

---

Warsaw, 8 April 2020

Opinion-Nr.: POLIT-KGZ/367/2020 [JG]

---

## **OPINION ON THE DRAFT LAW ON POLITICAL PARTIES**

---

### **KYRGYZ REPUBLIC**

---

This Opinion was prepared by  
Alice Thomas, International Human Rights and Legal Expert  
and has benefited from contributions made by  
Fernando Casal Bértoa (OSCE/ODIHR Core Group of Experts on Political Parties)  
Lolita Cigane (OSCE/ODIHR Core Group of Experts on Political Parties)  
Barbara Jouan-Stonestreet (OSCE/ODIHR Core Group of Experts on Political  
Parties)

Based on an unofficial English translation of the Draft Law.

---



---

OSCE Office for Democratic Institutions and Human Rights

---

Ul. Miodowa 10, PL-00-251 Warsaw

Office: +48 22 520 06 00, Fax: +48 22 520 0605, [office@odhr.pl](mailto:office@odhr.pl)

[www.legislationline.org](http://www.legislationline.org)

---

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

## EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

At the outset, OSCE/ODIHR welcomes the intention of the lawmakers to reform the legal framework for political party regulation in the Kyrgyz Republic and for pursuing legal reform in a manner that includes public consultation. The Draft Law contains several elements that are crucial for regulating political parties in line with international standards and good international practice.

However, some aspects of the Draft Law should be further improved in order to safeguard the rights to freedom of expression and free association, to not to unduly interfere with political parties' internal activities and to further the political participation of all segments of society, including persons with disabilities, women or youth. In addition, it is recommended that the Draft Law revises some provisions to avoid the creation of loopholes that can be used to circumvent restrictions of political party finance or make political parties dependent on wealthy individuals, to guarantee effective oversight and to ensure that the dissolution of a political party is a measure reserved only for the gravest violations under exceptional circumstances.

More specifically, and in addition to what was stated above, OSCE/ODIHR makes the following recommendations to further enhance the Draft Law:

- A.** In Article 5 pars 5 and 8: to revise the provision in such a way as not to unnecessarily inhibit political parties' freedom of expression, and ensure that only those names and symbols are prohibited that are already being used by other political parties or public institutions, or that clearly exhibit or promote violent actions against certain groups [pars 19-20];
- B.** In Article 7 par 3: to reconsider the provision in its entirety, and to either revise it extensively and render it compliant with international standards, or to delete it so that there is no blanket ban on the

formation of parties on the basis of racial, national, ethnic or religious affiliation, or based on the gender and social background of persons [pars 23-29];

- C.** In Chapter II: to reconsider the provisions on the process of founding a political party with a view to reformulating and simplifying them, as they pose unduly burdensome requirements on would-be founders of political parties [pars 34-42];
- D.** In Article 15: to ensure that that the time provided to the Ministry of Justice in which to register political parties is not too lengthy and that the documentation required to be submitted to the Ministry is not excessive, so as to not create overly cumbersome and unnecessary obstacles to the registration of new parties [pars 47-52];
- E.** In Article 17: to revise the provision so that grounds for denying registration must be clearly stated in law and based on objective criteria and that minor violations or omissions can be rectified by parties and do not lead to an automatic denial of registration [pars 55-61];
- F.** In Article 20 par 2: to remove “legal competence” as a prerequisite for membership in a political party so that the provision is in line with the Convention on the Rights of Persons with Disabilities [par 70];
- G.** In Article 29 par 1: to set aside some public funds for smaller parties as well, based on objective criteria. Additional support could be given to political parties that promote gender equality, the rights of persons with disabilities, youth, or other groups, to incentivize the implementation of state strategies in these areas [par 87];
- H.** In Article 30: to reduce the limits for private donations and to ensure that in-kind donations, loans, debits and credits are also considered to be donations within the meaning of the Draft Law [par 98];
- I.** In Article 31 par 4: to specify the type of financial report that political parties are required to submit annually, along with which financial

information shall be published, and ensure that this information should be comprehensive, and include all funds received and spent, with information on sources while respecting privacy rights [par 105];

- J.** In Article 33: to clearly delineate the respective mandates, powers and competences of the different bodies involved in oversight over political parties to ensure cooperation between them and avoid overlapping competencies [pars 106-113];
- K.** to introduce into the Draft Law catalogue of dissuasive and effective yet proportionate sanctions for different types of specifically enumerated behaviours [pars 114-116; 130-131];
- L.** In Article 35 par 2: to reconsider the dissolution of parties not participating in presidential, parliamentary and local elections for five years [par 119];
- M.** In Articles 37 and 39: to specify that only the most serious violations may trigger the initiation of suspension proceedings or dissolution of a party, as dissolution is a measure of last resort when political parties engage in serious illegal activities, or where they propagate violence or threaten to violently overthrow the constitutional order [pars 124-130].

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

## TABLE OF CONTENT

<b>I. INTRODUCTION .....</b>	<b>6</b>
<b>II. SCOPE OF REVIEW .....</b>	<b>6</b>
<b>III. ANALYSIS .....</b>	<b>7</b>
<b>1. International Standards and OSCE Commitments Relating to Political Parties</b>	<b>7</b>
<b>2. General Remarks .....</b>	<b>8</b>
<i>2.1. Names and Symbols of Political Parties .....</i>	<i>10</i>
<i>2.2. General Principles and Restrictions .....</i>	<i>10</i>
<b>3. The Formation and Registration of Political Parties .....</b>	<b>13</b>
<i>3.1. The Formation of Political Parties .....</i>	<i>13</i>
<i>3.2. State Registration of Political Parties .....</i>	<i>16</i>
<b>4. Internal Functioning of Political Parties .....</b>	<b>19</b>
<i>4.1. Political Party Charters and Structure .....</i>	<i>19</i>
<i>4.2. Political Party Membership.....</i>	<i>20</i>
<b>5. Rights and Responsibilities of Political Parties .....</b>	<b>21</b>
<b>6. Funding of Political Parties .....</b>	<b>23</b>
<i>6.1. State Funding.....</i>	<i>23</i>
<i>6.2. Private Donations .....</i>	<i>24</i>
<i>6.3. Reporting and Oversight.....</i>	<i>27</i>
<i>6.3.1 Financial Reporting Obligations .....</i>	<i>27</i>
<i>6.3.2 Oversight over Financial Activities.....</i>	<i>28</i>
<b>7. Participation of Political Parties in Elections .....</b>	<b>31</b>
<b>8. Oversight, Suspension of Activities and Dissolution .....</b>	<b>32</b>
<b>9. Final Comments.....</b>	<b>35</b>

Annex: Draft Law of the Kyrgyz Republic on Political Parties

## I. INTRODUCTION

---

1. On 10 February 2020, the Deputy Speaker of the *Jogorku Kenesh* (Parliament) of the Kyrgyz Republic sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for legal review of the Draft Law on Political Parties (hereinafter “the Draft Law”), which was transmitted to the OSCE/ODIHR by the Office of the Permanent Representative of the Kyrgyz Republic to the OSCE.
2. On 19 February 2020, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Draft Law with international democracy and human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. OSCE/ODIHR conducted this assessment as part of its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.

## II. SCOPE OF REVIEW

---

4. The scope of this Opinion covers only the Draft Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating the activities of political parties in the Kyrgyz Republic.
5. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing recommendations are based on international standards, norms and practices as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, the OSCE/ODIHR does not advocate for any specific country model; it 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 always be approached with caution since 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 the specific country context and political culture.
6. Moreover, in accordance with the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, programmes and projects, the Opinion’s analysis takes into account the potentially different impact of the Draft Act on women and men.<sup>1</sup>
7. This Opinion is based on an unofficial English translation of the Draft Act commissioned by the OSCE/ODIHR, which is attached to this document as an Annex.

---

<sup>1</sup> See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), <<http://www.osce.org/mc/23295?download=true>>.

Errors from translation may result. The Opinion is also available in Russian, the English version shall prevail.

8. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on respective legal acts or related legislation pertaining to the legal and institutional framework regulating political parties in the Kyrgyz Republic in the future.

### III. ANALYSIS

---

#### 1. International Standards and OSCE Commitments Relating to Political Parties

9. The rights to free association and free expression are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, must be able to fully enjoy such rights. Fundamental rights afforded to political parties and their members are found principally in Article 22 of the International Covenant on Civil and Political Rights (ICCPR), which protects the right to freedom of association and Article 19, which contains the right to freedom of expression and opinion.<sup>2</sup> The United Nations (UN) Convention against Corruption requires, in Article 7.3, State Parties to enhance transparency with respect to the funding of candidatures for elected public office and, where applicable, the funding of political parties.<sup>3</sup> The UN Convention on the Rights of Persons with Disabilities (CRPD) also contains specific state obligations in the area of political participation of persons with disabilities.<sup>4</sup>
10. At the regional level, paragraph 7.6 of the 1990 OSCE Copenhagen Document, commits OSCE participating States to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”<sup>5</sup> The Copenhagen Document also includes the protection of the freedom of association (paragraph 9.3) and of the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and political parties (paragraph 5.4). Within the OSCE context, the Ministerial Council’s Decision 7/09 on women’s participation in political and public life is also of interest.<sup>6</sup>

---

<sup>2</sup> International Covenant on Civil and Political Rights adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Kyrgyz Republic acceded to the Covenant on 7 October 1994.

<sup>3</sup> UN Convention against Corruption, adopted on 31 October 2003, ratified by the Kyrgyz Republic on 16 September 2005, available at [http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf).

<sup>4</sup> Convention on the Rights of Persons with Disabilities, 13 December 2006, entered into force 3 May 2008, available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12>; The Kyrgyz Republic ratified the CRPD on 16 May 2019.

<sup>5</sup> 1990 OSCE Copenhagen Document (29 June 1990) 29 ILM 1305, available at <http://www.osce.org/odihr/elections/14304?download=true>.

<sup>6</sup> OSCE Ministerial Council Decision 7/09, 2 December 2009, Women’s participation in political and public life, available at <https://www.osce.org/mc/40710?download=true>.

