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OPINION ON THE LAW ON POLITICAL PARTIES

MONTENEGRO

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Based on an unofficial translation of the Law, as provided by the requesting body.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

The Law of Montenegro on Political Parties (hereinafter "the Law") provides a solid framework for the formation and registration of political parties, emphasizing their fundamental role in the democratic process and if effectively implemented, it could help ensure an unimpeded environment for political participation. However, certain areas require improvement to guarantee full compliance with international standards and OSCE human dimension commitments, and reflect good practices. To reflect changing social and political circumstances since the Law was adopted in 2004 and last amended in 2011, and reflecting on the unique role that parties play in a democratic society, new provisions should be considered to further promote intra-party democracy, effectively promote women's equal political participation and enhancing political inclusivity, as well as accountability.

First, although prohibiting political parties that advocate violence or hatred may be justified, the broad wording of certain provisions in the Law, such as restrictions on parties that violate constitutional rights or Montenegro's territorial integrity, unless they have been consistently interpreted and applied, warrants further clarification. Additionally, limiting party founders to Montenegrin citizens with voting rights with two-years of residency, may exclude recent returnees or newly eligible residents, contradicting international recommendations and good practices towards broader political inclusion. It is also unclear whether similar restrictions apply to party membership, as international guidelines discourage barring legally residing non-citizens from party membership and political participation, particularly at the local level.

The provisions for party removal from the Registry (dissolution) raise concerns about proportionality and democratic principles. While regulating party activities and ensuring compliance with constitutional and legal frameworks is necessary, dissolution should be a measure of last resort, reserved for cases where a party clearly undermines democracy, in case of use of violence or threats to civil peace or fundamental democratic principles.

Additionally, while the Law is concise and accessible, it could be expanded to strengthen internal party democracy, organization, membership rules, and public accountability. Striking a balance between external regulations, internal democratic norms and party autonomy are crucial. Any potential overlap with the Law on Financing of Political Entities and Election Campaigns should be addressed through a coordinated approach that ensures equality, transparency, and fairness.

Finally, integrating gender and diversity perspectives throughout the Law, while considering effective measures to identify and overcome gender-biased barriers to women's political participation and to prevent and combat discrimination and violence against women in politics, would better reflect the constitutional principle

of equality between women and men while fostering greater participation of women and other groups, such as youth, persons with disabilities and national minorities, in party structures and political life.

More specifically, ODIHR makes the following recommendations to further strengthen the Law in accordance with international standards, OSCE commitments and good practices:

A. Regarding General Provisions:
   1. to revise the definition of political parties to better reflect the purpose of presentation of candidates for elections and exercise of political authority through elections to governmental institutions, and thus better distinguish them from other types of associations or interest groups; [para. 17]
   2. to make it more explicit that members have the right to cancel their party membership at any time, while specifying the withdrawal procedure either in the Law or political party statutes; [para. 19]
   3. to clarify that the grounds for prohibiting certain activities of a political party based on a "*breach of the territorial integrity of Montenegro*", "*violating the constitutionally guaranteed human rights and freedoms*" and "*incitement and promotion of national, racial, religious, or other forms of hatred or intolerance*" listed under Article 5 of the Law explicitly require a direct and immediate connection to violence; [paras. 23-26]

B. To consider supplementing Article 7 or other provisions of the Law by envisaging incentives for promoting participation of minorities and ethnic groups in line with international and regional instruments, which should be developed on the basis of prior consultation with the respective communities; [para. 37]

C. To establish legal requirements in the Law to ensure political parties take meaningful steps toward achieving gender parity goals, in line with international recommendations, including equal representation of women and men in party leadership, while encouraging or requiring political parties to provide for adequate rules, processes and structures to identify and respond to acts of violence against women members of their party [paras. 38-42];

D. Regarding the dissolution of political parties:
   1. to amend the Law to ensure that applicable sanctions are proportionate and allow for a certain level of flexibility based on the seriousness of the offence, while considering a broader range of potential sanctions in case of non-compliance with the provisions of the Law, proportionate to the violation, including the possibility of a warning or a grace period allowing the party to demonstrate that the unlawful actions are terminated; [paras. 56-57]
   2. to revise the provision of the Law allowing for the removal and dissolution of an inactive political party for not contesting elections for a certain period, or for relatively minor administrative/operational reasons; [para. 56]

E. To amend the Law to ensure that any restriction on political parties, including registration decisions, is subject to independent judicial review, while setting clear deadlines for applications and decisions, ensuring due process; [para. 58] and

F. To not require re-registration of political parties as a transitional measure when amending the existing Law on Political Parties. [para. 62]

These and additional recommendations are included throughout the text of this Opinion, highlighted in bold.

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

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Annex: Law of Montenegro on Political Parties

I. INTRODUCTION

1. On 28 January 2025, the Vice President of the Parliament of Montenegro and Co-Chair of the Committee for Comprehensive Electoral Reform sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") a request for a legal review of several key laws pertaining to the electoral legal framework, including the Law of Montenegro on Political Parties (hereinafter "the Law").
2. On 18 February 2025, ODIHR responded to this request, confirming the Office's readiness to prepare a legal opinion on the Law to assess its compliance with international human rights standards and OSCE human dimension commitments.
3. The present legal analysis should be read together with the *ODIHR Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns* (2024)[1] as well as the relevant findings and recommendations from the *ODIHR Election Observation Mission Final Report on the Early Parliamentary Elections of 11 June 2023*.[2]
4. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments.[3]

II. SCOPE OF THE OPINION

5. The scope of this Opinion covers only the Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing political parties in Montenegro.
6. The Opinion raises key issues and highlights areas of concern. In the interest of conciseness, it focuses on those provisions that require amendments or improvements rather than on positive aspects of the Law. The ensuing legal analysis is based on international and regional human rights and rule of law standards, norms and recommendations, as well as relevant OSCE human dimension commitments and international good practice, including the Joint Guidelines on Political Party Regulation issued by ODIHR and the Council of Europe's European Commission for Democracy through Law (hereinafter "Venice Commission").[4] Reference is also made to the relevant findings and recommendations from previous ODIHR election observation reports and legal opinions.
7. The Opinion also highlights, as appropriate, good practice from other OSCE participating States in this field. When referring to national legislation, ODIHR does not advocate for any specific country model but rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should be approached with caution since

1 See ODIHR, *Final Opinion on the Law of Montenegro on Financing of Political Entities and Election Campaigns*, 9 October 2024.
2 See ODIHR, *Montenegro - Early Parliamentary Elections (11 June 2023) - ODIHR Election Observation Mission Final Report*, 27 March 2024. See also ODIHR Electoral Recommendations.
3 See in particular, the *1990 OSCE Copenhagen Document*, para. 7.6., whereby the 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*."
4 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020).

it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

8. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[5] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[6] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

9. In view of the above, ODIHR stresses that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Montenegro in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

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

10. Political parties are essential in the democratic process and are vital to the realization of representative democracy. They are critical institutions through which citizens organize themselves to participate in public life, among which they choose at elections, and through which elected officials co-operate to build and maintain the coalitions that are the hallmark of democratic politics.[7] Political parties must be protected as an integral expression of the right of individuals and groups to freely form associations. Given the unique and vital role of political parties in the electoral process and democratic governance, it is commonly accepted for states to regulate their functioning insofar as is necessary to ensure effective, representative and fair democratic governance. When States choose to enact specific legislation to govern political parties, they should respect the general presumption in favour of their formation, functioning and protection, while aiming to facilitate a pluralistic political environment and promote equal and inclusive participation in political life.[8] Political parties should be regulated in a manner that supports the rights to freedom of association and expression, as well as genuine and democratic elections. These rights are fundamental to the proper functioning of a democratic society.[9]

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. Article 25 ensures the right to participate in public affairs.[10] International commitments on financing political parties

