



CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE
LEGISLATIVE ASSISTANCE AND RESEARCH PROGRAM

**ANALYSIS OF THE DRAFT
POLITICAL PARTIES ACT
OF THE REPUBLIC OF BULGARIA**

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Analysis of the Draft Political Parties Act of the Republic of Bulgaria

Table of Contents

Analysis of the Draft Political Parties Act for the Republic of Bulgaria.....	1
I. Introduction.....	1
II. Bulgaria’s Legal Obligations.....	1
A. Constitutional Norms And Guarantees	1
B. European Convention on Human Rights	2
III. Commentary on Specific Aspects of the Draft Code	2
A. Restriction of Party Purpose.....	2
B. Use of National Symbols.....	3
C. Language Requirement	3
D. Court Approval and Registration	3
1. Mental Health and Criminal Conviction Standards	5
2. Detailed Party Membership Information Requirements.....	5
3. Geographic Requirements.....	5
E. Participation of Youth	6
F. Restriction on Government Employees	6
G. Political Action Restricted to Political Parties.....	6
H. Party Financing and Property	7
1. Non-governmental Financing	7
2. Governmental Financing.....	7
3. Corruption Controls on Party Financing	8
a) Public Disclosures	8
b) Kickbacks and Illegal Payments.....	8
c) Enforcement.....	9
I. Termination of Political Parties	9
Draft Political Parties Act for the Republic of Bulgaria	Appendix A

Analysis of the Draft Political Parties Act of the Republic of Bulgaria^{1,2}

I. Introduction

This assessment of the draft Political Parties Act by the Thirty-Ninth National Assembly of Bulgaria is performed with the intention of identifying general themes and specific provisions that might be controversial or that could be drafted more effectively. These suggestions were compiled from the feedback provided by our panel of commentators, from the body of case-law under the European Convention on Human Rights, and from a comparative analysis of the American electoral system. The recommendations of this report represent a range of perspectives that attempt to provide diverse options for Bulgaria in its efforts to progress from its Communist history of totalitarian politics towards a sustainable, functional democracy.

One overview perspective that emerged in the assessment of this draft bill is that the legislation is generally too restrictive. The current drafting of the bill runs the risk of excessive regulation of political parties, which could limit the free flow of ideas critical to democracy and a free society. The presumption in modern democracies is that freedom is a natural right, and the role of government is merely to impose justifiable limits. It is therefore inappropriate for the government to grant freedoms and rights because doing so suggests that freedoms and rights belong to the government for it to disperse. Accordingly, it is suggested that the proposed Bulgarian law on political parties be redrafted to eliminate all those sections that read political parties may ...”, and instead identify those things a political party may not or must do. (See especially Article 21, Article 25(2) and (3), Article 27(1) and the first part of (3), and Article 28.) Many of the specific comments throughout this report will provide further guidance on how Bulgaria can address its concerns of electoral transparency, public confidence, and administrative feasibility, with more freedom and fewer regulations.

II. Bulgaria’s Legal Obligations

A. Constitutional Norms And Guarantees

Article 11 of the Bulgarian Constitution specifically addresses the existence and regulation of political parties in Bulgaria. Paragraph 1 states that, “Politics in the Republic of Bulgaria shall be founded on the principle of political plurality,” while Paragraph 2 states that “No political party or ideology shall be proclaimed or affirmed as a party or ideology of the state.” The Bulgarian National Assembly derives its authority to regulate political parties in Paragraph 3, which states, “The procedure applying to the formation and dissolution of political parties and the conditions pertaining to their activity is established by law.” Other articles of the Bulgarian Constitution relevant to this assessment include Article 39, which declares the right to freedom of expression, Article 43, which grants freedom of assembly, and Article 44, which grants freedom of association.

¹ Compiled by Melissa Duffy, CEELI Legislative Analyst.

² CEELI gratefully acknowledges the contributions of the following commentators for this report: Kenneth Gross (Skadden, Arps, Slate, Meagher & Flom), William Kimberling (U.S. Federal Election Commission), Ruth Levush (U.S. Law Library of Congress), Prof. Marlene Nicholson (DePaul University College of Law), Larry Shapiro (Legislative Commissioner’s Office, Connecticut General Assembly), and Paul Sanford (Center for Responsive Politics).

B. European Convention on Human Rights

Bulgaria is a member of the European Convention on Human Rights (ECHR). As a party Bulgaria is obligated to apply the Convention in their domestic courts and will be amenable to suit before the European Court of Human Rights if their treaty obligations are not met. Two Articles of the ECHR that are most relevant to this assessment are Article 10, which addresses the freedom of expression, and Article 11, which addresses the freedom of Association.

III. Commentary on Specific Aspects of the Draft Code

A. Restriction of Party Purpose

Article 5(1) prohibits activities by political parties that are “directed against the sovereignty and territorial unity of the state or seek forceful change of the state system and social order established by the Constitution.” The prohibition of activities “directed against ... territorial unity of the state” may be inconsistent with Bulgaria’s treaty obligations under the Articles 10 and 11 of the European Convention on Human Rights. Protection of “territorial integrity” is one of the aims specified in Article 10 as sometimes justifying restrictions on expression. However, even restrictions serving the listed ends must be found “necessary in a democratic society,” which has been defined as serving a “pressing social need.” Furthermore, in numerous cases the Court has explained that the exceptions must be narrowly interpreted. Although there is no case precisely on point, two recent cases decided by the ECHR suggests that so long as a group does not advocate secession through violence or advocate undermining the democratic system, the Convention protects a group’s right to organize for the purpose of seeking separation of the territory of a member country.