11. In Europe, Article 11 of the European Convention on Human Rights (ECHR) sets standards regarding the right to freedom of association, which protects the rights of political parties as special types of associations and their members.<sup>7</sup> The case law of the European Court of Human Rights (ECtHR) provides additional guidance for Council of Europe Member States on how to ensure that their laws and policies comply with key aspects of Article 11.<sup>8</sup>
12. These obligations are supplemented by various UN recommendations, the most important of which is General Comment 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service, interpreting State obligations under Article 25 of the ICCPR.<sup>9</sup> Similar types of recommendations can be found at the OSCE and the Council of Europe levels. These include Joint Guidelines issued by OSCE/ODIHR and the Council of Europe Commission for Democracy through Law (Venice Commission) on Political Party Regulation,<sup>10</sup> the OSCE/ODIHR and Venice Commission Joint Guidelines on Freedom of Association,<sup>11</sup> the Council of Europe Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,<sup>12</sup> as well as various OSCE/ODIHR and Venice Commission opinions on individual pieces of legislation and OSCE/ODIHR election observation reports.<sup>13</sup>

## 2. General Remarks

13. The Draft Law regulates key elements pertaining to the right to form and become member of a political party, the rights and obligations of political parties, and their internal functioning, as well as registration requirements and procedures, funding of political parties, participation in elections, as well as the suspension and dissolution of political parties. While retaining some elements of a 2009 Draft Law on Political Parties (hereinafter “the 2009 Draft Law”) that OSCE/ODIHR and the Venice Commission had reviewed at the time, other sections of the Draft Law have improved, especially in the area of funding of political parties.
14. Within Chapter 1, which contains general provisions of the Draft Law, Article 1 describes its scope and purpose, which, among others, is to regulate the basic procedures for formation, operation, reorganization and dissolution of political parties. **While mentioned in selected provisions (e.g. Article 18 par 2 (18), Article 22 par 1, and Article 40), the reorganization of political parties is not described and it is not clear whether this refers to the changes in the legal status of the organization or**

<sup>7</sup> The Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms entered into force on 3 September 1953.

<sup>8</sup> While the Kyrgyz Republic is not a member State of the Council of Europe, the obligations imposed by the European Convention on Human Rights, as well as jurisprudence of the European Court of Human Rights and other Council of Europe mechanisms and instruments can provide useful guidance beyond the Council of Europe's geographical scope of application.

<sup>9</sup> UN Human Rights Committee General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7, available at <http://www.refworld.org/docid/453883fc22.html>.

<sup>10</sup> OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation (2010), available at <http://www.osce.org/odihr/77812> (hereinafter “Guidelines on Political Party Regulation”).

<sup>11</sup> OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association (2015), available at <https://www.osce.org/odihr/132371> (hereinafter “Guidelines on Freedom of Association”).

<sup>12</sup> Council of Europe Committee of Ministers Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, available at <https://rm.coe.int/16806cc1f1>.

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



**also covers issues of internal restructuring. If this merely concerns the internal restructuring of a party, it is not clear why this would need to be regulated in a law, and why, under Article 41 of the Draft Law, the consequences of a reorganization are similar to those of a political party's dissolution. To clarify this, it is recommended to either explain this concept (reorganisation of a party), or to remove all references to the reorganization of political parties from the Draft Law.**

15. According to Article 2 of the Draft Law, political parties shall carry out their activities in accordance with the Constitution of the Kyrgyz Republic, the Draft Law and their charters, as well as “other regulatory acts of the Kyrgyz Republic”. Given the vagueness of this provision, it is questionable whether it is very useful in practice, as the need to follow the Constitution and the Draft Law (once adopted) should already be clear to political parties and state institutions alike. **For this reason, it would be advisable to either clarify in Article 2 which other regulatory acts it is referring to, or to delete this article altogether.**
16. The right of citizens to form, join or refrain from joining political parties is set out in Article 3 of the Draft Law. Generally, international obligations recognize nationality and citizenship as reasonable considerations when restricting the right to political participation,<sup>14</sup> usually in order to avoid foreign policy conflicts.<sup>15</sup> At the same time, general exclusion of foreign citizens and stateless persons from membership of political parties is not justified, as they should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can participate in elections.<sup>16</sup> Indeed, general human rights protection, including the right to freedom of association, is generally granted to all persons, regardless of whether they are citizens of a given country or not.<sup>17</sup>
17. Article 3 par 2 of the Draft Law further specifies that a citizen may only be a member of one political party. This provision is also overly limiting, especially if there are different political constellations at the central level on the one hand and on the local level on the other. In fact, the right to freedom of association is so fundamental in nature that it should not be limited by requirements to only associate with a single organization.<sup>18</sup> Thus, while a law could arguably state that a person may not be founding member of more than one political party (as long as both are registered and functioning),<sup>19</sup> only compelling reasons could justify a similar restriction for membership.<sup>20</sup> Rather than regulating this in a law, it should be up to individual political parties to decide whether membership in their party is exclusive or not.<sup>21</sup> Article 3 par 2 should thus be removed from the Draft Law.
18. There is also no reason why political parties should not, as prohibited by Article 4 par 5, “speak on behalf of the entire people of Kyrgyzstan”, as this would unreasonable limit the right to freedom of expression of a political party. Parties may speak their

<sup>14</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 120.

<sup>15</sup> Venice Commission Opinion on the Ukrainian Legislation on Political Parties (CDL-AD(2002)017) of 15 July 2002, par 17.

<sup>16</sup> See e.g. OSCE/ODIHR Venice Commission [Joint Opinion on Draft Amendments to the Legislation Concerning Political Parties](#) (20 March 2020) par 23.

<sup>17</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 120.

<sup>18</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 119.

<sup>19</sup> See OSCE/ODIHR Opinion on the Draft Law on Political Parties of Mongolia of 27 November 2019, par 30. See also OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia of 12 December 2016, par 21.

<sup>20</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 119.

<sup>21</sup> See OSCE/ODIHR Opinion on the Draft Law on Political Parties of Mongolia of 27 November 2019, par 30. See also OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Constitutional Law on Political Parties of Armenia of 12 December 2016, par 21.

mind, also on behalf of others; this does not make them (official or unofficial) representatives of the people. If this provision aims to address the latter, then this should be made clearer.

## 2.1. Names and Symbols of Political Parties

19. Article 5 par 5 states that the name of a political party may not violate intellectual property rights, insult national and religious feelings, or violate generally accepted moral standards. Similarly, par 8 of the same provision stipulates that parties may not use symbols that insult or defame state symbols (including local), symbols of another state or religious symbols, as well as symbols insulting racial, national and religious feelings, or that violate generally recognized moral standards.
20. Universal and regional human rights instruments recognize restrictions that can be placed on the freedom of association, including those aimed at public order, public safety, protection of health and morals of the society, national security. However, political parties are integral vehicles for political activity and expression.<sup>22</sup> The freedom of expression under Article 19 of the ICCPR also protects expression that may be regarded as deeply offensive,<sup>23</sup> except in cases where certain depictions or statements exhibit a hatred of certain persons or groups.<sup>24</sup> Similarly, according to the European Court of Human Rights (hereinafter “ECtHR”), this not only applies to the freedom of expression; Article 11 of the European Convention on Human Rights (hereinafter “ECHR”) also protects persons or associations whose views offend, shock or disturb.<sup>25</sup> Moreover, the concept of “morals” has the potential to be applied in an overly restrictive manner as it is not clear what “generally accepted moral standards” would be; in any event, this concept should not be used to limit or prohibit political parties with views that offend, shock or disturb certain groups of persons (except, as stated, in cases of hate crimes or calls for violence against certain groups).

### RECOMMENDATION A.

In Article 5 pars 5 and 8: to revise the provision in such a way as not to unnecessarily inhibit political parties’ freedom of expression, and ensure that only those names and symbols are prohibited that are already being used by other political parties or public institutions, or that clearly exhibit or promote violent actions against certain groups;

## 2.2. General Principles and Restrictions

21. Article 6 specifies basic activities of political parties and principles on which these activities should be based. Paragraph 3 promotes the freedom of parties to determine their internal structures, goals, forms and methods of activity, with the exception of restrictions set out in the Constitution, the Draft Law, and “other laws of the Kyrgyz

<sup>22</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 44.

<sup>23</sup> See UN Human Rights Committee General Comment 34, Article 19: Freedoms of opinion and expression, UN Doc. CCPR/C/GC/34, par 11, available at <http://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

<sup>24</sup> See, e.g., *Ross v. Canada*, Communication No. 736/97, U.N. Doc. CCPR/C/70/D/736/1997 (2000), United Nations Human Rights Committee, 18 October 2000, par 11.5, where the Committee confirmed that the applicant teacher’s statements were discriminatory against persons of the Jewish faith and ancestry and that they denigrated the faith and beliefs of Jews, and thus found that the restrictions of the applicant’s rights were not in violation of Article 19 of the ICCPR.

<sup>25</sup> See, e.g., ECtHR, *Vona v Hungary*, application no. 35943/10, judgment of 9 July 2013, par 63.

Republic”. As stated above, such provisions are not very meaningful if they do not specify which laws, other than the Constitution and the Draft Law, these are.

22. Paragraph 3 of Article 6 states that when carrying out their activities, political parties shall guarantee equal representation of female and male members in their governing bodies and candidate lists. **While this is in principle a welcome approach, it may not always be possible for political parties to do so. To avoid situations where political parties inadvertently violate the Draft Law, it may thus be preferable to state that political parties shall strive to achieve full equal representation.**
23. Restrictions on the formation and activities of political parties can be found in Article 7, which bans formation and activities of parties whose goals or actions are aimed at overthrowing or forcibly changing the constitutional democratic system of the Kyrgyz Republic, undermining sovereignty and violating territorial integrity, creating covert, armed and paramilitary groups, or inciting social, racial, national, regional or religious enmity and hatred. This provision largely reflects what is also stated in Article 4 par 4 (5) of the Constitution, and in Article 22 par 2 of the ICCPR.
24. Article 7 par 2, however, is somewhat unclear, as it specifies that party charters and programmes protecting social justice, as well as activities promoting social justice, cannot be regarded as inciting social enmity and hatred. While this is rather obvious, the implied need for a provision such as par 2 raises questions as to what exactly the incitement to social, racial, national, regional or religious enmity or hatred entails. If this is meant to prevent parties that openly incite to hatred against others, or to violence against particular groups, then this is welcome and necessary. If, however, the incitement to hatred is to be interpreted broadly (and Article 7 par 2 appears to suggest that it might), then it raises serious questions as to the rights to freedom of association and to freedom of expression. To avoid this, it is recommended to amend Article 7 par 1, so that it clearly bans violent actions, or calls for violent behaviour. In this situation, there would then be no need for a provision such as Article 7 par 2.
25. According to Article 7 par 3, political parties shall not be formed on the basis of racial, national, ethnic or religious affiliation, or based on the gender and social background of citizens. This provision goes further than the Constitution, which merely prohibits the creation of political parties on the basis of ethnic or religious grounds. Moreover, Article 4 par 2 of the Constitution describes the satisfaction of social needs as one of the objectives of establishing a political party.
26. OSCE/ODIHR and the Venice Commission had already criticized a similar provision in the 2009 Draft Law, finding that banning political parties established on national or ethnic grounds was overly broad, and not compatible with the right to freedom of association.<sup>26</sup> Such a restriction would only be permissible if it were strictly necessary in a democratic society, which would require a party to pose a real and concrete threat to the state and its institutions. Such parties are, however, already banned under Article 7 par 1, which is why the aim of par 3 of the same provision is not entirely clear. It could conceivably also be possible to ban parties that do not allow others to join based on their race, nationality, ethnicity, religion (or indeed gender or social status), but the wording of Article 7 par 3 does not indicate that this is a factor here.
27. Simply assuming that all parties that are established based on their founders’ or members’ nationality or ethnicity (if that is indeed what is meant) would be

---

<sup>26</sup> See OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 13.

undemocratic,<sup>27</sup> would deprive these groups of one particular form of political participation, in addition to unduly restricting their rights to freedom of association. The same applies to parties established on the basis of racial affiliation.