5 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. Montenegro became a State Party to the CEDAW by succession on 23 October 2006.
6 See *OSCE Action Plan for the Promotion of Gender Equality, adopted by Decision No. 14/04, MC.DEC/14/04* (2004), para. 32.
7 ODIHR and Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020), para. 1.
8 *Ibid*. Principles 1, 2, 4 and 9.
9 *Ibid*. para. 17.
10 See *International Covenant on Civil and Political Rights* adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Montenegro became a State Party to the ICCPR by succession on 23 October 2006.

and election campaigns are also found in Article 7 paragraph 3 of the United Nations Convention against Corruption (hereinafter "UNCAC").[11]

12. Furthermore, the CEDAW is relevant to gender equality and diversity inclusion, in particular its Articles 4 (on temporary special measures to enhance gender equality) and 7 (on eliminating discrimination against women in political and public life). Article 29 of the UN Convention on the Rights of Persons with Disabilities (hereinafter "CRPD") also focuses on the participation of persons with disabilities in political and public life.[12]

13. At the regional level, Article 11 of the European Convention on Human Rights (hereinafter "ECHR") sets standards regarding the right to freedom of association, protecting political parties and their members as special types of associations.[13] 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 relevant when reviewing legislation on political parties. The case law of the European Court of Human Rights (hereinafter "ECtHR") provides additional guidance for Council of Europe (hereinafter "CoE") Member States on ensuring that laws and policies comply with rights and freedoms guaranteed by the ECHR. Moreover, the CoE Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, adopted on 8 April 2003, can serve as a useful point of reference.

14. 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*."[14] Other OSCE commitments relevant to political party regulation under the Copenhagen Document include the protection of the freedom of association (paragraph 9.3), the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4). Additionally, Ministerial Council Decision 7/09 on women's participation in political and public life is of interest.[15]

15. These standards and commitments are supplemented by various guidance and recommendations from the UN, the CoE 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.[16] In addition, the CEDAW General Recommendation No. 23: Political and Public Life reaffirms the equal participation of men and women.[17] The most recent CEDAW Committee Recommendation No. 40 establishes a global roadmap to achieve fifty-fifty gender parity in decision-making systems. It recognizes *"equal and inclusive representation of women*

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11 See *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 Montenegro became a State Party to the Convention by succession on 23 October 2006. See also the *Additional Protocol to the Criminal Law Convention on Corruption*, adopted on 15 May 2003, ratified by Montenegro on 17 March 2008. Article 7(3) of the UNCAC requires that "*each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties*".

12 See the *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. Montenegro ratified the Convention on 2 November 2009.

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

14 See the *1990 OSCE Copenhagen Document*.

15 See the *OSCE Ministerial Council Decision 7/09*, 2 December 2009, Women's participation in political and public life.

16 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.

17 See the CEDAW Committee, *General Recommendation No. 23*: Political and Public Life.

as a fundamental human right and a game changing solution to overcome global challenges to achieving peace, political stability, economic inclusion, climate change mitigation as well as to ensure the inclusivity of technological advancement."[18] It also provides specific recommendations relating to political parties, especially with respect to the development of codes of conduct, parity in their decision-making bodies and support to women's sections.[19]

16. The ensuing recommendations will also refer, as appropriate, to other nonbinding documents that provide further detailed guidance. These include the ODIHR and Venice Commission Joint Guidelines on Political Party Regulation[20] (hereinafter "Guidelines") and the ODIHR and Venice Commission Joint Guidelines on Freedom of Association.[21] The Opinion also takes into account the various reports from the European Commission, CoE and ODIHR, which also refer and to findings and recommendations from non-governmental organizations, with respect to the need to reform the Law.[22]

2. General Provisions

17. The Law regulates the establishment, organization, registration, association, and dissolution of political parties (Article 1). It defines a political party as "*an organization of citizens who freely and voluntarily unite to achieve political objectives through democratic and peaceful means*" (Article 2). This definition is in line with the standard definition of a political party as *"a free association of individuals, one of the aims of which is to express the political will of the people by seeking to participate in and influence the governance of a country."*[23] One of the key objectives of legislation on political parties is to emphasize their essential role in the functioning of democracy. Consequently, political party laws often highlight their special function in shaping and expressing the will of the people. At the same time, according to the Guidelines, the definition of a political party includes "*associations at all levels of governance whose purpose is the presentation of candidates for elections and exercising political authority through elections to governmental institutions*". **It is advisable to reflect the purpose of presentation of candidates for elections and exercise of political authority through elections to governmental institutions in order to better distinguish between a political party and other associations or interest groups seeking to influence policy without itself presenting candidates for election**. **This will also reinforce the significance of political parties in any functioning democracy, further underlining their role in democratic governance and political representation.**

18. While the definition in Article 2 does not refer to registration, several other provisions of the Law underline that registration under the Law is needed before a political party may be able to operate in Montenegro (Article 5 (2)) or may begin its activities (Article 6). Although registration may be required in order to receive certain benefits from the state, such as public financing or other advantages,[24] it is important that once party registration is approved, requirements for retaining it should be minimal (see also additional comments on registration of political parties in Sub-Section 4 *infra*).

18 See the CEDAW Committee, *General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems*, 25 October 2024.
19 *Ibid.* paras. 39 (c) and 51 (d)-(e).
20 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation* (2nd edition, 2020).
21 See the ODIHR and the Venice Commission *Joint Guidelines on Freedom of Association*.
22 See, in particular, European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Montenegro* (2024); Council of Europe, Horizontal Facility for Western Balkans and Turkey - Action against Economic Crime in Montenegro (AEC-MNE), *Technical Paper on the Assessment of the regulatory framework for political party and election campaign financing in Montenegro* (2017);
23 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 64.
24 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 99.

19. While the Law recognizes party membership as voluntary, it does not specify the procedures for membership cancellation, although the voluntary nature of membership might be interpreted as an ability of members of political parties to cancel their membership at any time. The freedom of association includes both the right to establish and join political parties and the right to refrain from participation. This negative right, implied in Article 11 ECHR and Article 21 ICCPR, and explicitly stated in Article 20 (2) of the Universal Declaration of Human Rights, is reinforced by ECtHR case law on union membership, which also applies to political parties.[25] This is also particularly important as Article 17 of the Law envisages the merger of two or more parties. As provided by the Guidelines, *"[c]ancellation of membership is a key element of the voluntary nature of association and should occur without fine or penalty. In particular, in the case of party mergers, splinter groups or the formation of new platforms, party members should be allowed the freedom to continue or terminate their membership activity as they see fit."*[26] **While the Law acknowledges the voluntary nature of party membership, it could be more explicit in affirming that members have the right to cancel their membership at any time and clarifying the withdrawal procedure. Hence, Article 11(6) outlining the requirements for political party statutes could be amended by including the principle of voluntary withdrawal, i.e., the statutes should provide a procedure for admitting and excluding party members and their withdrawal from the political party membership.**

20. In addition, the Law does not extend fundamental rights protecting the right of association without discrimination, as required by Article 2 of the ICCPR and Article 14 of the ECHR along with Protocol 12 to the ECHR.[27] While Article 2 of the Law emphasizes the purpose of the establishment of a party by "*democratic and peaceful means"*, broader guarantees are essential to ensure equal treatment of political parties as well as equal treatment by and within political parties.[28] This is even more relevant since the Constitution of Montenegro provides for a general prohibition of discrimination on any ground (Article 8 (1)). Individuals and groups must be able to establish political parties on the basis of equal treatment before the law.[29] As stated in Principle 9 of the Guidelines, *"[t]he right to freedom of association generally entitles those forming an association or belonging to one to choose with whom they form an association or whom to admit as members.[…] However, this freedom of choice is not unlimited as this aspect of the right to association is also subject to the prohibition on discrimination, so that any differential treatment of persons with respect to the formation or membership of an association that is based on a personal characteristic or status must have a reasonable and objective justification."*[30] **Consideration could be given to amending Article 2 to explicitly include compliance with the principle of non-discrimination when forming a political party, as well as political parties' obligation to comply with the principles of equal treatment and non-discrimination after establishment. Strengthening guarantees of equal rights in the Law would provide a stronger ground to further enhance political participation and representation for women, persons with disabilities, and minorities** (see also addition recommendations on political participation enhancement under Sub-Section 4 *infra*). Moreover, the potential

25 See ECtHR, *Young, James and Webster v. the United Kingdom*, nos. 7601/76 and 7806/77, 13 August 1981, para. 56; ECtHR, *Sigurður A. Sigurjónsson v. Iceland*, no. 16130/90, 30 June 1993, para. 35, which states: "*Article 11 must be viewed as encompassing a negative right of association*"; ECtHR, *Sørensen and Rasmussen v. Denmark* [GC], nos. 52562/99 and 52620/99, 11 January 2006, para. 56.