In *Yazar, Karata, Aksoy and the People’s Labour Party (HEP) v. Turkey* (decided April 2002), the Court found a violation of the right to freedom of association guaranteed under Article 11 of the Convention. The Turkish Constitutional Court had dissolved HEP because it had been “seeking to divide the Turkish nation in two, with Turks on one side and Kurds on the other, with the aim of setting up separate States’ and for ‘seeking to destroy national and territorial integrity.’” The Court concluded that “[A]s HEP had not urged or sought to justify recourse to force for political ends, its dissolution could not reasonably be considered to correspond to a ‘pressing social need.’” Thus the dissolution of HEP did not fall within the exception to the protections of freedom of association that requires any restriction to be “necessary in a democratic society.”

In another case the Court was quite clear that advocacy of separation alone could not be a basis to restrict a group’s associational rights. In *Straknov and the United Macedonian Organisation Ilinden v. Bulgaria*, (October 2001) the Court found a violation of Article 11 of the Convention in the denial by a local official of a permit to hold a meeting to an organization of ethnic Macedonians. In finding the permit denial inconsistent with the Convention, the Court explained that:

The fact that a group of persons calls for autonomy or even requests secession of part of the country’s territory — thus demanding fundamental constitutional and territorial changes — cannot automatically justify a prohibition of its assemblies. Demanding territorial changes in speeches and demonstrations does not

automatically amount to a threat to the country's integrity and national security.

In light of these cases from the ECHR, the drafters of the law may wish to consider adapting the prohibition to apply only to parties that advocate violence or undemocratic means to disrupt territorial integrity.

B. Use of National Symbols

Article 4 prohibits political parties from using as part of their symbols the coat of arms and the flag of Bulgaria, of a foreign state or any religious emblems or images. This is a questionable restriction on political and religious speech. As a comparison, political parties in the United States are free to make use of the flag of the United States as they see fit, including the right to burn the flag as a political statement without fear of criminal prosecution.³

C. Language Requirement

Article 6 requires that "political parties ... carry out their activities in the ... official language of the state." The practical impact of the language restriction would be to prevent persons who are not fluent in the official language. This would likely conflict with the requirement under Articles 10 and 11 of the ECHR that any incursion on freedom of expression or assembly be "necessary in a democratic society."

D. Court Approval and Registration

Article 15 (1) provides that parties become legal entities only after a decision of the Sofia City Court based upon an application for registration containing specified information. On a general comparative note, in both Germany and the United States, political parties simply file material with the government to gain legal status. The onus is then on the government to take action against the party if it is not in compliance with statutory and constitutional requirements. The benefit of that approach is that there are fewer opportunities for government officials to abuse their discretion by attempting to block the activities of parties opposed to the current regime. In the United States the federal government recognizes political parties merely for the purposes of granting ballot access, of allowing and regulating coordinated campaign expenditures on behalf of candidates up to specified dollar amounts, and of distributing subsidies for the costs of parties' national nominating conventions. The U.S. Federal Election Commission recognizes political parties as "an association, committee, or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee, or organization."⁴

One remedy to Bulgaria's problem of the unwieldy number of political parties is to limit the number of parties by creating threshold requirements for ballot access instead of requiring that parties be certified through the court system. An example of this proposal is the political system of the U.S. State of Connecticut. Connecticut, which has a population of about 3.5 million people, has a three-tiered system for ballot access. A party that qualifies as a "major

³ *Texas v. Johnson*, 109 S.Ct. 2533 (1989).

⁴ 2 U.S.C. § 431(16).

party”⁵ in Connecticut is entitled to have its candidates appear on the ballot for any office in the state. A party that qualifies as a “minor party”⁶ is allowed to have its candidates appear on the ballot only for any office in the state for which it qualified as a minor party. A party that does not qualify as a “major party” or as a “minor party” is allowed to have one or more candidates placed on the ballot at an election for one or more offices if it obtains a minimum number of signatures of registered voters.⁷ In none of these scenarios is the party required to register with the State of Connecticut, but the three-tiered system works to allow minority parties to emerge without opening the floodgates to an overwhelming and unwieldy number of parties.

Article 16 gives the courts broad discretion in their administration on the provisions in Article 15, which could be detrimental to the development of democracy in Bulgaria. First, Article 16 sub-section 2 states that the court “shall examine the compliance with legal requirements” but does not state what these requirements are. The specific provisions of the act should be referenced here. Second, the draft does not clearly state the basis for a decision by the court to approve an application. A clear statement of the parameters of the court’s authority may be helpful in order to limit the possibility of a court abusing its discretion.⁸ Third, the draft does not clearly state what actions the court may take, or is required to take, with regard to an application.⁹ Fourth, to ensure that the court acts impartially, there could be a non-discrimination provision added to the draft (if there is not currently such a provision under Bulgarian law) that would require the court to carry out its responsibilities under this act without regard to ideology, race, color, religious creed, sex, age, national origin, ancestry or physical ability.