28. With respect to parties established on religious grounds, the OSCE/ODIHR-Venice Commission Opinion on the 2009 Draft Law came to a similar conclusion. **It is reiterated here that parties should never be prohibited simply because their members, sympathisers or leaders happen to be from a particular religious denomination, or because they include the name of a specific religion in their official name, as long as their objectives are democratic in character and are pursued by legal and democratic means.**<sup>28</sup>
29. Finally, it is equally unclear why it would be necessary to ban political parties founded on the grounds of gender or social background of a citizen. This would exclude political parties created to promote gender equality and potentially even those parties created to satisfy social needs and protect social justice (which are explicitly mentioned in Article 4 par 2 of the Constitution and Article 7 par 2 as permissible objectives of political parties).

#### **RECOMMENDATION B.**

In Article 7 par 3: to reconsider the provision in its entirety, and to either revise it extensively and render it compliant with international standards, or to delete it so that there is no blanket ban on the formation of parties on the basis of racial, national, ethnic or religious affiliation, or based on the gender and social background of persons;

30. Article 7 par 6 contains a ban on the formation and activities of foreign political parties and their structural units on the territory of the Kyrgyz Republic. As already stated with respect to the 2009 Draft Law, a state may prevent foreign political parties from taking part in public debates or elections, but this should not prevent cooperation between domestic and foreign political parties for the purposes of training of activists, elaboration of programmes and platforms, seminars, conferences, and participation in regional programmes<sup>29</sup> (insofar as these take place on Kyrgyz soil). Also, Article 23 par 1 (9) specifically states that a political party is entitled to establish and maintain international relations and contacts with foreign political parties. Article 7 par 6 should be amended so as to take this type of cooperation into account.
31. Article 8 deals with the relationship between the state and political parties. Paragraph 1 of Article 8 contains a non-interference clause that works both ways – government/local bodies and their officials may not interfere in activities of political parties, while political parties may not interfere in activities of state bodies, local government bodies and their officials. While generally, states should ensure separation

<sup>27</sup> See OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 13.

<sup>28</sup> See OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 14.

<sup>29</sup> See OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 15.

between political parties and the state (see paragraph 5.4 of the 1990 Copenhagen Document), lawmakers should ensure that this does not preclude lobbying and cooperation between political parties and state bodies. Along similar lines, the OSCE/ODIHR-Venice Commission Political Party Guidelines' (hereinafter "Guidelines on Political Party Regulation") definition of political parties lists the participation in the management of public affairs as one of the aims of a political party.<sup>30</sup> **If Article 8 par 1 intends to avoid undesirable interference with the work of the bureaucratic apparatus of the public institutions, then this should be made clearer.**<sup>31</sup>

32. The participation of political parties in decisions concerning their interests (Article 8 par 2) should also be clarified. If this provision aims to oblige public decision-makers to discuss laws and policies relating to the rights and status of political parties (such as, e.g., this Draft Law) with political parties themselves before taking any important decisions in this field, then this is commendable in principle, but should be stated more explicitly.
33. Article 9 par 1 lists ways in which state and local government bodies can support political parties, which includes equal access to media outlets and equal conditions in election campaigning (Article 9 par 1 (1) and (3)). Article 9 par 1 (2) also mentions that the State may provide premises and communications facilities to political parties – also here, Article 9 should specify that this be done on an equal basis.

### 3. The Formation and Registration of Political Parties

34. According to Article 10 of the Draft Law, the formation of political parties takes place via a constituent congress, with no prior permission of state officials required, which is positive. Once a party has been formed, it submits a request to the Ministry of Justice for registration (Article 15). Registration appears to be compulsory, and means that the respective political party receives a state registration certificate (Article 12 par 3), and that the Ministry of Justice includes data on the registration in the publicly available unified state register of political parties (Article 16 par 2).

#### 3.1. The Formation of Political Parties

35. According to Article 10 par 2, a political party shall be deemed formed from the day on which the constituent congress passes a decision on its formation, approves its charter and programme, and creates its governing bodies. The constituent congress delegates, who become members of the political party upon its formation, are also the founders of the party (Article 10 par 3). The constituent congress is organized, convened and held by the organizing committee, made up of at least 50 citizens with membership eligibility, whose term of office shall not exceed 3 months (Article 11 par 1). Once the constituent congress has been held, and the political party has received its registration certificate, the organizing committee shall cease its activities (Article 12 par 3). Article 11 contains further details of the organizing process, with precise deadlines and tasks for the committee.

---

<sup>30</sup> *Op cit* footnote 10.

<sup>31</sup> See OSCE/ODIHR Opinion on the Draft Law on Political Parties of Mongolia of 27 November 2019, par 24, which dealt with a similar provision.

36. As a whole, this process is somewhat complicated. First of all, organizing, convening and holding a constituent congress would not appear to require a large organizing committee made up of at least 50 persons. Moreover, it is not practical to oblige the committee to organize, convene and hold the constituent congress, and engage in all other activities set out in Articles 11 within a statutory period of three months. In case things take longer, the committee would need to reconstitute itself and restart the entire process, which would appear to be an unnecessarily bureaucratic step.
37. Similar concerns arise regarding other elements of the process – since the formation of a political party does not require the permission of the State, it is not apparent why the organizing committee should be required to inform the Ministry of Justice of its intention to form a political party within ten days of its first meeting. These are early days in the process, and thus it seems unduly burdensome to require the committee to at this stage submit extensive documentation to the Ministry, including a draft charter and programme of the nascent political party, information about the organizing committee, and minutes of the first meeting.<sup>32</sup>
38. Seeing as the charter and programme are to be discussed and adopted at the constituent congress (which will take place many weeks after the notification), it would be more useful and less bureaucratic to let the organizing committee prepare all necessary materials for its constituent congress in its own time, and to let the constituent congress fully exercise its rights as founding body by allowing the main discussion on the contents of the charter and programme to take place there.<sup>33</sup>
39. Also, as the organizing committee merely has the task of preparing the constituent congress, but is not the actual founding body of the congress (though there may be some overlap in terms of individual members), it should not be obliged by Article 11 par 2 to provide the Ministry with not only the names and dates of birth, but also resident addresses, places of employment, and information on citizenship of all of its members; considering that the committee shall consist of at least 50 persons, collecting all of this information would be an unduly lengthy and cumbersome process. Given the limited scope of the organizing committee’s tasks and the fact that it will automatically cease to exist once the party has been founded (Article 12 par 3), it is not clear what the Ministry would need this information for, and what will happen to it once the party has been founded.
40. After the Ministry of Justice has received and acknowledged receipt of the notification (Article 11 par 3), the organizing committee needs to publish information about its intention to form a political party in the republic print media (Article 11 par 4). The purpose of such publication at such an early stage is unclear, especially as Article 13 par 1 requires the organizing committee to publish additional information about the place and date of the constituent congress, as well as the main provisions of the draft charter and programme one month prior to holding the constituent congress. In addition to what was said earlier about the need for the draft charter and programme to be prepared so early on, this extensive publication of the founding documents and

---

<sup>32</sup> See e.g. OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties (19 October 2019) par 20; OSCE/ODIHR Venice Commission [Joint Opinion on Draft Amendments to the Legislation Concerning Political Parties](#) (20 March 2020) par 16.

<sup>33</sup> See the OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Legislation Concerning Political Parties of Armenia of 20 March 2020, par 17, where it was also suggested to use the founding congress itself to develop the political party programme through a participatory process, and that the establishment of a political party should not require too many details that such party cannot provide during the establishment process.

activities of a party that has not been formed yet would appear to be unduly burdensome, and neither necessary nor proportionate.<sup>34</sup>

41. Additionally, it is noted that here, and in other parts of the Draft Law,<sup>35</sup> publication appears to be limited to “republic print media”. It would be more effective and useful to allow publication on state portals of public information or other popular online resources.
42. Overall, the above process appears to be unnecessarily cumbersome and bureaucratic, at a stage where people who are not even party founders yet are merely discussing details of founding a political party. **Many of the details of founding a party should be left to each group wishing to do so; as long as the Ministry receives all necessary information allowing it to officially register a political party in line with procedure set out in Chapter III, there would appear to be no need to closely monitor the process leading up to this moment, and to impose such unduly burdensome requirements on would-be founders of political parties.**<sup>36</sup>

#### RECOMMENDATION C.

In Chapter II: to reconsider the provisions on the process of founding a political party with a view to reformulating and simplifying them, as they pose unduly burdensome requirements on would-be founders of political parties;<sup>37</sup>

43. According to Article 12 par 1, while organizing the constituent congress, the organizing committee shall “carry out organizational activities aimed at establishing territorial branches of the political party [...]”. It is unusual for a party to already determine the need for the establishment of territorial branches before the party has even been founded.
44. Under Article 13 par 2, the constituent congress is competent to decide on all matters pertaining to the founding of a political party if at least 250 delegates take part in its work. As these delegates become members of the political party after its formation and are then also considered to be the party’s founders (Article 10 par 2), this may imply that 250 persons is the minimum membership requirement for political parties in the Kyrgyz Republic. This point should be clarified. Overall, requiring such a large amount of founding members is quite unusual and burdensome for the respective party – **it would be preferable if the Draft Law would be amended so that 250 persons is the required number of party members for establishing a party, not the required number of party founders.**
45. As stated in Article 13 par 3, the organizing committee shall inform the Ministry of Justice in writing about the place and time of the constituent congress. It is not clear

<sup>34</sup> See the OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Legislation Concerning Political Parties of Armenia of 20 March 2020, par 16, where a similar process was considered to be disproportionate and as constituting an excessive logistical and economic obstacle to the establishment of a political party.