26 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 143.

27 Ratified on 3 March 2004, entered into force in Montenegro on 6 June 2006.

28 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, Principles 8 and 9.

29 See also Articles 2 and 26 of the *ICCPR*; Article 14 of the *ECHR* and *Protocol No. 12 to the ECHR*. Paragraph 7.6 of the *1990 OSCE Copenhagen Document* also states that *"Participating States will 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."*

30 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 59.

concerns about the fact that the non-discrimination principle might oblige parties to accept potential members who would be inclined to deviate from the officially established programmatic principles, could be alleviated by the provisions in the party statutes that are addressed in Article 11 (6), which call on parties to elaborate their own, internal procedures for "admitting and excluding party members", i.e., specifying on what grounds party membership can be denied.

21. Article 4 of the Law establishes that the party shall be organized and operate exclusively on a territorial basis. The wording of this provision is not entirely clear. If the purpose of Article 4 is to clearly establish the Montenegrin jurisdiction for the political parties operating in the country with a view to prevent undue influence by foreign interests, including foreign governments, in domestic political affairs, and strengthen the independence of domestic political parties, this would appear as a legitimate objective.[31] At the same time, if the provision is interpreted to prevent political parties from carrying out any form of activities beyond the national borders of Montenegro, including possible information-sharing or co-operation or any form of engagement with Montenegrin citizens who reside abroad, this could be considered excessive.[32] Moreover, this provision should not be interpreted as requiring party operation and activities to be carried out physically, in person. Legislation should be flexible and recognize that political parties can exist online and conduct many of their activities and ordinary business through new technologies and online means, without requisite physical presence for every such activity. The ambiguity in the wording of Article 4 may also allow for potential restrictive interpretations or undue prescriptive measures regarding a party's internal organization. Depending on how this provision is interpreted, imposing strict territorial constraints could be viewed as an excessive requirement, potentially infringing upon this right.[33] In light of the above, **the provision on organization and operation "exclusively on a territorial basis" should be clarified to ensure that its practical application will respect the principles of party autonomy and political pluralism, while ensuring flexibility in terms of the organization and operation, not requiring specific territorial requirements, with adequate and proportionate safeguards to protect national interests and the independence of domestic political parties.**

22. According to the Law, "*[t]he operation of a party whose objectives are aimed at: the violent alteration of the constitutional order, a breach of the territorial integrity of Montenegro, the violation of constitutionally guaranteed human rights and freedoms, or the incitement and promotion of national, racial, religious, or other forms of hatred or intolerance shall be prohibited*" (Article 5). This provision somewhat mirrors Article 55 of the Constitution of Montenegro, which provides that *"[t]he operation of political and other organizations aimed at violently overthrowing the constitutional order, undermining the territorial integrity of Montenegro, violating guaranteed freedoms and rights, or inciting national, racial, religious, or other hatred and intolerance is prohibited".*

23. It should be reminded that any limitation on the right to freedom of association must meet the strict requirements provided in international human rights law - namely, that they must be prescribed by law (legality), pursue one of the legitimate aims recognized by international instruments (legitimacy), be necessary in a democratic society (necessity and proportionality). In addition, the restriction must be non-discriminatory (Articles 2 and 26 of the ICCPR and Article 14 of the ECHR and Protocol 12 to the ECHR). Particularly in the case of political parties, given their fundamental role in the democratic

31 *Ibid*, para. 229, with respect to foreign funding specifically.
32 *Ibid.* para. 231.
33 *Ibid,* para. 154, which underlines that any political or other excessive state control over activities of political parties, including the operation of territorial branches and subdivisions, should be avoided.

process, prohibitive measures shall be narrowly applied and shall never completely extinguish the right or encroach on its essence, which means that prohibition of a political party should always be a measure of last resort, and shall only be imposed in exceptional cases under strict conditions.[34] It is noted that any restriction on the right to freedom of association must be in conformity with the specific permissible grounds of limitations exhaustively set out in the relevant international instruments[35] and to be narrowly interpreted.[36] In 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.[37] Further, any limitation imposed on the rights of political parties must be necessary and effective in achieving its specified purpose as well as proportionate in nature and time, meaning that it should always be the least intrusive means to achieve the respective objective.[38] Lastly, any such restrictions must be applied consistently and objectively, ensuring they do not unfairly infringe upon the fundamental political freedoms of any party based on subjective or arbitrary grounds.

24. Some of the grounds for prohibiting activities of a political party listed under Article 5 of the Law could be considered to pursue one of the legitimate aims set in international instruments, such as the protection of public order or prevention of disorder or the protection of the rights and freedoms of others. That said, only an explicit call or use of violence or threat to civil peace or fundamental democratic principles by a political party may justify a prohibition of a political party.[39] The reference to *"a breach of the territorial integrity of Montenegro"* without specific references to violence should not serve as a ground for prohibiting the defence of the rights of national minorities, or for advocating for a peaceful change of the Constitution, *peacefully* calling for regional autonomy, or even for secession of part of the territory, all of which should be protected by the rights to freedom of association and to freedom of expression.[40] Hence, the Law should explicitly state that "*breach of the territorial integrity*" for the sake of prohibiting activities of a political party implies a direct and immediate call for or use of violence . The same issue applies to the broad terminology "*violating the sovereignty, security and territorial integrity of a state*" and *"violating the constitutionally guaranteed human rights and freedoms".*

25. With respect to *"incitement and promotion of national, racial, religious, or other forms of hatred or intolerance"*, while falling under the permitted legitimate aims listed under international human rights standards to limit the rights to freedom of association and freedom of expression, such a wording does not necessarily imply some elements of

34 See ODIHR and Venice Commission, *Guidelines on Political Party Regulation*, para. 50.

35 The legitimate aims mentioned in Article 22 (2) of the ICCPR and Article 11 (2) of the ECHR are the protection of national security, public safety, public order (*ordre public*) for Article 22 (2) of the ICCPR or the prevention of disorder or crime for Article 11 (2) of the ECHR, the protection of public health or morals, and the protection of the rights and freedoms of others. See also ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2014), para. 182. See also, for example, ECtHR, *Manole and Others v. Moldova*, no. 13936/02, 17 September 2009, para. 95; *Stankov and the United Macedonian Organisation Ilinden v. Bulgaria* (2001), nos. 29221/95 and 29225/95, 2 October 2001, paras. 97-103.

36 See ODIHR and Venice Commission, *Guidelines on Political Party Regulation*, para. 106; and *Joint Guidelines on Freedom of Association* (2015), para. 34, which states that *"[t]he scope of these legitimate aims shall be narrowly interpreted."* See also e.g., ECtHR, regarding political parties, *Parti nationaliste basque – Organisation régionale d'Iparralde v. France*, no. 71251/01, 7 June 2007, para. 46, where the Court reiterated that "*the exceptions set out in Article 11 are to be construed strictly*"; ECtHR, *Socialist Party and Others v. Turkey* [GC], no. 21237/93, 25 May 1998, para. 46, which provides 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.*"

37 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 48. See also *ODIHR Note* on International and Regional Standards Applicable to Certain Issues relating to Political Party Reform in Ukraine, para. 74.

38 See ODIHR and Venice Commission, *Guidelines on Political Party Regulation*, para. 52.

39 See, ODIHR and Venice Commission, *Guidelines on Political Party Regulation*, para. 42. See also *Guide on Article 17 of the European Convention on Human Rights* for the case law of the ECtHR.