Bulgaria might consider having an independent governmental agency, rather than a court, make the initial determination on an application for approval of a party registration. In the United States, the making of this type of determination is an executive function rather than judicial because it involves administrative determinations. The advantages of an administrative agency rather than a court are: (1) the agency would be specialized in elections matters and would therefore have more expertise than a court; (2) agency procedures are not as formal as a court’s so the agency could be more flexible and efficient; and (3) the staff of the agency could answer questions from applicants on the registration requirements and process, which could make the process flow smoother and increase public confidence. The determinations of the agency on party registration applications could then be appealed to the courts. Furthermore, a study could be conducted after two years to review the implementation of the party registration process, after which point additional recommendations and improvements can be made.

⁵ A party whose candidate for governor received at least 20 percent of the vote in the last-preceding election or whose number of enrolled members on the active registry list equal at least 20 percent of the total number of enrolled members of all political parties on the active registry list. Connecticut General Statutes, section 9-372(5).

⁶ A party who is not a major party and whose candidate for the office in question received at the last-preceding regular election for such office, under the designation of that political party or organization, at least one percent of the whole number of votes cast for all candidates for such office at such election. Connecticut General Statutes, section 9-372(6).

⁷ Connecticut General Statutes, section 9-453d.

⁸ For example, “If the court determines that an application complies with the provisions of Articles 1 to 15, inclusive, of this act and that the documents presented under Article 15 (1) and (2) are authentic, the court shall approve the application.”

⁹ For example, “The court may approve or disapprove an application or may grant an application thirty days to correct defects in an application.”

Several subsections of Article 15 (1) contain provisions that may not be consistent with Bulgaria's treaty obligations under the ECHR.

1. Mental Health and Criminal Conviction Standards

Sub-section 6 requires both medical "certificates attesting to the mental health of the persons representing the party and certificates showing no previous conviction," both of which are unusual requirements. Mental health is often a relatively subjective label, and the members of the party should be trusted to select qualified, mentally sound representatives. It would seem that obtaining such a certificate could be cumbersome and expensive, as well as invasive of privacy and potentially discriminatory. Furthermore, persons with unpopular views might have particular difficulty obtaining a certificate. The requirement of no prior conviction might pose problems for persons who had been convicted of political crimes during the communist era. It is questionable whether such burdens on association are "necessary in a democratic society," as required by Article 11 of the ECHR.

2. Detailed Party Membership Information Requirements

Sub-section 7 requires the party submit "a list containing the personal data (full name, citizen's number, address and signature) of no fewer than 4,500 members" The material accompanying the draft law states that one goal of the legislation is to reduce the number of political parties from what is thought to be the currently unwieldy number of 270, which is thought to interfere with the "democratization of Bulgarian political life." Because the European Court often takes into consideration special conditions in particular countries that help to justify a restriction not necessary in other countries, the high membership requirement would probably be found consistent with the ECHR.

As a comparison, the U.S. Federal Election Commission does not require political parties to submit this information. The courts in the United States have said that requiring organizations that are engaged in advocacy to disclose their membership lists interferes with their freedoms of association and assembly.¹⁰ In the U.S. some states require citizens to declare their party affiliation when registering for the right to vote. This declaration, however, is for the purpose of determining which ballot they will receive when they vote in a primary election; it does not limit their ability to participate simultaneously in the activities of other political parties.

3. Geographic Requirements

The requirement in sub-section 8 that the party structure exist in "no less than 2/3 of the municipalities in the country" may conflict with Bulgaria's obligations under the ECHR. The effect of the provision would be particularly burdensome to ethnic minorities who might be more prevalent in some areas of country than in others. The requirement would also prevent the development of regional political parties that would compete in local elections. The burdensome effect of the provision upon freedom of association of groups with significant regional support suggest that it would not be found "necessary in a democratic society" under the ECHR. This same problem emerges in Article 20 (1) requiring that a party "carry out their activities on the territory of the whole country...."

¹⁰ NAACP v. Alabama, 78 S.Ct. 1163 (1958).

E. Participation of Youth

Article 21 (4) prevents parties from organizing children's and juvenile organizations for persons under the age of 16. It is not unusual for East European countries to have statutes that limit party membership to voters, presumably persons 18 years and older. Communist youth organizations were prevalent in Central and East Europe, which may contribute to the modern concern that involvement of young people in party activities has particular dangers. The European Court may find this restriction consistent with the ECHR, deferring to the particular historical experience of countries in the former Soviet block region.