<sup>35</sup> The same requirement may be found in Articles 13 par 1, 16 par 1, 31 par 4, and 34 par 4.

<sup>36</sup> See e.g. OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties (19 October 2019) par 20; OSCE/ODIHR Venice Commission [Joint Opinion on Draft Amendments to the Legislation Concerning Political Parties](#) (20 March 2020) par 16.

<sup>37</sup> See, in this context, the OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Legislation Concerning Political Parties of Armenia of 20 March 2020, par 14, which recommended to refrain from such two-step processes for registering political parties.

why the Ministry would need to receive a specific additional notification of an event that was already published in the media one month beforehand (Article 13 par 1). **It is recommended to delete this provision.**

### 3.2. State Registration of Political Parties

46. According to Article 14 of the Draft Law, the state registration of political parties and of their representative offices (territorial branches) shall take place in the manner prescribed by the Draft Law and the Law of the Kyrgyz Republic on State Registration of Legal Entities, Branches (Representative Offices) (hereinafter “Law on State Registration”).<sup>38</sup> Article 8 par 3 of the Law on State Registration provides that the state registration of political parties and their branches (representative offices) shall be completed within 30 calendar days from the day when the necessary set of documents was submitted to the registration body.
47. It is not apparent why the separate registration of branches of political parties should be necessary, given that they are part of the same political party (and that according to Article 15 par 2 the number of documents that branches are required to submit are quite substantial). In particular, the registration of representative offices/territorial branches should not involve having to pay another registration fee (Article 15 par 2 (5)), as the party already pays a fee when registering (Article 15 par 1 (8)). The branch of a party should likewise not be required to submit a notarized copy of the state registration certificate of the political party (Article 15 par 2 (3)), as the Ministry of Justice is already in possession of this certificate following the party’s registration. Parties should also not be denied the possibility of opening branches (Article 17 par 2). **Overall, it should suffice to have the political party register as one entity, which would then cover all of its branches, present and future and it is therefore recommended to delete such requirement.**
48. The relevant registration requirements and procedural steps need to be reasonable and should be carefully drafted to achieve the legitimate aims necessary in a democratic society.<sup>39</sup> In particular, deadlines should be reasonably short to ensure that each individual may realize his/her right to associate. **Overly long deadlines constitute unreasonable barriers to party registration and participation.<sup>40</sup> In this context, it should be noted that a 30-day period for reviewing the registration application of a political party is quite lengthy; consideration should be given to shortening this time period. Especially before elections, it is essential for new parties to be registered in a prompt and expedient manner.<sup>41</sup>**
49. Article 15 par 1 of the Draft Law contains a list of documents that need to be submitted to the Ministry of Justice when applying for registration. These include a registration application, the approved party charter and programme, as well as copies of decisions and minutes of the constituent congress, the lists of members of the governing bodies of the party and of party founders, a document confirming payment of the registration fee, a copy of the print media announcement containing date and time of the constituent congress and main provisions of the draft charter and programme, and a document confirming the participation of at least 250 persons in the constituent congress of the party.

<sup>38</sup> Law of the Kyrgyz Republic on State Registration of Legal Entities, Branches (Representative offices), adopted on 20 February 2009.

<sup>39</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 66.

<sup>40</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 69.

<sup>41</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 69.



50. This list of documents required in order to register appears to be quite extensive. In this regard, the Guidelines on Political Party Regulation have noted that it is reasonable for legislation to require that the State be provided with basic information regarding political parties, including on a party's structure, as a means to identify the responsible persons for organizational and communication purposes.<sup>42</sup> The contents of Article 15 par 1, however, appear to go beyond such basic information.
51. Article 15 par 1 (7), for example, is somewhat confusing, as it requires the political party to submit a list of all 50 founders, including names, years of birth, and addresses, whereas Article 10 par 2, on the other hand, indicates that the number of founders, previously congress delegates, may be much higher. It is recommended to clarify this point.
52. The need to also submit a document confirming the participation of at least 250 delegates in the constituent congress, indicating their names, passport details and personal signatures (Article 15 par 1 (10)) is doubtful as well. Given that according to Article 13 par 3, a representative of the Ministry of Justice attended the constituent congress in order to certify the presence of the stated number of delegates, the Ministry would appear to already be in possession of proof of the correct number of delegates; requiring the party to submit such information a second time would appear to be overly cumbersome, burdensome, and unnecessary. It would be advisable to rethink these latter two provisions in their entirety.

#### **RECOMMENDATION D.**

In Article 15: to ensure that that the time provided to the Ministry of Justice in which to register political parties is not too lengthy and that the documentation required to be submitted to the Ministry is not excessive, so as to not create overly cumbersome and unnecessary obstacles to the registration of new parties;

53. Article 16 par 1 states that information on the formation, reorganization and dissolution of a political party shall be published. Generally, this should not include private data on members or founders, such as their passport details and addresses. According to par 2 of this provision, the Ministry of Justice shall provide election commissions with lists of political parties and their branches within ten days of receiving a requisite request. If, as assumed, this relates to the registration of candidates prior to elections, then this ten days' period seems quite lengthy, as according to Article 60 of the current Law on Presidential and *Jogorku Kenesh* Elections in the Kyrgyz Republic (hereinafter "Law on Elections"), the nomination of candidates starts immediately after elections have been called, and the nominated candidates should be presented to the electoral commission within 3 days after the calling the elections. These deadlines should be synchronized.
54. Article 17 lists circumstances under which the registration of a political party may be denied. Generally, this is the case where a party's charter and/or programme are in some way contrary to different provisions of the Draft Law, or where a party or a party branch/office did not comply with formal requirements, i.e. where the list of required

---

<sup>42</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 73.

documents is incomplete or unreliable, or where the deadlines for submitting documents for state registration were violated.

55. Under Article 17 par 1 (1), a political party shall be denied state registration if its charter or programme are contrary to the Constitution, the Draft Law and “other regulatory acts”. As stated earlier, this type of reference to unnamed legislation is problematic in terms of legality and foreseeability of legislation; **it is recommended to clarify which legislation this refers to or delete this part of Article 17 par 1 (1)**. Furthermore, it should be borne in mind that the term “contrary to the Constitution” should not prevent a charter or programme from espousing ideas or objectives that aim at (peacefully) amending all or parts of the Constitution, for example by seeking to transform the country’s government system and other essential elements of the State. Such ideas or aims would be contrary to the Constitution in its current form but are legitimate unless they involve calls for violence or for overthrowing the Government. **This should be clarified in the Draft Law.**
56. Generally, grounds for denying registration must be clearly stated in law and based on objective criteria. Also, clearly defined deadlines and procedures for registration are necessary to minimize the negative impact of denials of party registration for purely administrative reasons.<sup>43</sup> Overall, however, the principle of proportionality must be respected, meaning that the registration of a party shall only be refused in cases where no less restrictive means of regulation can be found.<sup>44</sup>
57. The all-encompassing language found in Article 17 par 1 (1) would appear to imply that potentially any violation of the Draft Law, however minor, will lead to a denial of registration of a political party. In light of the above-described international standards, and given the importance of freedom of association and the need for political pluralism in any democratic state, simply refusing to register a political party for minor reasons, e.g. because it failed to include all aspects required by Article 18 in its charter appears to be somewhat extreme. Rather than immediately reject an application for registration, Article 17 should provide for some sort of notification mechanism, whereby the Ministry of Justice would raise such points with the respective party and ask it to re-submit its application once it has amended its charter and programme accordingly. This applies equally to the denial of registration due to a party’s failure to submit complete information (Article 17 par 1 (4)); also here, the Ministry could notify the party and ask it to add or replace the requisite information within a certain reasonable deadline.<sup>45</sup>
58. Article 17 par 1 (3) states that the Ministry shall refuse to register a political party if its name and/or symbol does not meet the requirements of Article 5 of the Draft Law. As stated previously in pars 19-20 *supra*, the restrictions contained in Article 5 raise serious concerns with respect to a party’s freedoms of association and of freedom of expression and should be revised. Generally, the mere expression of a disturbing or offensive idea should not be used as a ground to dismiss an application to register political parties.<sup>46</sup>
59. Registration may also be denied where documents have been drawn up “inappropriately” (Article 17 par 1 (4)), or where it has been established that they contain “unreliable” information on compliance with the requirements of the Draft Law

<sup>43</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 68.

<sup>44</sup> Guidelines on Political Party Regulation, *op cit* footnote 10 par 68.

<sup>45</sup> See, in this context, OSCE/ODIHR Opinion on the Draft Law on Political Parties of Mongolia of 27 November 2019, par 40.

<sup>46</sup> See OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Act of Malta to Regulate the Formation, the Inner Structures, Functioning and Financing of Political Parties and their Participation in Elections of 14 October 2014, par 19.

(Article 17 par 1 (5)). Both of these terms are quite vague, and so it is difficult to assess in which instances this will be the case. Such ambiguity renders these provisions open to arbitrary application in the registration process. **If this reason for refusing registration is maintained, then it will need to be supplemented with procedural guarantees to ensure that the party can replace “unreliable” documents within a certain deadline (unless the documents were deliberately falsified).**

60. Finally, the Ministry may deny registration where deadlines for submitting documents for state registration of a political party were violated. It is noted here that the current version of the Draft Law does not contain a precise deadline within which political parties shall submit their application for registration. This provision should moreover only apply to the registration procedure and should not punish political parties for any failure to respect the deadlines set out in the process of forming a party (Articles 11-13). **Rather, as already elaborated above, it would be preferable if Chapter II outlining the procedure for political party formation were substantially simplified.** (see pars 35-42 *supra*).
61. It is welcome that the denial of registration may be appealed in court; as already recommended for the 2009 Draft Law, this should also be permitted in cases where the Ministry fails to respond to the application within the one-month deadline.<sup>47</sup> Generally, consideration could be given to including in the Draft Law a provision stating that in case the Ministry fails to respond to the request for registration within the statutory deadline, registration shall be considered granted automatically.<sup>48</sup>

#### **RECOMMENDATION E.**

In Article 17: to revise the provision so that grounds for denying registration must be clearly stated in law and based on objective criteria and that minor violations or omissions can be rectified by parties and do not lead to an automatic denial of registration;

## **4. INTERNAL FUNCTIONING OF POLITICAL PARTIES**

62. Generally, political parties regulate their internal matters themselves. It is welcome that the Draft Law also follows this principle, as evidenced in Article 6, which includes self-government in the principles governing the activities of political parties.