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

violence or other elements incompatible with fundamental democratic principles.[41] According to Article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), *"[a]ll 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. At the same time, such a wording to serve as a ground for prohibiting certain activities of a political party should be given a restrictive interpretation and only concern cases where political parties intent to incite imminent violence, if there is a likelihood of such violence and a direct and immediate connection to such violence.[42]

26. In light of the foregoing, **it is recommended to clarify that the grounds for prohibiting the activities of a political party based on a "*breach of the territorial integrity of Montenegro*", "*violating the constitutionally guaranteed human rights and freedoms*" and "*incitement and promotion of national, racial, religious, or other forms of hatred or intolerance*" listed under Article 5 of the Law explicitly require a direct and immediate connection to violence.**

RECOMMENDATION A.

1. To revise the definition of a political party to better reflect the purpose of presentation of candidates for elections and exercise of political authority through elections to governmental institutions, and thus better distinguish them from other types of associations or interest groups.
2. To make it more explicit in the Law that members have the right to cancel their party membership at any time, while specifying the withdrawal procedure either in the Law or political party statutes.
3. To clarify that the grounds for prohibiting certain activities of a political party based on a "*breach of the territorial integrity of Montenegro*", "*violating the constitutionally guaranteed human rights and freedoms*" and "*incitement and promotion of national, racial, religious, or other forms of hatred or intolerance*" listed under Article 5 of the Law explicitly require a direct and immediate connection to violence.

3. MEMBERSHIP AND ESTABLISHMENT OF A POLITICAL PARTY

3.1. Membership Requirements

27. A political party can be founded by at least 200 eligible citizens with voting rights who sign a declaration of establishment (Article 7). As a distinct form of association, political parties in many countries are subject to registration requirements, particularly for acquiring legal personality, electoral participation or accessing public funding. Many OSCE participating States require proof of minimum levels of support, on the basis of the collection of signatures or of membership, prior to forming and registering a political

41 See the ODIHR and Venice Commission *Joint Opinion* on the Law on Political Parties of Azerbaijan, para. 34. See also *ODIHR Note* on International and Regional Standards Applicable to Certain Issues relating to Political Party Reform in Ukraine, para.76

42 See ODIHR and Venice Commission *Joint Opinion* on the Law on Political Parties of Azerbaijan, para. 35.

party.[43] Minimum support established through the collection of signatures or minimum number of members must be reasonable and democratically justifiable and not so burdensome as to restrict the political activities of small parties or to discriminate against parties representing minorities.[44] In Montenegro, the requirement of having at least 200 eligible citizens signing the declaration of establishment for an overall population of approximately 660,000 inhabitants, would represent approximately 0.03 per cent of the population, which would in principle not appear excessive.[45]

28. Article 7 also requires a party founder to be a citizen of Montenegro with voting rights. Being eligible for voting rights in Montenegro requires at least two years of registered in-country residency. This means that citizens who have recently returned to the country or have recently obtained residency for various reasons would be disqualified from establishing a political party. As ODIHR noted during the observation of the early parliamentary elections in 2023, *"[t]he length of this residency requirement is at odds with international standards and good practices."*[46]

29. The Law is not clear if this restriction also extends to party membership, as this is not covered elsewhere. In their Joint Guidelines, ODIHR and the Venice Commission considered that only the possibility of aliens to *establish* political parties could be restricted under Article 16 of the ECHR, and *"the latter provision should not be applied in order to restrict the membership of aliens in political parties"*.[47]

30. In addition, Recommendation 1500 (2001) on Participation of immigrants and foreign residents in political life in the CoE member states, notes that democratic legitimacy requires equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country's prosperity further justifies their right to influence political decisions in the country concerned (para 4).[48] A blanket exclusion of foreign citizens and stateless persons from membership in political parties

43 Most Western European countries (e.g. Germany, Greece, Spain, Switzerland) do not establish any special registration requirements for political parties as compared to other associations while in countries like Denmark, Italy or The Netherlands, political parties are not even obliged to register. In other countries, the collection of a minimum number of signatures prior to the registration of a political party is the most frequent requirement. It can go from as low as 3 in Andorra (population of approx. 80,000), 100 in Croatia (population of approx. 3.9 million) or 200 in Latvia (population of approx. 1.88 million), Montenegro (population of approx. 0.62 million) or Slovenia (population of approx. 2.12 million) to as high as 10,000 in Serbia (population of approx. 6.62 million) and Slovakia (population of approx. 5.43 million) or even 20,000 in Uzbekistan (population of approx. 35.7 million). Some countries, however, use party membership as the basis to establish the minimum levels of support required for registration, for instance 3 in Romania, 10 in Hungary or Kyrgyzstan or 40,000 in Kazakhstan. In Bulgaria, both a minimum number of signatures (500) and member (2,500) is required. For instance, in Canada, there is no legislation regulating the formation of federal political parties or their legal, internal and financial structures but a party may choose to register, in which case it should have at least 250 members who are electors, in a country which population represents approximately 40 million inhabitants; see <https://www.elections.ca/content.aspx?section=pol&dir=pol/bck&document=index&lang=e>.

44 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 94 and 97. See also the Venice Commission *Opinion on the Draft Amendments to the Law on Political Parties of Bulgaria* (2008), paras. 14-19.

45 In general, a minimum level of support amounting to 0.0125% of the population would be considered reasonable, while 0.0625% of the population would be deemed a disproportionate requirement, which is not necessary in a democratic society; see ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 96; the Venice Commission has also *stated* that, in a country of eight million inhabitants, a minimum requirement of 1,000 party members (0.0125% of the population) is reasonable, whereas 5,000 party members (0.0625% of the population) would be a disproportionate requirement which is not necessary in a democratic society and therefore a violation of Article 11 of the ECHR.

46 See *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, page 9. Articles 11 and 14 of the *UN CCPR General Comment No.25* state *"If residence requirements apply to registration, they must be reasonable", and "... grounds for deprivation of voting rights should be objective and reasonable",* while Section I.1.1.c of the Council of Europe's Venice Commission Code of Good Practice in Electoral Matters states that *"a length of residence requirement may be imposed on nationals solely for local or regional elections".*

47 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 149.

48 See *Recommendation 1500 (2001)* on Participation of Immigrants and Foreign Residents in Political Life in the Council of Europe member states, which declares: "*democratic legitimacy requires equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country's prosperity further justifies their right to influence political decisions in the country concerned*" (para. 4). In this connection the PACE "urges the governments of member states to grant the right to vote and stand in local elections to all migrants legally established for at least three years irrespective of their origin." See also *Convention on the Participation of Foreigners in Public Life at Local Level*.

is unwarranted.[49] To some extent, such individuals should be allowed to engage in the political life of their country of residence, particularly in areas where they are permitted to participate in certain types of elections, such as local.[50]**While recognizing the right of OSCE participating States to link certain modes of political participation to a citizenship requirement it is recommended to specify that anyone, including aliens with legal residency, has the right to become a member of a political party.** In this respect, it is also important to note that upon accession of Montenegro to the EU, every EU citizen residing in Montenegro will have the right to vote and to stand as a candidate at elections to the European Parliament and at municipal elections in the country.[51]

31. Furthermore, it is important to underline the increasing focus at the international and regional level on the importance of strengthening children and young people's participation in public decision-making processes.[52] At the OSCE level, the significance of youth involvement is also enshrined in a number of OSCE commitments.[53] In this respect it would also be beneficial to mention funds to support specific youth organizations, persons with disabilities, minorities within parties, including for awareness-raising and educational campaigns among politicians, in the media and among the general public, about the need for the full, free and equal democratic participation in political and public life.[54] The above initiatives would align with international standards aimed at promoting gender equality and diversity in political participation.[55] Specifically with respect youth, it would be beneficial to explore additional mechanisms that enhance youth political participation, including potential financial and other incentives for political parties that actively promote young people's advancement in leadership and decision-making roles. This could involve the adoption of youth action plans, the establishment of dedicated youth wings within parties, structured mentorship and