F. Restrictions on Government Employees

Article 22 provides that members of the armed forces, employees of the Ministry of Interior, Ministry of Foreign Affairs, the National Security Service, the National Intelligence, judges, prosecutors and investigators, staff members of the Office of the President of the Republic of Bulgaria, and civil servants may not be members of political parties. This restriction involves a particularly murky area of the European Court's jurisprudence. Despite the specific reference in Article 11 sub-section 2 to "lawful restrictions on members of the armed forces, of the police or of the administration of the state," the Court has found a violation of the Convention in at least one case involving restrictions on political activities and party membership of a public employee because the restrictions were not found to be "necessary in a democratic society." The restriction on party membership by members of the armed forces, however, probably would be found consistent with the convention. In *Rekvenyi v. Hungary* (1999), the Court found a ban on party membership by members by the police in Hungary as the "self-avowed tool of the ruling party." In *dicta* the Court discussed the military and the police as being similarly situated with respect to this issue. Therefore, the ban on party membership by the military should not pose problems under the Convention, considering that Bulgaria's history with the police and military is similar to Hungary.

The other limitations on party membership are more problematic. In *Rekvenyii*, the European Court explained that "[a]lthough it is legitimate for a State to impose on civil servants, on account of their status, a duty of discretion, civil servants are individuals and, as such qualify for the protection of Article 10 of the Convention." This conclusion is reinforced by the decision in *Vogt v. Germany* (1995) in which the Court found a violation of the Convention's guarantees of speech and association in the dismissal of a school teacher for active participation and membership in an extreme left wing political party that advocated policies inconsistent with democratic values. The draft law's broad ban on party membership by all civil servants would, therefore, most likely be found inconsistent with Bulgaria's treaty obligations under the ECHR. A middle position might be to allow civil servants to retain their party membership but to prohibit them from engaging in partisan political activity.

G. Political Action Restricted to Political Parties

Article 24 prohibits public organizations that have not been registered as political parties from carrying out the activities of a political party. This restriction is excessively broad and vague. For example, the U.S. Supreme Court has distinguished between express advocacy and issue advocacy communications, determining that issue advocacy is First Amendment protected speech and constitutionally cannot be regulated. On the other hand, communications that

expressly advocate the election or defeat of a clearly identified candidate could be subject to regulation. In the draft bill, however, express advocacy is prohibited by those not directly registered as political parties, thereby silencing advocacy groups that might be interested in only one or a few of the issues rather than the full spectrum of a political agenda of a national party.

H. Party Financing and Property

1. Non-governmental Financing

Article 28 of the draft bill allows political parties to have numerous sources of funding, including profits made by commercial companies owned by the party, engaged in, for instance, “running restaurants and cafes.” Article 29 of the draft further exempts political parties from taxation of such profits, except those deriving from real estate. The authorization to engage in businesses that bear no connection to the political process and the exemption from taxation is unusual. The explanatory notes for the draft state that “the main reason for this proposal is that the current full prohibition of any business activities carried out by the parties is practically evaded and is also leading to black market economy business activities of the party headquarters that are not under control. The new ideas ... aim at maximal transparency of party financing sources.” While transparency is a desired feature of a political system, allowing parties to engage in business activities unrelated to the political process might be questionable. Transparency may be achieved by requiring businesses to engage in responsible accounting practices.

2. Governmental Financing

Article 30 proposes the distribution of governmental subsidies on an annual basis to parties and coalitions represented in Parliament as well as parties that are not represented in the National Assembly but have attracted a minimum of two percent of the votes at the last parliamentary elections. Even non-parliamentary parties are entitled to governmental financing, although only once instead of on an annual basis.

While the provision of direct governmental funding is common in many democracies, it usually depends on a minimum share of votes. A Law Library of Congress study¹¹ found that while the United States does not provide any public funding to Congressional races, other countries surveyed set thresholds for such funding. Among the highest found in the survey were Taiwan with 33.3 percent of minimum share of votes, Canada with 15 percent, Turkey with 7 percent, and France with 5 percent. Limiting public funding to parties that have a reasonable share of public support may be a positive step in reducing the large number of political parties registered under current Bulgarian law. However, distributing subsidies in proportion to the number of votes received at the last parliamentary elections runs the risk of a few existing parties receiving increasingly larger subsidies over time, thus protecting incumbents at the expense of political vibrancy.

In addition to the above, the requirement listed in Article 33 for the provision of suitable premises for offices and party activities is questionable. Requiring the state and municipalities to provide the latter could be burdensome. Such a requirement is unusual compared to countries surveyed in the report mentioned above. In the very few countries that provide use of government

¹¹ Ruth Levush, *Campaign Financing-Laws of Selected Foreign Nations*, Law Library of Congress, June 2001.

property, the use is limited in nature, usually to facilitate a public meeting in a conference room, but not to provide permanent offices.

3. Corruption Controls on Party Financing

a) Public Disclosures

Public disclosure of all donations and expenditures is critical to protecting the integrity of any electoral system. Article 27 (5) requires parties to “announce publicly the donations received by them in each calendar year as well as during elections.” There should be specific dates assigned for reporting. For example, during an election period the dates should be scheduled to allow the press to analyze and publicize this information prior to the election. Yearly disclosures are insufficient. The U.S. Federal Election Commission, for example, requires congressional candidates’ campaign committees during election years to file: (1) quarterly reports and pre-election reports twelve days preceding both the primary election and general election; (2) post-election reports after the general election; and (3) special notices of one thousand dollars or more received less than twenty days but more than forty-eight hours preceding the election.¹²