### **4.1. Political Party Charters and Structure**

63. Article 18 lists the key elements that should be included in political party charters. Requiring the charter to list the sources of funding of a party (Article 18 par 2 (10)) may, however, be redundant, as permissible sources of funding are already listed in Article 27 of the Draft Law and cannot be regulated by the charter.
64. Similarly, while it is positive that the procedures for compiling candidate lists for deputies of the *Jogorku Kenesh* and local *keneshes* listed under Article 18 par 2 (13)

<sup>47</sup> See OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 28.

<sup>48</sup> See, in this context, the OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Legislation Concerning Political Parties of Armenia of 20 March 2020, par 18, where the inclusion of such a provision in the Draft Amendments was welcomed.

contain several measures to enhance gender equality among candidates, these requirements are already provided for in the Law on Elections (though somewhat differently) and do not need to be duplicated in the Draft Law. **For this reason, it is recommended to replace this provision with a reference to the relevant provisions of the Law on Elections.**

65. Based on Article 18 par 2 (15), the grounds and procedures for recalling deputies of local *keneshes* should also be included in a political party charter. In this context, it should be borne in mind that once a deputy has been elected, this expression of the voters' will prevails over the decisions and policies of the respective party that nominated him/her. Moreover, par 7.9 of the 1990 Copenhagen Document specifies that candidates who obtain the necessary number of votes required by law are duly installed in office and should be permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures.
66. For local *keneshes*, the early termination of powers and replacement of deputies is regulated in Article 52 of the Law on the Election to Local Councils (*Keneshes*);<sup>49</sup> according to this provision, political parties may have a say in replacements of *keneshes* from political party lists, but do not have the power to recall deputies themselves. This is in compliance with par 7.9 of the Copenhagen Document. **Article 18 par 2 (15) should be amended accordingly or deleted.**
67. Finally, while it is welcome that the charter of a party shall be amended exclusively by the party congress (Article 18 par 3), Article 18 par 4 states that such amendments shall be subject to preliminary consideration by the governing body of the party (Article 18 par 4). **While this part of the provision may be aimed only at simplifying and expediting discussions on possible amendments, such a regulation would also potentially allow leaders of the party to block any changes to the charter and programmes, which could enhance their already dominating position in a party. It is thus recommended to rethink this provision, and to consider deleting it.**
68. Article 21 of the Draft Law describes the governing bodies of political parties in great detail, in particular, as regards the terms of mandate of the governing body, including its end of mandate and election. Political parties should be able to determine these matters for themselves, and thus, pars 3-6 of Article 21 should be reconsidered and ideally revised or deleted (also to avoid possible duplications of mandate of the governing bodies). **At the same time, it would be beneficial to include in Article 21 some mechanisms aiming at equal gender representation also in the governing structures of political parties.**

#### 4.2. Political Party Membership

69. According to Article 20 par 2 of the Draft Law, only citizens of the Kyrgyz Republic who are 18 years of age may be members of a political party, but not foreign citizens or stateless persons, as well as citizens recognized by courts as legally incompetent. As indicated above (see par 16 *supra*), excluding foreign citizens and stateless persons from party membership is unnecessarily limiting, and not in line with international human rights standards.
70. As for persons who are “legally incompetent”, it should be borne in mind that the CRPD provides for equal recognition of persons with disabilities before the law

---

<sup>49</sup> Law on the Election to Local Councils, adopted on 14 July 2011, last amended in 2019.

(Article 12). Article 29 CRPD guarantees to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, including the right to participate in the activities and administration of political parties (in par b (i)).

#### **RECOMMENDATION F.**

In Article 20 par 2: to remove “legal competence” as a prerequisite for membership in a political party so that the provision is in line with the Convention on the Rights of Persons with Disabilities;<sup>50</sup>

71. Article 20 par 4 stipulates that political party members shall be expelled if they do not comply with the charter. Aside from the fact that it would be excessive to expel members for all violations of the charter, **this type of regulation of internal party matters unduly interferes with parties’ autonomy – it should be left to the individual party to decide in which circumstances members are expelled. At the same time, the Draft Law should include a proper appeals mechanism for party members to complain against political party decisions such as expulsions.**
72. Paragraph 7 of Article 20 correctly notes that members of political parties may not be bound in their official (professional) decisions by decisions of the party, but also notes that this does not apply to deputies of the *Jogorku Kenesh* and of local *keneshes*. **This latter part of the provision should be reconsidered, as this would threaten to impose undue pressure on deputies in instances of so-called “conscience votes”. It should be sufficient to provide for internal political party discipline in the charter of the political party.**
73. Finally, Article 20 par 8 states that restrictions of the right to join political parties, or the obligation to suspend membership in a party apply to a certain category of citizens of the Kyrgyz Republic, defined by the “legislation of the Kyrgyz Republic”. As with other provisions of the Draft Law, such vague references to unnamed other legislation provide little to no information as to which categories Article 20 is talking about. **As this is an important element of a law regulating political parties (and their membership), it is recommended to include the categories of citizens excluded from membership in political parties in the Draft Law, and to ensure that in all cases, such exclusion is objectively justifiable.**

## **5. RIGHTS AND RESPONSIBILITIES OF POLITICAL PARTIES**

74. The rights of political parties are set out in Article 23 of the Draft Law. While generally, these are welcome and unproblematic from a human rights point of view, some parts of this provision would benefit from some improvement.
75. Notably, according to Article 23 par 1 (6), political parties may establish their own printing houses and media outlets, and printing houses and mass media are also listed as property items of political parties under Article 25 par 1. The nature of these printing houses and media outlets is unclear (and they are also not listed as permissible economic activities under Article 26 par 2) It is important to avoid that political parties

<sup>50</sup> See, in this context, OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties of 11 October 2019, par 43.

use funds to wield disproportionate media influence **Therefore, to contribute to a level playing field, especially before elections, political parties should not be permitted to own and establish their own commercial media outlets.**<sup>51</sup> However, it also has to be ensured that political parties are still able to establish, own and run non-commercial media outlets and printing houses in order to publish campaign material or inform about the party's statutory activities, goals and programmes.<sup>52</sup>

76. Article 23 par 1 (7) grants the use of state-run media outlets and of local government-run media outlets “on equal terms”, where this is provided by legislation of the Kyrgyz Republic. So as not to detract from the newsworthiness of political programming, it would be preferable to use the term “equitable access” instead, which will help distinguish political coverage of large and parliamentary parties from the coverage of very small and emerging parties. At the same time, the legislator should ensure that the term “state-run media outlets” covers both public TV stations funded by or managed by the state (e.g. KTRK and other central or regional broadcasters).
77. The responsibilities of political parties are outlined in Article 24. Paragraph 1 (3) requires parties to respect territorial integrity and strengthen national unity – the purpose of this provision is not entirely clear, but in any event, this should not restrict political parties in the elaboration of their party charter and programme, provided that this does not include any calls to violence or other illegal behaviour, or threats to overthrow the constitutional order.
78. Article 24 par 1 (4-6) specifies certain reporting requirements for political parties and their representative offices/branches. Thus, parties are obliged to annually report on their use of financial resources (and their sources) and other property to members, state bodies and the public, and are also obliged to provide the Ministry of Justice with annual reports on their activities, number of party members, as well as implemented activities and continuation of activities past activities. At the request of the Ministry and of the election commissions, they may also be obliged to submit certified copies of the decisions of their governing bodies and officials, and annual and quarterly reports “within the scope of information to be submitted to the tax authorities”.
79. This means that every year, political parties need to not only submit substantial financial reports to the competent tax authorities (Article 31 par 2), but also financial reports to members, state bodies and the public, and activity reports to the Ministry of Justice. **This amounts to quite a number of reports, requiring an excessive amount of information, which could conceivably become quite burdensome for parties, especially in election years and therefore is recommended to delete.** At the same time, Article 24 par 1(4) should specify that the published reports on the use of financial resources shall indicate only names of individual donors who have donated substantial sums, but otherwise exclude personal details, to ensure respect for their rights to privacy. Individuals who have only donated small sums should not be mentioned by name at all.
80. Based on Article 24 par 1 (7), political parties are obliged to allow the Ministry of Justice at public events (e.g. congresses or conferences) that they organize. Generally, parties should be allowed to invite (or not invite) whomever they please, and thus the question of allowing Ministry representatives at political party events should not be

<sup>51</sup> See, in this context, the OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Legislation Concerning Political Parties of Armenia of 20 March 2020, par 33.

<sup>52</sup> Ibid.

formulated as an obligation. **It is recommended to delete this provision from Article 24.**

81. Likewise, it is not clear why, under Article 24 par 2, political parties should need to submit to the Ministry of Justice information on the number of their nominated registered candidates for different forms of public office, as well as on candidates registered by the election commissions. This information shall be presented in the form of a “certified copy of a relevant protocol of election results”. As the collection of such data would be quite burdensome, it would be easier if the Ministry of Justice would request such information from the Central Election Commission (or other relevant commissions).
82. Permissible economic activities of political parties are listed in Article 26 par 2, including the possibility for a political party to lease and sell its movable and immovable property. **This option should be clarified in the Draft Law; in particular, it should specify that property should always be leased or sold at the current market price (or at least not at a significantly or disproportionately higher price), and that in such transactions, possible conflicts of interest should be avoided. This includes not conducting such transactions with semi-public or public enterprises.**<sup>53</sup>
83. Political parties may use their funds for charitable purposes, as specified in Article 26 par 4. This should also be reflected in its consolidated financial report; paragraph 5 of Article 26, which currently only refers to economic activities, should be supplemented accordingly.

## 6. FUNDING OF POLITICAL PARTIES

84. The funding of political parties is regulated in Chapter VI of the Draft Law, and includes funding sources, state and private funding, as well as financial reporting and oversight. It is very welcome that the sources of funding listed in Article 27 now also include funds from the state budget.
85. According to Article 27 par 1 (1), funding sources include membership fees and entrance fees. It is not clear what entrance fees would be, as opposed to membership fees, and it is recommended to clarify this point in the Draft Law.

### 6.1. State Funding

86. Article 29 provides more details on the distribution of state funding to political parties. Paragraph 1 of this provision stipulates that political parties are entitled to state funding if its ticket received at least five percent of the popular vote in a republican constituency during the last elections of deputies of the *Jogorku Kenesh*. The total amount of funds allocated from the state budget shall be determined by the Government annually and distributed among parties in accordance with the received votes (Article 29 par 4) within three months of the day of official publication of election results and thereafter annually throughout the term of office of the *Jogorku Kenesh* of the corresponding convocation (Article 29 par 5).

---

<sup>53</sup> See, in this context, par 5.4 of the 1990 Copenhagen Document requiring a strict separation between political parties and the State.