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49 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 149 and references cited therein: "*Article 16 of the ECHR enables states to restrict aliens further than nationals in relation to their political activities under Articles 10 and 11 ECHR, such as establishing of and participating in political parties. This provision allows for restrictions on political activities without the need to be justified under Articles 10(2) and 11(2). The Grand Chamber of the ECtHR has argued that Article 16 reflects an outdated understanding of international law143, and that an 'unbridled reliance on [this provision] to restrain the possibility for aliens to exercise their right to freedom of expression would run against the Court's rulings in cases in which aliens have been found entitled to exercise this right without any suggestion that it could be curtailed by reference to Article 16.' These considerations were made in the specific context of the Perinçek case which concerned the right to freedom of expression guaranteed under Article 10 ECHR "regardless of frontiers". At the same time, the Court also held that Article 16 should be construed as only capable of authorizing restrictions on "activities" that directly affect the political process. Therefore, taking also into account the recommendation of the Parliamentary Assembly that the restrictions at present authorized by Article 16 with respect to political activity by aliens are excluded,145 the Commission and ODIHR take the view that only the possibility of aliens to establish political parties can be restricted under Article 16. Nevertheless, the latter provision should not be applied in order to restrict the membership of aliens in political parties."*

50 See Venice Commission and ODIHR, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, para. 86. Also ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties of Mongolia (2022), para. 48; Venice Commission and ODIHR, *Joint Opinion* on draft amendments to the legislation concerning political parties of Armenia, para. 23.

51 See Articles 39 and 40 of the Charter of Fundamental Rights of the European Union.

52 See e.g., UN General Assembly, World Programme of Action for Youth | Division for Inclusive Social Development (DISD) (un.org), most notably Priority Area 1 on *"Full and effective participation of youth in the life of society and decision-making";* see also United Nations' Youth Strategy 2030, which advocates for reducing barriers to youth participation in political processes. See also Council of Europe, *Recommendation CM/Rec(2012)2 of the Committee of Ministers* to member States on the participation of children and young people under the age of 18 (Adopted by the Committee of Ministers on 28 March 2012 at the 1138th meeting of the Ministers' Deputies), p. 4. See also *the Council of Europe Strategy for the Rights of the Child 2022-2027*, with one of the strategic objectives to give a voice to every child, including through safe, ethical and enabling child participation processes*; the European Union Strategy on the Rights of the Child, 2021*, which includes participation in political and public life as a specific theme.

53 See *OSCE, Youth and Security Education: Compilation of OSCE Commitments*, January 2019; see also OSCE, *Youth Declaration adopted at the Youth Conference*, Mollina, 2017.

54 See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019); *Addressing Violence against Women in Politics In the OSCE Region: Toolkit* (especially Tool 3 for Political Parties) (2022); *Handbook on Promoting Women's Participation in Political Parties* (2014); OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

55 As embedded in the CEDAW, the CRPD, the Beijing Declaration and Platform for Action (United Nations, Beijing Declaration and Platform for Action), CoE Recommendation Rec(2003)3 of the Committee of Ministers to member states on Balanced Participation of Women and Men in Political and Public Decision Making (adopted on 12 March 2003), and *OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life*, 4 December 2009. See also *International IDEA Funding of Political Parties and Election Campaigns*, p. 354. See also *ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain*, para. 70.

capacity-building initiatives, as well as financial and logistical support for young candidates during election campaigns.

32. Lastly, Article 7 of the Law prohibits judicial and prosecutorial office holders, ombudspersons, and professional members of the police and military to establish a political party. Article 22 (2) ICCPR and Article 11 (2) of the ECHR allow some limitations to the freedom of association of three categories of persons: members of the armed forces, of the police and of the administration of the state.[56] Accordingly, the ECtHR has recognized the legitimacy of restricting the political activity of such public authorities, because of *"the need to guarantee their political neutrality and ensure that they will duly fulfil their duty of impartiality, treating all citizens in a manner that is equal, fair and untainted by political considerations."*[57] Therefore, partisan political participation and party membership of state administrative officials may be regulated or denied in order to ensure that such persons are able to fulfil their public functions free from any conflict of interest.[58] Allowing such involvement could undermine the essential impartiality and independence of judicial office-holders, and prosecutorial autonomy and independence as well as the necessary neutrality and non-partisan functions of the members of military and police forces. With respect to judges in particular, the Council of Europe's Consultative Council of European Judges (CCJE) has considered that where party membership or their participation in public debate is allowed, it is necessary for judges to refrain from any political activity that might compromise their independence or impartiality, or the reputation of the judiciary.[59]

33. The ODIHR and Venice Commission have recognized that the necessity for independence and impartiality of ombudspersons and national human rights institutions in line with the UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (UN Paris Principles),[60] was such that they could not properly be filled by persons who at the same time played an active part in politics.[61] At the same time, it does not appear clear whether such prohibition would appear legitimate, necessary and proportionate with respect to the regular staff of the national human rights institutions as it may be going and potentially overly broad, beyond office-holders, thereby requiring further clarification. Overall, it is crucial that such prohibition does not unduly restrict the right to associate of human rights defenders.[62]

34. Article 7 of the Law only refers to the prohibition of being the founder of a political party but does not specifically address party membership. Of note, Article 54 of the Constitution of Montenegro states that *"[a] judge of the Constitutional Court, a judge, a state prosecutor and his/her deputy, an Ombudsman, a member of the Council of the*

56 For example, In *Ahmed v. United Kingdom*, the ECtHR found no violation with respect to the United Kingdom's decision to restrict certain classes of public-office holders in their political activities, in cases that could imply bias. In *Strezelecki v. Poland*, the prohibition against police officers becoming members of a political party and participating in political activities was upheld, because of the legitimate aims of maintaining the neutrality and impartiality of the police and the confidence of the public on the police.

57 See also *Code of Good Practice in the field of political parties*, adopted by the Venice Commission at its 77th Plenary Session (12-13 December 2008) and *Explanatory Report*, adopted by the Venice Commission at its 78th Plenary Session (Venice, 13-14 March 2009).

58 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 146 and 148.

59 See Consultative Council of European Judges (CCJE), Opinion No. 25 (2022) on freedom of expression of judges, Recommendation 5. See also ODIHR, *Warsaw Recommendations on Judicial Independence and Accountability* (2023), para. 30, which states: "*this right [to freedom of association] may be circumscribed and subject to such restrictions as may be necessary where forming or joining an association would conflict with the public duties and/or jeopardize the impartiality of judges or the appearance thereof*".

60 See UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (Paris Principles) as defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris (7-9 October 1991), and adopted by UN General Assembly Resolution 48/134 of 20 December 1993.

61 See Venice Commission and ODIHR, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, para. 91 and *Opinion* on the draft law on amendments to the law on political parties of the Republic of Azerbaijan (2011), para 27.

62 The *UN Declaration on Human Rights Defenders* acknowledges the valuable work of individuals and associations in contributing to the effective elimination of human rights violations, and states that everyone has the right, individually or in association with others, to disseminate information and knowledge on all human rights issues, to hold and form opinions on the observance, both in law and practice, of human rights and fundamental freedoms and to draw public attention to those matters (Article 6). It further declares that everyone has the right to have effective access, on a non-discriminatory basis, to participating in the government of his or her country and in the conduct of public affairs (Article 8).