It is not clear in the Bulgarian draft law whether announcing donations refers to specific donations from persons and entities, or simply total donations. It should be made clear that the names and amounts of persons and entities contributing over some threshold amount must be made available. It would also be helpful to require the addresses and occupations of contributors of large sums so that the voters can more easily determine what special interests are likely to have influence over particular candidates and/or parties. The Law Library of Congress report cited above found that all countries surveyed provide for public access to campaign financing records, with Canada and Australia even providing electronic online access to the information. The ability of the public in Bulgaria to access financial disclosure information may contribute to greater transparency and thus more public confidence in the electoral system.

b) Kickbacks and Illegal Payments

The draft law does not fully address the potential for kickbacks and other illegal payments between party contributors and party representatives. Moreover, it is possible that prohibited donors could use authorized entities as conduits to make illegal contributions. For example, Article 27 prohibits both commercial companies with state or municipal participation in them from giving donations directly to parties. Standing alone, this provision is insufficient because it does not address the possibility that prohibited donors may seek to improperly influence political parties through indirect means. In the U.S., the Federal Election Campaign Act prohibits national banks, labor organizations, and government contractors from making any contributions to a political party, committee, or candidate for public office.¹³ Article 29 of the Bulgarian draft law prohibits distribution of party funds among party members. The law would be strengthened on this point by including a penalty specifically addressing the receipt of illegal payments and kickbacks.

¹² See FEC Campaign Guide, available at <http://fec.gov/pdf/candui.pdf>.

¹³ Federal Election Campaign Act, 2 U.S.C. § 441b and § 441c(a) (2002).

c) Enforcement

The draft law states in Article 46 that leaders and political parties who violate or permit the violation of the financing and accountability requirements shall be penalized by a fine from 1,000 to 10,000 Lv., and Article 27 sub-section 6 states that funds and property received in violation of the financing regulations shall be confiscated for the benefit of the State. However the draft law does not address the possibility that the illegal funds or property will no longer exist by the time the violations are discovered. Accordingly, one suggestion is to draft a provision as follows: “Funds or property received in violation of Par. 2,3, or 4 shall be confiscated for the benefit of the state or in the event that the funds have been expended or the property no longer exists, fines will be assessed against the party equal to [100% or 125%] of the value of the illegal funds or property received.”

I. Termination of Political Parties

Chapter Six of the draft law, which addresses the termination of parties, raises several questions. Article 42 sub-section 3 provides for termination of a party registration if more than five years have elapsed since the last registration. Do parties have to renew their registrations every five years? If so, the draft should set forth the procedure. Also, does a party still have to renew after five years if it reaches the 4 percent or 8 percent threshold in Article 25 sub-section 4 during the five-year period following approval of its registration application? Perhaps, over time, renewal would not be needed if the party maintains its 4 percent/8 percent of support.

Appendix A

Draft Political Parties Act of the Republic of Bulgaria

REPUBLIC OF BULGARIA
THE THIRTY-NINETH NATIONAL ASSEMBLY

Draft

POLITICAL PARTIES ACT

Chapter One

GENERAL PROVISIONS

Art. 1. (1) Political parties are voluntary organisations of free and individual association of Bulgarian citizens that aim at the collective formation and expression of citizens' political will by means of elections and other democratic ways.

(2) Political parties shall use democratic means and methods to structure their organisation and achieve their political and power goals.

(3) The organisations and movements that are not political parties may express positions and place claims of a political nature but may not run for presidential elections in the Republic of Bulgaria, for parliamentary elections or for local self-governance bodies elections.

Art. 2. The political parties shall exercise their activities in compliance with the Constitution and the national legislation and in accordance with their own Statutes.

Art. 3. Membership or non-membership as well as the discontinuation of membership in a political party shall not lead to advantages or restrictions in the exercising of citizens' constitutional rights and freedoms.

Art. 4. The political parties may not use as part of their symbols the coat of arms and the flag of the Republic of Bulgaria, of a foreign state or any religious emblems or images.

Art. 5. This law prohibits the formation and existence of political parties that:

1. perform activities directed against the sovereignty and territorial unity of the state or seek a forceful change of the state system and social order established by the Constitution;
2. seek to abolish the constitutionally established rights and freedoms of citizens or violate other constitutional prohibitions;

3. uphold racial, national, ethnic or religious animosity;
4. attempt to achieve their goals by use of violence or other unlawful means;

Art. 6. The political parties shall carry out their activities in the country in the official language of the state.

Chapter Two

POLITICAL PARTIES FORMATION AND REGISTRATION

Art. 7. The formation and activity of political parties shall be public.

Art. 8. (1) A political party may be established by Bulgarian citizens who have voting rights.

(2) Citizens who participate in the founding of a political party may not be members of another party.

(3) Citizens of dual citizenship may participate in the founding and membership of a political party.

Art. 9. (1) A political party shall be founded on the initiative of at least 50 Bulgarian citizens who shall sign a Founding Declaration. The signatures of the initiators of establishing a new party shall be attested by a notary.

(2) In the Founding Declaration, the Initiative Committee shall lay down the main principles and objectives to be championed by the party as well as the date and place of holding the Constituent Assembly.