87. Allocating funds based on the previous election results is not unusual, and the 5% hurdle is also reasonable given the high 9% election threshold in the Kyrgyz Republic (though it should be borne in mind that if this threshold is ever lowered, the percentage determining whether a party receives state funding will also need to be reduced). At the same time, Article 29 par 1 does not foresee any funding for smaller or newly established parties, which means that large and well-established parties are greatly favoured in this system, while other parties will not have any state support until they win elections (which again obviously depends on funding). According to the Guidelines on Political Party Regulation the disbursement of public funds should ensure the ability of parties to compete on the basis of equal opportunity, thereby enhancing political pluralism.<sup>54</sup>

#### **RECOMMENDATION G.**

In Article 29 par 1: to set aside some public funds for smaller parties as well, based on objective criteria. Additional support could be given to political parties that promote gender equality, the rights of persons with disabilities, youth, or other groups, to incentivize the implementation of state strategies in these areas<sup>55</sup>;

88. Article 29 par 4 provides the Government with a large amount of discretion when deciding on the amount of public funding to be allocated. At the same time, it is unclear which part of this decision really falls within the competences of the Government. Article 29 par 3 notes that the funds shall be shown in the state budget, which is passed by the *Jogorku Kenesh*. In any event, to enhance transparency in this process and render this amount less dependent on political changes, it would be better to specify the amount in the Draft Law.<sup>56</sup> Ideally, this should be an inflation adjustable amount for votes received, a public funding figure expressed in a concrete fraction of the GDP amount, a percentage of the total planned budgetary resources or the total source incomes of the budget.
89. Under Article 29 par 5, the procedure and terms for transferring state funds to political parties shall be determined in accordance with par 3 of the same article. This provision is unclear, as par 3 merely speaks of funds being transferred to a special account of the Ministry of Finance but does not mention the transfer of state funds to the parties. Article 29 should thus specify the process and terms of transferring funds to parties. Generally, the annual distribution of state funds should take place at the end of the year, and the receipt of funds should be conditional upon and paid only after the timely fulfilment of each party's reporting requirements.

## **6.2. Private Donations**

90. Article 30 stipulates that political parties may accept donations in the form of cash and other property from both individuals and legal entities, provided that the donations are

<sup>54</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, pars 183-184.

<sup>55</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 191.

<sup>56</sup> See on the stability and predictability of public funding, OSCE/ODIHR Opinion on the Act on Amendment of the Act on the 2019 State Budget of the Republic of Bulgaria pars 21-25.



documented with the mandatory indication of their source. Article 30 should also specify that in-kind donations, as well as loans, debits and credits, should also be considered to be donations within the meaning of the Draft Law.

91. The obligation under Article 30 par 2 of making monetary donations to political parties only through wire transfers appears to run counter to the wording par 1 of the same provision, which states that parties are entitled to also accept cash donations. Moreover, Article 30 par 6 states that citizens of the Kyrgyz Republic may make monetary donations by delivering them personally to post offices and banking institutions. It is recommended to amend the above parts of Article 30 to ensure that these provisions are all consistent with one another.
92. In this context, it should be borne in mind that allowing individual donations only by wire transfer would exclude people without bank accounts from donating to political parties; the same would apply for all forms of crowd sourcing. This would be counterproductive, as the more donations a party receives from various sources, however small, the less it will be driven by wealthy interest groups. It would thus be advisable to allow cash donations up to a certain amount, and to then require all donations above this amount to be done via wire transfer. This would ensure transparency, without excluding small donations per se. In this context, the good record keeping requirements listed in Article 30 par 5 on the details of wire transfer should be noted positively.
93. Article 30 par 3 lists numerous individuals or entities that may not donate to political parties in the Kyrgyz Republic. This includes international financial organizations and international non-profit organizations (Article 30 par 3 (6)). While the Draft Law may well prohibit such organizations from directly funding a particular party, this ban should not apply to capacity-building efforts of such organizations that support all political parties equally. Thus, seminars, training activities, research and other supportive activities should not be covered by Article 30 par 3 (6), either by stating that this form of assistance shall not be defined as a donation, or by explicitly excluding it from the scope of this particular provision.<sup>57</sup>
94. Legal entities where more than 30% of their (joint stock) capital is owned by the state or a municipality are also banned from donating to political parties (Article 30 par 3 (9)). This percentage could be too high, seeing as in some laws, donations from companies that the state is involved in are prohibited, regardless of the extent of such involvement. States which do not ban such donations completely usually set the limit of government involvement lower, and prohibit, for example, donations from companies in which the State owns more than 10%.<sup>58</sup> **Article 30 par 3 (9) should be amended accordingly. Additionally, the legislators may consider also banning donations from companies benefiting from public contracts for a period of three-five years after the end of the contract.**
95. Charitable organizations and religious associations may not donate to political parties either, as well as organizations established by them (Article 30 par 3 (11)). Considering that these associations are part of civil society, it would appear unreasonable to completely ban them from supporting individual parties in any way. Instead, this provision should specify which types of charitable or religious entities should be

---

<sup>57</sup> This would also be in line with Copenhagen Document par 26

<sup>58</sup> See also OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention and Fight Against Political Corruption of Ukraine of 26 October 2015, par 32.

banned from donating (though such provisions would need to be worded carefully, so as to avoid discriminatory clauses).

96. If prohibited donations are received, then they shall be returned to the donors within a month, or else, based on Article 30 par 4, transferred to the state revenue. It is assumed that this should mean “state budget”; this provision should be adapted accordingly (unless this is due to erroneous translation).
97. In the case of in-kind donations, Article 30 par 8 stipulates that political parties shall establish their monetary value and enter the relevant data into the financial report. It might be good to add that this value should not be less than the current market value at the time of the donation.
98. Article 30 par 9 contains an annual ceiling for donations received by a political party. For each individual, this ceiling lies at 5,000 times the minimum wage established on the date of the donation, which means that the maximum ceiling for a single donation amounts to more than 110 thousand Euro, while for each legal entity, it lies at 50,000 times the minimum wage or more than one million Euro. Generally, donation limits are useful, as they help ensure a level playing field for all political parties, and reduce the ability of particular groups or individuals to gain influence through financial advantages.<sup>59</sup> At the same time, it is noted that the current limits, in particular in a country with a relatively low GDP, appear to be disproportionately high,<sup>60</sup> also compared to other countries within the OSCE region.<sup>61</sup> This defeats the purpose of having such limits in the first place. **In order to prevent or at least minimize corruption and the dependence on parties on wealthy interest groups or individuals,<sup>62</sup> it is highly recommended to reduce these limits. Also, either here or elsewhere in Article 30, it should be made clear that these caps apply to all kinds of donations, including in-kind donations, loans, debits and credits (see par 91 *supra*). Likewise, entry and membership fees should also be seen as individual contributions or donations and should fall under the limitation under Article 30 par 9.<sup>63</sup>**

#### RECOMMENDATION H.

In Article 30: to reduce the limits for private donations and to ensure that in-kind donations, loans, debits and credits are also considered to be donations within the meaning of the Draft Law;

99. Furthermore, the wording of Article 30 par 9 could be interpreted to mean that election campaign fund contributions (regulated in Article 62 par 2 of the Law on Elections) collected by the parties will also fall under these limits. The Draft Law should provide

<sup>59</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 173.

<sup>60</sup> Based on the projections published by the Ministry of Justice, the minimum wages for 2020 and 2021 are expected to be at 1,854, respectively 1,970 Kyrgyz Som. Multiplied by 5,000, this amounts to a maximum annual ceiling of 9,270,000 (approximately 103,813 EUR), respectively 9,850,000 Som (approximately 110, 308 EUR) for individual donors, and to a maximum ceiling of 92,700,000 (approximately 1,038,129 EUR), respectively 98,500,000 Som (approximately 1,103,116) for legal entities.

<sup>61</sup> See e.g. Joint Opinion on the Legal Framework of Moldova Governing the Funding of Political Parties and Electoral Campaigns par 41 (donation limit for individual donations is set at approx. EUR 55,000); OSCE/ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain (donations by individuals are capped at EU 50,000)

<sup>62</sup> See also OSCE/ODIHR Opinion on the Act on Amendment of the Act on the 2019 State Budget of the Republic of Bulgaria, par 27.

<sup>63</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 163.

more clarity in this regard, by providing guidance on how to differentiate between contributions for ordinary party activities and between those provided for campaign activities, and how the contributions received from legal entities and citizens before the start of an election campaign should be accounted for, namely whether they would be regarded as party funds or still be seen as contributions received from legal entities and citizens.

### **6.3. Reporting and Oversight**

#### **6.3.1 Financial Reporting Obligations**

100. In the Guidelines on Political Party Regulation, Principle 10 on accountability states that as a result of having privileges not granted to other associations, it is appropriate to place certain obligations on political parties due to their acquired legal status. These may involve reporting requirements and transparency on financial arrangements.<sup>64</sup>
101. Article 31 regulates financial reporting of political parties. According to par 1 of this provision, a political party and its representative office/territorial branches shall submit financial and accounting reports in the manner and terms established by the legislation of the Kyrgyz Republic. Given how important it is to have absolute clarity on what political parties are required to do, it would be recommendable to include more information on this in the Draft Law, or to introduce more specific references to Article 31. In particular, it is not clear by when political parties shall submit their consolidated tax report to the competent tax agency after the end of the requisite calendar year (Article 31 par 2).
102. Article 31 par 3 specifies what financial reports shall contain (ideally, this information should be itemized). This includes information about sources and amounts of funds received on accounts of the political party and its representative offices/territorial branches, as well as on how these funds were spent. This provision does not, however, specify the extent of the information that parties need to provide on their funding sources, e.g. which information on individual donors and legal entities needs to be included; additionally, the use of funds for charitable purposes (Article 26 par 4) should also be included in the financial report.
103. As regards the form of the financial report, it is welcome that the state tax authority is held to introduce a standard template and guidance for reporting that should be the same for all political parties nation-wide. Reports should clearly distinguish between contributions and expenditures. Further, reporting formats should include the itemization of all contributions and expenditures into standardized categories as defined by the regulations. Itemized reporting should include the date and amount of each transaction, as well as copies of proof of the transaction (for example, receipts, checks, bank transfers and loan agreements).<sup>65</sup>
104. Article 31 par 3 also states that the funds expended by a political party and its representative offices/territorial branches for the preparation and conduct of elections shall be accounted for separately. It is unclear how this provision relates to Article 31 par 2, or to Article 16 of the Law on Elections, which foresees somewhat different reporting requirements. Article 31 should clarify whether parties shall present reports

---

<sup>64</sup> Political Party Guidelines, *op cit* footnote 10, par 23.