Central Bank, a member of the Senate of the State Audit Institution, a professional member of the Army, Police and other security services shall not be a member of any political organization". Overall, such prohibitions imposed on judges, prosecutors and members of the military and of the police would appear legitimate and justified, especially with respect to the establishment of a political party. Mere membership in political parties of judges, prosecutors, or members of the police or military could similarly imply some possible bias, and hence restrictions in this respect would similarly apply legitimate and justified, as their *personal* scope is limited to specific professions for which independence, impartiality, autonomy and/or neutrality are essential to the exercise of their functions, and they are not applied in an overly broad manner, e.g., to all persons in government service.[63]

3.2. Procedure for the Establishment of a Political Party

35. The declaration of establishment of a political party must include personal details of all founders (name, date and place of birth, residential address and unique identification number), the name of the party, acceptance of the party's statute and programme, with signatures, and be certified by a competent court (Article 8). A founding assembly formally establishes the political party by adopting its statute and programme and electing an authorized representative (Article 9). The decision on establishment must outline the party's name, objectives, and representative details, among others (Article 10). The political party must have a statute defining its structure, decision-making, membership rules, financial management, and other governance aspects, while its programme states its political goals and values (Article 11). Such requirements appear generally reasonable, and if not interpreted rigidly, would align with parties' associational autonomy.[64]

36. Article 12 of the Law contemplates the possibility of registering a political party in the languages of national minorities and ethnic groups, provided that the official name comes first. As underlined in the Joint Guidelines, "*Legislation on political parties may create incentives that help promote the full participation and representation of national and ethnic minorities, women and persons with disabilities in the political process. A state may allow or even dictate – in line with the international and regional instruments mentioned hereafter – temporary special measures aimed at achieving de facto equality and thus support full participation of national and ethnic minorities, women and persons with disabilities in public life.*"[65]

37. Article 7 of the Framework Convention on National Minorities requires that State Parties *"shall ensure respect for the right of every person belonging to a national minority to freedom of peaceful assembly, freedom of association, freedom of expression..."* Pursuant to Article 2 (1) of the ICERD, circumstances even may exist where State Parties are legally obliged to adopt such special measures. In this context, regard should be paid to General Recommendation No. 32 of the UN Committee on the Elimination of Racial Discrimination (CERD Committee), which states that *"[s]pecial measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary"* and that measures *"include the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as (...) participation in*

63 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 148. See also, for example, the case of *Vogt v. Germany* [GC], no. 17851/91, 26 September 1995, where the ECtHR found that the dismissal of a public teacher on the basis of her membership in a political party was an infringement of her rights as set out in Articles 10 and 11 of the ECHR

64 See e.g., ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties of Mongolia (2022), para. 52.

65 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 163.

public life for disfavoured groups."[66] **Taking into consideration the above, Article 7 of the Law or other provisions of the Law could be supplemented to envisage additional measures for promoting the political participation of minorities.**[67] **Such measures could be developed on the basis of prior consultation with affected communities.**

RECOMMENDATION B.

To consider supplementing Article 7 or other provisions of the Law by envisaging incentives for promoting participation of minorities and ethnic groups in line with international and regional instruments, which should be developed on the basis of prior consultation with affected communities.

4. GENDER AND DIVERSITY CONSIDERATIONS

38. Article 11 (9) of the Law requires the statute of a political party to include provisions on "*the method of ensuring affirmative action to achieve gender equality in the election of party bodies*". At the same time, the Law lacks provisions promoting gender equality and more diversity within internal party structures, seeking gender parity in their decision-making bodies, while also aiming to prevent and combat discrimination on any ground and violence against women in politics. In particular, in line with good practices and international recommendations, **it is recommended to develop internal party codes of conduct, adopt measures and promote parity in party decision-making bodies while ensuring effective support to women's sections of political parties**.[68] According to the Guidelines, in respecting universal and regional instruments designed to ensure equality for women, as well as general principles for non-discrimination, legislation should endeavour to ensure that women are able to participate fully in political parties as a fundamental mean for the full enjoyment of their political rights.[69]

39. There are a number of ways of achieving this goal, some of which are related to internal party regulations, whilst others may be contained in legislation. **Such measures could include financial and other incentives for establishing and supporting women's sections in political parties, implementing electoral gender quotas, providing training for women party members and ensuring financial, legal and other support to women candidates, adopting gender-equality strategies, considering family responsibilities to ensure balanced participation in party leadership**.[70]

40. Given the under-representation of women in the Parliament (27.16%)[71] and local assemblies in Montenegro, the legal drafters should consider introducing further incentives for political parties to enhance the representation of either sex in Parliament and local assemblies,[72] and more generally, promote women's equal participation in

66 See *General Recommendation No. 32* on the meaning and scope of special measures in the ICERD (2009), UN Doc CERD/C/GC/32, para. 16.
67 See for example, *Guidelines to Assist National Minority Participation in the Electoral Process*, the OSCE High Commissioner on National Minorities (HCNM) See also OSCE HCNM, *Lund Recommendations on the Effective Participation of National Minorities in Public Life & Explanatory Note* (1999).
68 See the CEDAW Committee, *General recommendation No. 40 (2024) on the equal and inclusive representation of women in decision-making systems*, 25 October 2024, paras. 39 (c) and 51 (d)-(e).
69 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para.160. See also *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016).
70 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, paras.101-105. See also *Joint Opinion* on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, para. 60.
71 See <Montenegro | Inter-Parliamentary Union>.
72 According to *IPU-Parline*, there women's representation in the current parliament is 27 per cent.

political and public life. This should be in addition to considering the introduction of a zipper system, requiring political parties to create candidate lists alternating between female and male candidates, as recommended by the CEDAW Committee in its latest concluding observations of June 2024.[73] In addition to measures that may be voluntarily introduced by each political party **to encourage women's participation, the Law could establish specific legal requirements to ensure political parties take meaningful steps toward achieving these goals.**

41. In addition, seeing how violence against women in politics constitutes a barrier to women's political participation in Montenegro, as also recognized in the latest ODIHR election observation report,[74] there is a need to respond to its manifestations in all areas of political life, including in political parties.[75] 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 women members of their party**.[76] 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.[77] 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.[78] As emphasized above, **this complaint mechanism should be in addition to any other avenue for redress before courts or tribunals**.

42. Lastly, as in the case of the Law on Financing of Political Entities and Election Campaigns, this Law is not drafted in a gender-neutral manner, as it refers at times to individuals using the masculine personal pronoun. This is not in line with international recommendations and good practice, whereby drafters are encouraged also to apply gender-sensitive drafting and terms.[79] **It is recommended to phrase all provisions of the Law in a gender-sensitive manner.**

43. It is also equally important to consider other measures for inclusion that extend beyond gender, ensuring diverse and equitable representation across all segments of society. In this respect it would also be beneficial to mention funds to support specific youth organizations, persons with disabilities, minorities within parties, including for awareness-raising and educational campaigns among politicians, in the media and among the general public, about the need for the full, free and equal democratic participation in political and public life.[80]

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73 See CEDAW Committee, *Concluding observations on the third periodic report of Montenegro*, CEDAW/C/MNE/CO/3, 6 June 2024, paras. 29-30. In addition, the CEDAW *General Recommendation No. 23*: Political and Public Life reaffirms the equal participation of men and women. See also, *General Recommendation No. 40*, which reaffirms 50-50 representation of women and men across all decision making spaces, both formal and informal.

74 See *ODIHR Final Report* on Early Parliamentary Elections in Montenegro, 11 June 2023, Priority Recommendation 3, which states: "*Political parties should undertake effective measures to identify and overcome gender-biased barriers for women candidates and a thorough assessment should be conducted on the impact of the gender quota on the election of women officeholders at all levels*".

75 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.

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

77 *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.

78 *Ibid.* p. 9 (ODIHR Tool 3).

79 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular paras. 133 and 223.

80 See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019); *Addressing Violence against Women in Politics In the OSCE Region: Toolkit* (especially Tool 3 for Political Parties) (2022); *Handbook on Promoting Women's Participation in Political Parties* (2014); OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

RECOMMENDATION C.

To establish specific legal requirements in the Law to ensure political parties take meaningful steps toward achieving gender parity goals, in line with international recommendations, including equal representation of women and men in party leadership, while encouraging or requiring political parties to provide for adequate rules, processes and structures to identify and respond to acts of violence against women members of their party.

5. REGISTRATION OF POLITICAL PARTIES

44. As already noted, a political party acquires legal status only upon registration in the Register of Political Parties (Article 6). According to Article 14 of the Law, the Register is maintained by the competent authority, which sets the regulations for its content and procedures. A party's authorized representative must submit the registration application in person or by mail, accompanied by the decision on establishment of the party, statute, and programme. If any required documents are missing, the authority will request their completion within ten days, and failure to comply within 30 days will result in the application's withdrawal. According to Article 15, registration must be completed within 15 days (or on the first working day after the deadline) and the party may begin activities upon registration. Article 15 further requires the responsible authority to publish the decision on the party's registration in the Register in the Official Gazette of Montenegro. It would be also advisable to publish it at the website of the Register.