(3) The Initiative Committee shall publish a Draft Founding Declaration and shall announce publicly the start of a founding-members' subscription in the State Gazette. The announcement shall define the date and place of holding the Constituent Assembly.

(4) The period of assembling founding members and the holding of a Constituent Assembly may not be shorter than one month or longer than three months following the date of

the publication referred to in the preceding paragraph.

Art. 10. Every citizen entitled to voting may join the subscription by personally filling in and signing an Individual Membership Declaration compiled in a format approved by the Initiative Committee and corresponding to Sofia City Court general requirements for registering a political party. In the same Declaration, the citizen shall express their personal will to become a member of the political party and shall state that they agree with the Founding Declaration and are not members of another political party.

Art. 11. The Constituent Assembly of the political party shall be considered legitimate when it is attended by no fewer than 500 citizens who signed the membership declaration under the procedure of Art. 9 and Art. 10.

Art. 12. The Constituent Assembly shall adopt the Statutes and Manifesto of the political party, their adoption being procured by a simple majority vote by the minimal number of participants identified in the preceding Article.

Art. 13. The Constituent Assembly shall elect the leadership and control bodies in accordance with the requirements of the adopted Statutes.

Art. 14. (1) The Statutes of the political party shall define:

1. the party name where its name may not repeat or resemble names of other registered Bulgarian parties and where the literal repetition of the name or abbreviation of other parties accompanied by additional words, numbers and symbols shall not be allowed;
2. the party programme aims and goals;
3. the order of obtaining and terminating membership in the party;
4. the rights and obligations of its members;
5. the leadership and control bodies, the procedure for their assembly, election and dismissal, their competence, rights and obligations;
6. the principles of organisational development of the party structures, and their rights and obligations;

7. its symbols;
8. the amount of membership fee, party financing and method of disposal of party property and funds;
9. its seat;
10. the person (persons) who represent it;
11. method and terms of terminating its activity.

(2) The Statutes may also contain other provisions.

Art. 15. (1) The political parties may acquire the status of a legal entity following the Decision of Sofia City Court, for the purpose of which the founding members deposit in the Court in advance:

1. an application for registration of the party signed by its representing person (persons) in accordance with its Statutes;
2. a Constituent Minutes of the Constituent Assembly;
3. the party Statutes;
4. a list of founding members under Art. 11 containing each member's full name, citizen's number, address and personal signature;
5. a list containing the full names, citizens' numbers and addresses of the members of the party governing body that represents the party under its Statutes;
6. medical certificates attesting to the mental health of the persons representing the party and certificates showing no previous conviction of the same persons;
7. a list containing the personal data (full name, citizen's number, address and signature) of no fewer than 4,500 members, in addition to those identified under item 4 and under Art. 11 as a minimum of 500 founding members;
8. documents attesting to the existence of party structures in no less than 2/3 of the municipalities in the country.
9. a notarially stamped declaration of the political party leadership that testifies the genuineness of the documents under items 1,2,3,4,5,6,7,8.

(2) The deadline for submitting the documents for the court registration of the party under Art. 15, Par. 1 expires 6 months after the date of holding the Constituent Assembly.

(3) If within the time limit defined by the preceding paragraph the terms for acquiring a

legal entity status under the same paragraph have not been met by the party, the Constituent Assembly shall be considered illegitimate and the procedure for registering the political party shall have to be repeated in its entirety within the meaning of Articles 9, 10, 11, 12, 13, 14, and 15, paragraphs 1 and 2, but not earlier than 6 months after the expiry of the time limit under the preceding paragraph.

Art. 16. (1) The application for a political party court registration shall be considered at an open session of Sofia City Court attended by a prosecutor, the session being scheduled for no later than one month following the receipt of application.

(2) The Court shall examine the compliance with legal requirements and the authenticity of the presented documents under Art. 15, Par. 1 and Par. 2, and shall announce its decision within 14 days after the session.

(3) In the case of established violations, the Court shall grant a one-month period for their removal.

(4) The Court refusal to register a party shall be subject to appeal before the Supreme Court of Cassation in the manner of the Civil Procedure Code within 7 days after coming to knowledge of the court decision.

Art. 17. The Supreme Court of Cassation shall consider the complaint within seven days and shall pronounce a final decision.

Art. 18. (1) The Court decision shall be recorded within 7 days in a separate Register of Political Parties at Sofia City Court.

(2) The Register entry shall include the name and Statutes of the party, its seat, its governing body members and the person (persons) who represent it.

(3) All subsequent changes in the Register shall be made on the basis of a decision of the body that is competent to implement the changes under the Statutes.

(4) The party registration cases shall be kept permanently.

Art. 19. (1) Party registration and registration amendments shall be promulgated in the *State Gazette* within 7 days of presentation of the Court decision.

(2) As of the moment of promulgation of the Court decision in the *State Gazette* the party shall acquire the status of a legal entity.

Chapter Three

ACTIVITIES OF THE POLITICAL PARTIES

Art. 20. (1) The political parties shall carry out their activities on the territory of the whole country in compliance with the Constitution, national legislation and the party Statutes.

(2) All political parties shall have equal rights of participation in the political life of the country.

(3) The political parties shall conduct their activities through their governing bodies, subdivisions and subdivision leadership.