<sup>65</sup> OSCE/ODIHR Handbook for the Observation of Campaign Finance, 2015, pp. 40-41.

on these election-related expenditures to the tax office and (or) to the Central Election Commission.

105. Finally, in its par 4, Article 31 states that political parties shall publish in the print media information from the consolidated financial report in the form established by the tax authority. Information on the funds and expenditure of political parties should be published in a way that it is available over an extended period of time and its format should be easily searchable and accessible.<sup>66</sup> Hence, online publication of reports is advisable. Additionally, it is not clear whether this is the same financial report mentioned in Article 24 par 1 (4) on the use of financial resources and other property that political parties are held to make available to their members, competent state bodies and the public. This should be clarified in the relevant articles of the Draft Law. **Article 31 par 4 should also be more specific as to which financial information shall be published and should ensure that this information should be comprehensive, and include all funds received and spent, with information on sources, but without providing names and personal details of individual smaller donors, so as to protect their privacy rights. In the case of individual donors who submitted large amounts, it would appear to suffice to list their names, but to not add other personal details.**

#### RECOMMENDATION I.

In Article 31 par 4: to specify the type of financial report that political parties are required to submit annually, along with which financial information shall be published, and ensure that this information should be comprehensive, and include all funds received and spent, with information on sources while respecting privacy rights;

#### 6.3.2 Oversight over Financial Activities

106. The control over financial activities of political parties is regulated in Article 33, which provides different public bodies with different oversight powers. Thus, the Chamber of Accounts is responsible for checking receipts and the targeted use of funds, while the tax authority shall control financial and accounting reports submitted by political parties. According to par 2 of Article 33, the *Jogorku Kenesh* may also review receipts and the targeted use of funds and other resources following the request of one-third of the total number of deputies.
107. States need to provide for independent monitoring with respect to the funding and expenditure of funds by political parties, both as regards their usual activities, and also as regards election campaigns. This includes supervision over political party accounts and the expenses involved in election campaigns, as well as their presentation and

<sup>66</sup> See also OSCE/ODIHR Opinion on the Constitutional Law of the Republic of Armenia on Political Parties (19 October 2019) par 29; OSCE/ODIHR Opinion on Opinion on Laws Regulating the Funding of Political Parties in Spain (30 October 2017) par 55.; OSCE/ODIHR Opinion on Draft Amendments to some Legislative Acts of Ukraine concerning Transparency of Financing of Political Parties and Election Campaigns (14 September 2014), par 25; OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Act to Regulate the Formation, the Inner Structures, Functioning and Financing of Political Parties and their Participation in Elections of Malta (14 October 2014), par 38; and OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to some Legislative Acts Concerning Prevention of and Fight against Political Corruption of Ukraine (26 October 2015) par 60.

publication.<sup>67</sup> Monitoring can be undertaken by a variety of different bodies, including a competent supervisory body or state financial body; whichever body is tasked to review a party's financial reports should be strengthened by effective legal and practical measures to ensure its independence from political pressure and its commitment to impartiality,<sup>68</sup> and should also be endowed with sufficient financial support and investigative powers.<sup>69</sup>

108. **If monitoring is undertaken by different bodies, then the extent of their respective powers and competences need to be delineated clearly. Article 33, while welcome in principle, does not provide much detail on the process of conducting oversight in general; while the Chamber of Accounts shall check receipts and targeted use of funds of political parties, such tasks would appear to also fall within the purview of the tax authority when it reviews financial reports submitted by the parties. This indicates that there may be some overlap in the competences of these two bodies, but at the same Article 33 does not indicate how these two bodies will cooperate to ensure comprehensive oversight over political party funding.**
109. Moreover, the extent and purpose of the parliamentary oversight mentioned in Article 33 par 2 is also unclear. Generally, it is unusual for parliaments to exercise oversight over political parties; given the number of political parties represented there, this would in essence create a situation where certain political parties exercise oversight over others. This could create a potential conflict of interest, could lead to abuse and should thus be reconsidered. Also, it is unlikely that the *Jogorku Kenesh* would have the professional means or capacities to conduct an in-depth review of the receipt and targeted use of funds by political parties, nor would there appear to be a need for parliament to duplicate the tasks of the Chamber of Accounts, which is a more neutral, specialized body. It is thus recommended to delete Article 33 par 2. Alternatively, the provision could be modified, giving the *Jogorku Kenesh* a more clearly defined supplementary role in oversight by, for example, opening the possibility of initiating a parliamentary debate or creating an oversight committee in certain circumstances.
110. Article 107 of the Constitution describes the Chamber of Accounts as the Kyrgyz Republic's highest auditing body.<sup>70</sup> If the role of the Chamber of Accounts is thus to conduct financial audits of political parties, then this should be stated clearly in the Draft Law. In that case, however, it would also be helpful to specify whether this should cover all political parties or only larger ones, and whether this would exclude political parties from appointing other auditors to check their financial records. Moreover, it would be important to assess the current capacity of the Chamber of Audits, and to supplement it with additional staff and funds, if necessary.
111. The same applies to the tax authority, which will need significant amounts of staff and funding to be able to oversee financial reports of all political parties in the country. Moreover, Article 33 does not provide much detail as to how the tax authority will

<sup>67</sup> See Guidelines on Political Party Regulation *op. cit* footnote 10 pars 211-214; while the Kyrgyz Republic is not a member State of the Council of Europe the need for independent monitoring is also highlighted in the Council of Europe Committee of Ministers, Recommendation 2003(4) to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003, Appendix, Article 14.

<sup>68</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 212.

<sup>69</sup> OSCE/ODIHR-Venice Commission Joint Opinion on the Draft Amendments to Some Legislative Acts Concerning Prevention and Fight Against Political Corruption of Ukraine of 26 October 2015, par 36

<sup>70</sup> Article 107 of the Constitution states that the Chamber of Accounts "shall conduct the audit of execution of republican and local budgets, off-budgetary funds as well as use of public and municipal property."

conduct its oversight over political parties, and whether this will go beyond the simple review of annual financial reports.

112. In particular, the wording of Article 33 does not reveal what will happen in cases where either body detects irregularities in the financial conduct of political parties. Neither the Chamber of Accounts, nor the tax authority currently appear to have the power and capacities to follow up on and investigate alleged irregularities in case of credible information of falsified reports or other serious financial violations. The Draft Law currently does not provide for this type of investigations of potential wrongdoing, but merely suggests that inspection shall be limited to reviewing financial reports, the results of which shall then be published (Article 33 par 3). Without such powers, however, it will be difficult to maintain adequate and effective oversight over political parties, their funds and how they spend these funds.<sup>71</sup>
113. In addition to what was stated above, Article 33 should outline clearly how the competences of the oversight bodies mentioned therein relate to and comply with Article 42 pars 1 and 2 of the Law on Elections, which regulates oversight over election campaign funding. According to these provisions, the election commissions shall exercise oversight over election campaign funding and shall also create their own auditing teams for this purpose. Article 33 of the Draft Law and Article 42 of the Law on Elections should be reviewed, and the wording of the Draft Law adapted to ensure consistency and avoid overlaps.

#### **RECOMMENDATION J.**

In Article 33: to clearly delineate the respective mandates, powers and competences of the different bodies involved in oversight over political parties to ensure cooperation between them and avoid overlapping competencies;

114. Finally, the Draft Law does not foresee any sanctions in cases where political parties have engaged in wrongful conduct in terms of receiving and spending funds, and reporting on this. The Guidelines on Political Party Regulation specifically state that legislation on political parties shall specify also the types and scope of violations requiring sanctions, while noting that irregularities in finance reporting, non-compliance with financial reporting regulations or improper use of public funds should result in the loss of all or part of such funds for the party, or in administrative fines.<sup>72</sup>
115. Overall, all sanctions must be effective, proportionate and dissuasive.<sup>73</sup> The amount of money involved, whether there were attempts to hide the violation, and whether the violation was of a recurring nature are all factors that need to be taken into account when deciding on a sanction. Ideally, there should be a range of administrative sanctions; criminal sanctions should only apply in cases involving serious violations that undermine public integrity.<sup>74</sup>

<sup>71</sup> See, in this context, Guidelines on Political Party Regulation, *op cit* footnote 10, par 220. See also OSCE/ODIHR Opinion on the Draft Law on Political Parties of Mongolia of 27 November 2019, par 57.

<sup>72</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 215.

<sup>73</sup> See Guidelines on Political Party Regulation par 215; see further, even though not directly applicable to Kyrgyzstan Council of Europe Committee of Ministers, Recommendation 2003(4) to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003, Appendix, Article 16.

<sup>74</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, pars 216-217.

116. Overall, the Draft Law should be expanded to include a proper and effective oversight mechanism over political parties and their finances, by clarifying the oversight powers of the competent bodies, adding proper investigative powers, and including a proper and proportionate catalogue of sanctions for violations of finance and financial reporting regulations.

**RECOMMENDATION K.**

to introduce into the Draft Law catalogue of dissuasive and effective yet proportionate sanctions for different types of specifically enumerated behaviours;

## 7. PARTICIPATION OF POLITICAL PARTIES IN ELECTIONS

117. Chapter VII contains two provisions that regulate the participation of political parties in elections, namely Articles 34 and 35. As the nomination and registration of candidates are already covered by the Law on Elections, the necessity of retaining Chapter VII should be re-assessed.
118. Additionally, Article 34 par 4 requiring political parties to publish their programme in the republican print media should be reviewed. Political parties that have nominated candidates for elections will publish lots of information, but will neither limit this to party programmes, nor to the print media. The legislators should consider deleting this provision.
119. Article 35 par 2 states that parties not participating in presidential, parliamentary and local elections for five years shall be subject to dissolution under Article 39 par 3 (4) of the Draft Law. This would appear to be unduly harsh, as the dissolution of a party, in other words a complete ban on a party's existence, is an extreme measure of last resort, which should only take place in extreme cases, e.g. where a party uses violence and threatens civil peace, and where all less serious measures have been deemed inadequate.<sup>75</sup> As already stated with regard to the 2009 Draft Law, freedom of association, as formulated in OSCE commitments and in regional and international human rights instruments, is not conditioned upon the standing and other participation of candidates or political parties in elections. Nor should failure to stand as candidates or participate in elections be construed as a threat to the constitutional order or state institutions.<sup>76</sup> Moreover, the use of the word "and" when listing the different types of elections indicates that a party may already be liable for dissolution if it fails to participate in all three elections: presidential, parliamentary and local. Unless due to a translation error, this would be particularly severe, and would eliminate any smaller parties with insufficient means to take part in all forms of elections, as well as parties that are only active at the national or local level. However, already the requirement to take part in elections under threat of dissolution is a disproportionate measure,

<sup>75</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, pars 89-92.