45. As already noted, not all OSCE participating States require the registration of political parties; however, it is acknowledged that political parties may obtain certain legal privileges, based on their legal status, that are not available to other associations.[81] Where registration as a political party is required to take part in elections or to obtain certain benefits, substantive registration requirements and procedural steps for registration should be reasonable. Such registration requirements should be carefully drafted to achieve legitimate aims, but not overly restrictive, in line with Article 22(2) of the ICCPR and Article 11 (2) of the ECHR, read in the light of Article 3 of Protocol No. 1 to the ECHR.[82]

46. The requirements for continuing to receive certain benefits from the state, such as public financing or ballot access in elections, may be higher than requirements for maintaining registration as a political party.[83] While acknowledging that some States do not prescribe any requirements for political party registration, it nevertheless may be justified for a state to enact regulations – in general only procedural in nature – for political party registration and formation.[84] As underlined in the Guidelines, requirements for registration do not, in themselves, represent a violation of the right to free association and it is reasonable to require the registration of political parties with a state authority for certain purposes, e.g., to acquire legal personality, to allow parties to participate in elections, and to receive certain forms of state funding.[85] Once party registration is approved, requirements for retaining it should be minimal although the requirements for continuing to receive certain benefits from the state, such as public financing or ballot access in elections, may be higher than requirements for maintaining registration as a

81 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 85.
82 *Ibid*, para. 86.
83 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 99.
84 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 84.
85 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 85.

political party.[86] As further emphasized in the Guidelines, *"[w]hile de-registration may legitimately result in the loss of official recognition and of some privileges, such as state funding or privileged ballot access, de-registration should not result in the dissolution of the party*".[87]

47. It is a legitimate requirement that political parties provide basic information with the application for registration. This is necessary given the need for responsible persons to be identified within the party for the receipt of communications from the State and for the operational oversight of certain activities. However, there is no reason for the State to require the inclusion of the party programme at the point of applying to be registered as a political party, as the party programme might not be completely established at the time of registration. This issue and when it is developed should be left up to the political party to decide internally.[88] In addition, this can have a negative effect on the establishment of a political party in which the members of the party are involved by participating in a democratically organized debate, which may take some time. **It is recommended to review this provision**.

48. In addition, while requiring a party to submit their statute for registration is not inherently illegitimate, States must ensure that such a registration requirement does not lead to discrimination. As the Guidelines state, *"such a requirement cannot be used to discriminate against the formation of parties that espouse unpopular ideas."* The ECtHR in *Refah Partisi* emphasized that Article 10 of the ECHR protects ideas, even those that *"offend, shock or disturb."*[89] Since submitting a statute is mandatory for registration, an application should not be rejected solely on the basis of the content of the statute, for instance due to unpopular or offensive ideas, provided it upholds democratic principles. Moreover, while the Law is specific on the required documents to be submitted, it does not regulate the format of the application. Unless there has been consistent application of these registration requirements, this could lead to arbitrary or inconsistent application of the Law: some parties may use different formats, which could potentially lead to their disqualification. Finally, **consideration could be given to supplementing the Law to specify the basic requirements for the application format and the authority responsible for providing it, while also contemplating the possibility to file registration documents electronically.**

6. Removal from Register, Dissolution and Other Sanctions

49. According to Article 18 of the Law, a political party ceases to legally exist when it is removed from the Register, which in effect results in its dissolution. This occurs if (1) the Constitutional Court finds its actions unconstitutional, (2) its name or logo is too similar to another party or institution, or (3) it merges with another party. The same Article 18 further extends that the competent authority will initiate the removal of a party from the Register if (1) it dissolves itself, (2) was registered based on false information, (3) fails to elect statutory bodies within one year after, or (4) has not participated in elections for six years.

50. As stated in the Guidelines, *"[o]nce party registration is approved, requirements for retaining it should be minimal*" as opposed to "*the requirements for continuing to receive certain benefits from the state, such as public financing or ballot access in elections,*

86 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 99.
87 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 98.
88 See ODIHR *Opinion* on the Draft Law on Political Parties of Mongolia (2019), para.38.
89 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 90. See also ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey [GC]*, nos. 41340/98 and 3 others, 13 February 2003, para. 89

[which] may be higher".[90] In principle, de-registration should be limited to cases of serious legal violations and carried out according to clearly defined procedures, including review by and/or appeal to an impartial and independent body.[91] The Joint Guidelines further state that political parties should never be dissolved for minor administrative or operational breaches, in the absence of other relevant and sufficient circumstances.[92] It is *"of the essence of democracy to allow diverse political programmes to be proposed and debated, (…) provided that they do not harm democracy itself."*[93] It can only be justified in the case of parties that advocate for the use of violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the Constitution.[94] It should be used with the utmost restraint, as a measure of last resort, 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.[95]

51. Thus, deregistration, and in this case the consequential dissolution of a political party may only be justified in the case of political 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.[96] Given that dissolution is one of the most restrictive measures, it should be avoided whenever alternative measures can be effective in response to a potential violation. In this context, Article 18 raises certain concerns.

52. First, a political party should not be automatically removed from the Register solely because a court finds its name or symbol similar to an already registered party or institution. Instead, alternative solutions should be provided, allowing the party to make necessary changes if such similarities are confirmed.

53. Second, the automatic de-registration and consequential dissolution of a political party for failing to contest parliamentary and local elections for six years seems excessive, as it would result from missing just one election cycle; if such inactivity is retained as a ground for potential dissolution, the legal drafters should consider expanding this period to cover at least two election cycles. This also constitutes a restriction on the right to stand for elections, which, according to Article 3 of Protocol 1 to the ECHR, shall be held: *"[…] under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."*[97] The Guidelines also specify that while "*failure to present any candidates over a specified period may be grounds for denial of registered party status*", this should be "*only in cases in which denial of party registration is not tantamount to dissolution*".[98]

54. Thirdly, a political party should not be dissolved if it fails to elect its statutory bodies within one year after the deadline to elect the statutory bodies has expired. Political parties should control their own internal procedures and this includes deciding on the election of their statutory bodies. In addition, along with the party president and executive board,

90 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 99.
91 See also ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties of Mongolia (2022), para. 73.
92 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para 113.
93 See ECtHR, *Socialist Party and others v. Turkey*, judgment of 25 May 1998, no. 21237/93.
94 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*. See also Venice Commission and ODIHR, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, CDL-AD(2023)007, para. 70.
95 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 50 and 272. See also Venice Commission, *Guidelines on Prohibition and Dissolution of political parties and analogous measures*, CDLINF(99)15, pp. 3-4; Venice Commission, *Opinion* on the proposed Amendment to the Law on Parties and other Socio Political Organisations of the Republic of Moldova, CDL-AD(2003)008, para. 10.
96 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 113.
97 Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol No. 11, Paris, 20.III.1952. See also https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)035-e, para. 20. See also ODIHR and Venice Commission, *Joint Opinion* on the Draft Law on Political Parties of Mongolia (2022), para. 70.
98 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 113.

parties can elect such statutory bodies as audit and ethics committees, the leadership of youth and women's sections and regional offices. A failure to elect some of these might require a need for an internal reform and restructuration process rather than a dissolution. Likewise, as provided by the Guidelines, it should primarily be up to the political party and its members, and not to the public authorities, to ensure that the relevant formalities are observed in the manner specified in its articles of association.[99] So, while some kind of state regulation of the inner workings of political parties may be introduced, it is acceptable, in principle, that state interference is limited to *"requirements for parties to be transparent in their decision-making and to seek input from their membership when determining party constitutions and candidates."*[100]

55. Furthermore, the dissolution on the basis of the ground that a party's registration was based on false information would require further elaboration. The procedure and scope of the fact-checking to establish the falsification of information is unclear and allows for a certain ambiguity in interpretation. This provision would merit additional clarification as to the scope and modalities to avoid arbitrariness in implementation and to ensure legal certainty.