Art. 21. (1) Political parties may set up their own clubs, professional and pursuit associations and organisations on a territorial and on a domicile principle.

(2) Political parties may set up their own youth and women's organisations.

(3) Political parties may not set up their place-of-work organisations in business associations, state or municipal institutions or interfere in the management and activities of the same.

(4) Political parties may not set up children's and juvenile organisations uniting persons younger than 16 and may not set up military type structures.

Art. 22. (1) Members of the armed forces, employees of the Ministry of the Interior, Ministry of Foreign Affairs, the National Security Service, the National Intelligence, judges, prosecutors and investigators, staff members of the Office of the President of the Republic of Bulgaria as well as civil servants may not be members of political parties.

(2) On assuming a position in the aforementioned institutions employees shall present a declaration of non-membership in a political party.

(3) The political party membership of persons entering conscription shall be terminated for their period of service.

Art. 23. Civil servants may not use their official position to carry out activities to the benefit or detriment of political parties.

Art. 24. (1) A public organisation that has not been registered as a political party may not carry out the activities of a political party.

(2) Organisations that are not registered under the Law on Political Parties may not promote and register their candidates for participation in local and parliamentary elections while during elections they may not carry out organised political activities and agitation to the benefit or detriment of certain political parties as well as election candidates.

(3) Should a public organisation within the meaning of Par. 1 carry out visibly political activities within the meaning of Par. 2 of this Article, the district prosecutor shall recommend it an immediate termination of these activities. Should the activities be not stopped, the organisation shall be dissolved upon the request of the prosecutor in due order.

Art. 25. (1) Political parties participation in elections and referendums shall be defined by separate laws.

(2) Political parties may register to participate in elections and may promote and register their candidates for President and Vice-President of the Republic of Bulgaria, members of Parliament, municipality and settlement mayors and municipality councilors only if they have been registered in the Political Parties Register under the stipulations of Art. 15, Par. 1, Art. 18, Par. 1, 2 and 3, and Art. 19 of this Law.

(3) Political parties may participate in parliamentary elections independently or by coalition.

(4) Political parties that fail to go beyond the 4% threshold for independent participation or beyond the 8% threshold for their coalition twice in a sequence at regular parliamentary elections, should re-register again in compliance with all requirements of this Law stated in Art. 9, Par. 11, Art. 15 and Art. 19.

(5) The political parties that fall under the norms of the preceding paragraph should carry out their re-registration within six months after the date of the respective elections. Otherwise they shall be deleted from the Political Parties Register.

Chapter Four

POLITICAL PARTIES FINANCING AND PROPERTY

Art. 26. Political parties activities shall be financed from own revenues and a state subsidy.

Art. 27. (1) Political parties may have the following sources of funding:

1. membership fees;
2. donations and bequests;
3. revenues from profits made by commercial companies owned by the party;
4. revenues from real estate owned by the party;
5. interest on bank deposits owned by the party;
6. state budget subsidies;
7. revenues from the sale of print, audio and visual party propaganda materials and other publications, copyright and use of intellectual property.

(2) Political parties may not receive benefits and donations from foreign states and organisations, from foreign commercial companies as well as from anonymous sources. Donations and bequests from foreign non-profit legal entities and from foreign physical persons may not exceed 10,000 Lv, while one and the same physical or legal entity may not make more than one donation per year.

(3) Political parties may receive donations and bequests from Bulgarian physical and legal entities, while the size of the donation may not exceed 30,000 Lv from an entity per year.

(4) Commercial companies with state or municipal participation in them or companies that fulfill a public service order may not donate sums to the political parties or produce, publish or pay for advertising products to the benefit or detriment of other political parties.

(5) Political parties shall be under the obligation to announce publicly the donations received by them in each calendar year as well as during elections.

(6) Funds and property received in violation of Par. 2, 3 and 4 shall be confiscated for the benefit of the state.

Art. 28. (1) Political parties may develop business activities only through the sole trader companies created by the party under the terms and conditions of the Commercial Code and with the following objects of activity:

1. publishing;
2. transport services;
3. software;
4. arranging trips, conferences, holidays;
5. running restaurants and cafés ;
6. production and trade in souvenirs and agitation materials;
7. expert consultancy.

(2) The publication and distribution of one-off or periodical print materials, audio and visual materials linked directly to the political activities of the party may be carried out directly by the party leadership while the respective editions shall be exempt from VAT.

(3) The sole trader companies of the parties may not:

1. conclude contracts with commercial companies with state or municipal participation in them unless these refer to the purchase of materials for their production;
2. participate in the privatisation of state or municipal property;
3. acquire concessions from the state or the municipalities;
4. carry out mediation services under items 1, 2 and 3.

Art. 29. (1) Political parties revenues within the meaning of Art. 27, Par. 1, items 1, 2, 3, 5, 6, 7 shall not be subject to tax.

(2) The sole trader companies of parties shall be subject to tax under the general procedure.

(3) The revenues from the profit of sole trader commercial companies that are the source of party funds may not be distributed among party members.

Art. 30. (1) The state shall annually provide a subsidy from the state budget to finance the activities of parties and coalitions represented in Parliament.