<sup>76</sup> OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 42. See also OSCE/ODIHR Opinion on the Draft Law on Political Parties of Mongolia of 27 November 2019, par 41, and OSCE/ODIHR Opinion on the on the Act on Amendment of the Ac29-30.t on the 2019 State Budget of the Republic of Bulgaria of 3 December 2019, pars 29-30.

regardless of whether it means participation in one type of elections or participation in all elections.

**RECOMMENDATION L.**

In Article 35 par 2: to reconsider the dissolution of parties not participating in presidential, parliamentary and local elections for five years;

## **8. OVERSIGHT, SUSPENSION OF ACTIVITIES AND DISSOLUTION**

120. Chapter VIII regulates the conditions under which the State may suspend the activities of political parties or dissolve them altogether. As the first provision under this chapter, Article 36, is about oversight and control over political parties in general, without going too much into suspension or dissolution in particular, it would be more accurate to amend the title of the chapter to reflect this.
121. According to par 1 of Article 36, oversight over the “strict and uniform observance of the legislation” by a political party and its offices/branches shall be exercised by the Ministry of Justice. The Ministry shall also control the compliance of activities of the political party with the provisions, goals and objectives defined by its charter and programme, by asking the political party for documents on offices/branches and number of members and sending representatives to open events held by the political party (Article 36 par 2). In case political parties or their branches engage in activities contrary to the provisions, goals and objectives set out in its charter and programme, the Ministry shall issue a written warning (Article 36 par 3).
122. It is important to remember in this context that oversight bodies should refrain from exercising excessive control over party activities, as these are internal party matters that should only come to the attention of state authorities in exceptional circumstances.<sup>77</sup> This also applies to a party’s charter, and how it is to be implemented. As indicated in relation to the 2009 Draft Law, it would be extremely problematic if an administrative or judicial body examined the rationality and coherence of the political programme, goals and principles of the party, and passed judgements on whether the party has fulfilled them. Such evaluations should be left to the public and voters.<sup>78</sup> The State may only intervene in political party activities if they are illegal or aim to incite violence or to violently overthrow of the constitutional order.<sup>79</sup> Moreover, as already stated in par 81 *supra*, political parties shall not be obliged to let Ministry representatives attend their events. For these reasons, Article 36 par 2 should be rethought, and either substantially revised, or deleted.
123. Article 37 allows the Minister of Justice to “hand the party’s governing body an assignment on eliminating violations” within a specified period of time not exceeding three months if the party violates the Constitution, the Draft Law and other regulatory legal acts or if it commits actions violating the rights and freedoms of citizens. As in other instances where provisions of the Draft Law contain vague references to other unnamed laws, this part of Article 37 fails to provide a clear and succinct catalogue of

<sup>77</sup> Guidelines on Political Party Regulation, *op cit* footnote 10, par 221.

<sup>78</sup> OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 26.

<sup>79</sup> OSCE/ODIHR-Venice Commission Opinion on the Draft Law on Political Parties of the Kyrgyz Republic of 23 October 2009, par 38.



precise behaviour that will be considered to violate the above laws and that will be so severe as to justify the initiation of suspension procedures. As it stands, the imprecise language of Article 37 is open to interpretation, and thus, to potentially arbitrary decisions. In this situation, any violation of provisions of this Draft Law (or indeed of any law) could lead to the suspension of party activities. It is recommended to delete this part of Article 37 par 1, and to replace it with a list of (serious) violations that may trigger the initiation of suspension proceedings.

124. If the party fails to comply with the Minister's "assignment" within the specified period, the Minister may apply to the Supreme Court for suspension based on his/her own initiative or on the basis of a "reasonable appeal" of individuals/legal entities. These terms are quite vague, as it is neither clear what a reasonable appeal would be, nor which individuals or entities should have the right to make such an appeal in the first place. Additionally, a period of three months may not always suffice to eliminate the violation. Article 37 par 1 should be clarified in this respect.
125. Based on the Minister's application, the Supreme Court of the Kyrgyz Republic shall suspend the activities of the party for a period of up to six months. It is welcome that such decisions shall be taken by a court, and it is assumed that the suspension decision will be issued following a proper court procedure, in line with the principles of equality of arms, and providing the respective political party with ample time and opportunity to be heard (even though the wording "shall" may imply otherwise). For the sake of clarity and transparency, it is recommended to specify this in Article 37, along with a provision specifying the party's right and opportunity to appeal against suspension decisions. Similar considerations apply with respect to Article 37 par 3 allowing for the suspension of a party's representative office/territorial branch.
126. According to Article 37 par 4, the Ministry may also request the suspension of a party's activities in cases where it issued a written warning in line with Article 36 par 2 (3), unless this warning has been appealed. This reads somewhat unclear, and it is recommended to revise Article 37 par 4 to clarify that the request for suspension shall not be made only due to the written warning per se, but if the written warning has not been heeded within the required timeframe.
127. At the same time, this provision means that party activities that the Ministry considers to be in violation of a party's charter or programme could potentially, if such activities persist, lead to the suspension of a party. For the reasons elaborated above, this would be excessive and disproportionate, as the suspension of a political party's activities should be limited to extremely severe and serious cases.
128. The grounds and procedure for dissolving a political party are set out in Article 39 of the Draft Law, which will take place by Supreme Court decision. Some of these grounds are similar to those justifying the suspension of a political party, namely if the party violates the Draft Law and other regulatory legal acts or if it makes decisions violating the rights and freedoms of citizens. Other reasons listed are if a party fails to eliminate violations that the reasons for suspending the activities of the party, or the failure to participate in elections in accordance with Article 35 of the Draft Law (in this regard, see par pars 118-120 *supra*).
129. The concerns already raised with regard to the vague wording and the potentially disproportionate nature of the provision in relation to Article 37 apply to an even greater extent with regard to the dissolution of a political party, as a result of which a party ceases to exist. It is essential to remember the rights to freedom of association and

political participation on the one hand, and the principles of necessity and proportionality on the other; severely restricting the above rights by shutting down a political party should only be done in very serious cases where political parties engage in serious illegal activities, or where they propagate violence or threaten to violently overthrow the constitutional order. In all other cases, political parties may be sanctioned, but never dissolved. For this reason, vague references to the Draft Law in its entirety, or to other unnamed laws or violations of rights and freedoms of others will not suffice to justify the dissolution of a party.

**RECOMMENDATION M.**

In Articles 37 and 39: to specify that only the most serious violations may trigger the initiation of suspension proceedings or dissolution of a party, as dissolution is a measure of last resort when political parties engage in serious illegal activities, or where they propagate violence or threaten to violently overthrow the constitutional order.

130. Overall, and in addition to a previous remark made on the lack of a proper catalogue of specific prohibited acts, it is noted that the Draft Law contains only three types of sanctions, namely warnings, the suspension of activities, and the dissolution of political parties. There is no staggered application of sanctions; rather, the failure to respond to a warning immediately places the entire party, and its future existence, into danger.
131. Based on the findings of this Opinion, the legislators should therefore reassess their approach to sanctions for wrongdoing in the Draft Law in general, in particular in relation to which acts will be considered violations of the Draft Law, and how such infractions could be sanctioned in an effective and dissuasive yet proportionate manner. Thus, minor infractions such as failures to submit correct, complete or timely documentation could be met with fines or similarly minor administrative sanctions, while if parties fail to adhere to party finance regulations, they could either be fined or, depending on the severity of the infraction, be obliged to return the funds or transfer them to the State treasury. Another option would be to reduce the amount of state funding for certain political parties, or to declare them ineligible for future state funding or to run candidates in elections (for a certain amount of time). Serious crimes or violations, or situations where political parties engage in violent behaviour, or threaten the constitutional order, may indeed be met with suspension or dissolution, but only if no other less restrictive measure would have the desired effect. Behaviour of individual party members that objectively constitutes a criminal act should of course lead to their criminal liability.
132. Article 40 describes the process of reorganizing a political party. As stated above under par 14 *supra*, it is not clear what this means, and why it should have such far-reaching consequences. It is recommended to clarify this point, and to also review whether the act in question will always need to lead to the transfer of a party's property, termination of a party's activities, cancellation of its state registration certificate and exclusion from the state register, as indicated in Article 41 pars 2 and 3.

## 9. FINAL COMMENTS

133. The legal drafters have prepared an Explanatory Note to the Draft Law, which lists a number of reasons justifying the contemplated reform but does not mention the research and impact assessment on which these findings are based. Rather, the Note states that “since the draft law does not address business activities, no regulatory impact analysis is required”. However, impact assessments are not only necessary for draft laws that potentially affect businesses. Rather, given the potential impact of the Draft Act on political parties, their creation, status, funding and similar matters, an in-depth regulatory impact assessment is essential. This should be based on a proper problem analysis, using evidence-based techniques to identify the best efficient and effective regulatory option (including the “no regulation” option).<sup>80</sup> In the event that such an impact assessment has not yet been conducted, the legal drafters are encouraged to undertake such an in-depth review, to identify existing problems, and adapt proposed solutions accordingly.<sup>81</sup>
134. OSCE/ODIHR welcomes that public consultations have been carried out when preparing the draft law. When conducted in a meaningful way, public discussions and an open and inclusive debate increase all stakeholders’ understanding of the various factors involved and enhance confidence and trust in the adopted legislation, and in the relevant state institutions in general. Participation of civil society representing interests of specific groups, including women, persons with disabilities, national minorities and youth, are particularly beneficial for comprehensive consultations to ensure affected groups fully understand and are able to submit their views on draft legislation prior to its adoption. OSCE commitments require legislation to be adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document of 1991, par 18.1).<sup>82</sup> The legislator is encouraged to ensure that the Draft Law is consulted extensively up until its adoption.
135. Finally, Article 42 of the Draft Law states that the law shall enter into force on the day of its official publication. Given the quite substantial changes that the Draft Law envisages, both for political parties but also for state bodies, in particular those tasked with extensive oversight powers, it is recommended to include in Article 42 a reasonable *vacatio legis*, that would allow certain bodies and institutions some time to prepare for these changes once the law is adopted and published.

[END OF TEXT]

---

<sup>80</sup> See OSCE/ODIHR, Report on the Assessment of the Legislative Process in the Kyrgyz Republic (October 2015), pars 50-53, at <https://www.legislationline.org/legislative-process/section/process/country/20>

<sup>81</sup> Available at <<http://www.osce.org/fr/odihr/elections/14310>>.