56. The Law does not envisage any warning prior to a decision on the removal of a political party from the Register. To uphold the principle of proportionality, a range of sanctions should be available to ensure that the punishment matches the severity of the violation. This also includes a warning with appropriate time allocated to the parties to remedy the unlawful action that led to the decision to remove the party from the Registry. The Law fails to ensure respect for proportionality, which is a crucial aspect of the requirement that any restriction on the freedom of association must be *"necessary in a democratic society."* Such a high level of protection has been deemed appropriate by the ECtHR, given political parties' fundamental roles in the democratic process.[101] **Provided that the dissolution of a political party shall be a measure of last resort, it is recommended to amend these provisions and ensure that applicable sanctions are proportionate and allow for a certain level of flexibility based on the seriousness of the offence. The dissolution of an inactive political party for not contesting elections for a certain period, or for relatively minor administrative/operational reasons appears excessive and should be reconsidered.**

57. Lastly, Article 20 of the Law envisages some fines if a political party violates the territorial principle, operates before registration, fails to use its registered name, or does not report essential changes within the required timeframe. Such fines range from EUR 500 to 7,500, depending on the specific offense. A separate fine is also envisaged for a person representing the political party in the event a party is formed "contrary to a territorial principle"; this ranges from EUR 30 to 500. This is likely linked to Article 4, which provides that a party should be organized and operate exclusively on a territorial basis, however, as underlined above, both terms are rather vague and should be clarified. More generally, as indicated above, sanctions applied against political parties found to be in violation of relevant laws and regulations should be dissuasive in nature, while being objective, effective, and proportionate to the specific violation.[102] While sanctions are the primary tools for oversight bodies to enforce political finance regulations effectively, it is equally important for the oversight body to provide guidance to political parties to help them comply with their legal obligations. To comply with the principle of proportionality, there should be a spectrum of sanctions available when addressing non-compliance with

99 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 28.
100 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 155.
101 *Ibid*,, paras 52 and 272; See also ECtHR, *Socialist Party and others v. Turkey*, no. 21237/93, 25 May 1998, para. 47.
102 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 272.

laws and regulations.[103] Legislation may include measures as administrative warnings (e.g., "naming and shaming"), fines, forfeiture, suspension or (temporary) loss of public funding, compliance notices, deregistration, and/or criminal penalties. **It is recommended to supplement the Law with a broader range of potential sanctions in case of non-compliance with the provisions of the Law, proportionate to the violation, including the possibility of a warning or a grace period allowing the party to demonstrate that the unlawful actions are terminated.** Furthermore, it is advisable that the penalties are established based on an indexation to avoid having them quickly becoming obsolete.

RECOMMENDATION D.

1. To amend the Law to ensure that applicable sanctions are proportionate and allow for a certain level of flexibility based on the seriousness of the offence, while considering a broader range of potential sanctions in case of non-compliance with the provisions of the Law, proportionate to the violation, including the possibility of a warning or a grace period allowing the party to demonstrate that the unlawful actions are terminated.
2. To reconsider the provisions of the Law allowing for the dissolution of an inactive political party for not contesting elections for a certain period, or for relatively minor administrative/operational reasons.

7. OTHER COMMENTS

58. Article 18 of the Law provides the possibility to appeal the decisions on the removal of a party from the Register. Otherwise, the Law is silent regarding effective remedies for potential violations of the fundamental rights of freedom of association and expression pertaining to the registration and operation/activities of a political party, or against sanctions. As emphasized in the Guidelines, state legislation should provide an effective remedy for any violation of the fundamental rights of political parties and their members.[104] These remedies should be provided expeditiously by a competent administrative, legislative or judicial authority.[105] **Any restriction imposed on political parties, including registration decisions, must be subject to independent judicial review. Legislation should set clear deadlines for applications and decisions, ensuring due process. It is recommended to supplement the Law accordingly.**

59. Moreover, while the Law is concise and easy to navigate, certain parts could benefit from further elaboration. With respect to the rules for internal party structures and intra-party democracy, while striking a balance between external regulations to create a minimum of democratic and equal participation within parties (see also Sub-Section 3.3. *supra*). In particular, it would be advisable that Article 11 specifically refers to the principles of democracy with respect to its internal structures and rules and that overall, parties are given a rather wide autonomy to decide about its structure as internal functions and processes of political parties should generally be free from state interference.[106] This includes the freedom to determine their organizational structure and establish rules for selecting party leaders and candidates, as these are integral to a party's autonomy as an

103 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 273.
104 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 288.
105 Article 13 of the *ECHR* provides that, *"[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."* Similar provisions establishing the right to an effective remedy are found in Article 8 of the UDHR, Article 2 of the ICCPR and Article 5 of the ICERD. See also *1990 OSCE Copenhagen Document*, para. 5.10.
106 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 151.

association, without prejudice to measures to promote parity in party decision-making bodies (see Sub-Section 4 *supra*). At the same time, it is important that the respective provisions, especially on nomination, appointment and voting process, are not interpreted or applied in an overly restrictive manner, limiting the parties' ability to choose how to self-regulate.[107]

60. The Law could also be supplemented with provisions on party membership and public accountability, such as an explicit requirement that political parties adopt procedures and oversight bodies for disciplinary, conduct and ethics oversight.

61. Acknowledging that some aspects may overlap with the Law on Financing on Political Parties, any commonalities between these laws should be addressed through a coordinated approach that upholds the overarching principles of equality, transparency, and fairness.

62. Lastly, in terms of transitional provisions should amendments or a new Law be adopted, it is important to address the issue of re-registration since Article 22 of the Law made it a requirement for the (then) existing political parties to re-register within 12 months, with the exception of parties that had won one or more parliamentary or local council seats in the most recent elections. The Guidelines stress that *"[o]nce party registration is approved, requirements for retaining it should be minimal*".[108] Loss of registration should be limited to cases of serious legal violations and carried out according to clearly defined procedures.[109] The Joint Guidelines on Freedom of Association also underline that re-registration should only be required in exceptional cases where significant and fundamental changes are to take effect and a sufficient transitional period should be provided to enable the associations to comply with the new requirements.[110] Therefore, the legal drafters should as a principle not require re-registration, but rather compliance with possible new rules and requirements, while ensuring a sufficiently long transitional period to comply.

RECOMMENDATION E.

To amend the Law to ensure that any restriction on political parties, including registration decisions, is subject to independent judicial review, while setting clear deadlines for applications and decisions, ensuring due process.

RECOMMENDATION F.

To no require re-registration of political parties as a transitional measure when amending the existing Law on Political Parties.

8. PROCEDURE FOR AMENDING THE LAW

63. At the outset, the importance of open, participatory and inclusive lawmaking process should be highlighted. In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure.[111] Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people,*

107 *Ibid.*, paras. 154 and 155.
108 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 99.
109 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para 99.
110 See ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2014), para. 182.
111 See *1990 OSCE Copenhagen Document*, para. 5.8.

either directly or through their elected representatives".[112] The *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages[113].

64. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case all political parties from the ruling party as well as from the opposition, as well as civil society organizations, and the broader public. Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on policy options and possible draft amendments throughout the policy- and lawmaking process.[114]

65. In light of the above, **the public authorities are encouraged to ensure that any future amendments to the Law and electoral legal framework in general are preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate**. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before Parliament. As a principle, accelerated legislative procedure should not be used to pass such types of legislation or amendments. As an important element of good lawmaking, a consistent monitoring and evaluation system on the implementation of legislation should also be put in place that would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[115]

[END OF TEXT]

112 See 1991 *OSCE Moscow Document*, para. 18.1.
113 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also *Venice Commission, Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.
114 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), paras. 169-170. See also ODIHR, *Assessment of the Legislative Process in Georgia* (30 January 2015), paras. 33-34. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders (2014)*, Section II, Sub-Section G on the Right to Participate in Public Affairs.
115 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).