(2) The total sum allocated in the budget shall be distributed in proportion to the number of votes received at the last parliamentary elections.

(3) Regarding coalitions presented in Parliament, the total sum calculated under the

preceding paragraph shall be distributed among the coalition constituent parties in proportion to the number of members of Parliament from each of the parties.

(4) A state subsidy shall also be granted every year to parties that are not represented in the National Assembly but have attracted no less than 2 per cent of all real votes at the last parliamentary elections.

(5) Each political party shall receive its part from the state subsidy in four tranches, paid out accordingly by April 30, by June 30, by September 30 and by December 20 of the respective year.

(6) The received state subsidy may not be used for representative purposes, for commercial activities within the meaning of Art. 28 or for presenting bank guarantees.

(7) State subsidies shall not be received by the parties that have not presented their regular annual financial reports within the meaning of Art. 38 and Art. 39.

Art. 31. (1) The state subsidy may also be presented once only to political parties when carrying out parliamentary and local elections, including non-parliamentary parties that are registered within the meaning of Art. 15 and Art. 19.

(2) The method of receiving this subsidy by various political parties and the subsidy size shall be defined by the Election Laws.

(3) The overall sum allocated to the subsidising of political parties and coalitions shall be defined annually by the Law on the State Budget of the Republic of Bulgaria depending on the number of real votes received at the last parliamentary elections.

Art. 32. Political parties and their commercial companies may not purchase real estate from the state and municipalities.

Art. 33. (1) The state and the municipalities shall provide the political parties that received more than 2 per cent of the real votes and the coalition parties that received more than 8 per cent of the real votes at the last parliamentary elections with suitable premises for carrying out their activities.

(2) The Council of Ministers shall be under mandatory obligation to provide premises for offices of the central leadership of the political parties represented in the National Assembly.

(3) The obligation to provide premises shall also bind district governors with regard to the regional leadership of parties presented in Parliament and parties that received more than 2 per cent of the real votes.

(4) The remaining political parties shall be provided with premises for the needs of their central leadership depending on capacity.

(5) Mayors of municipalities and settlements (or of regions in towns with regional divisions) shall be under mandatory obligation to provide premises to the political parties and coalitions presented in the local council and to the parties presented in Parliament.

(6) District governors and municipality mayors shall provide premises to the political parties under the Law on State Property and the Law on Municipal Property.

(7) The refusal to provide premises under Par. 2 and Par. 3 shall be subject to appeal before the Supreme Administration Court within 14 days while under Par. 5 - before the respective district court. Failure to provide premises within three months from the request shall be considered a silent refusal.

(8) The rent of the provided premises shall amount to the depreciation costs. Where different tariffs apply for the payment of exploitation costs, the political party shall pay the lower tariff.

Art. 34. The provided premises may be subrented but solely for carrying out an activity that serves the activities of the political party.

Chapter Five

FINANCIAL CONTROL OF THE POLITICAL PARTIES

Art. 35. Political parties shall keep accounts of their revenues and expenditures in compliance with the Accountancy Act.

Art. 36. The financial control over the activities of a political party shall apply to the party revenues, party expenditures and party property.

Art. 37. The overall financial control over political parties shall be exercised by the Audit Office.

Art. 38. (1) Political parties shall present annually by March 31 before the Audit Office a profit-and-loss account certified by a Chartered Accountant and containing:

1. an abstract from the Record of Revenues certifying the revenues under Art. 27, 28, 30 and 31.
2. An abstract from the Record of Expenditures that reflects the expenditures made for staff, rent, administrative costs and intrinsic activity costs.

(2) Sole trader commercial companies established under Art. 28 of this Law and carrying out business activities to the benefit of the parties shall be controlled under the terms and conditions of the Commercial Code while their certified annual Balance Sheets shall be attached to the annual party report before the Audit Office.

Art. 39. Within six months of the receipt of the report, the Audit Office shall pronounce its judgement concerning the regularity of the political parties financial documentation in compliance with the stipulations of this Law.

Chapter Six

TERMINATION OF POLITICAL PARTIES

Art. 40. The activities of political parties shall be terminated voluntarily in accordance with the Statutes or forcefully because of violating the Constitution and the laws.

Art. 41. (1) Political party activities shall be terminated voluntarily in the cases of:

1. self-dismissal;
2. merging with or flowing into another party;
3. split into two or more parties.

(2) For the purposes of terminating the activities in the aforementioned cases, a decision shall be taken by the party supreme body. This right may not be delegated to the leader or the executive body of the party.

(3) A copy of the supreme body decision under the preceding paragraph shall be presented to the court together with the Minutes of the General Assembly of the party supreme body (conference or congress). The court shall be bound to check the legitimacy of the procedure for taking the decision.

Art. 42. (1) Political party activities may be terminated upon the request of a prosecutor for non-compliance with the Constitution and the legal requirements for party activities.

(2) Political party activities may also be terminated upon the request of the Audit Office in the case of significant violations of the financing and accountancy requirements. The request shall be made to the court by the Head of the Audit Office.

(3) Political party activities shall be terminated upon the request of a prosecutor if more than five years have elapsed since the last registration of the party for participation in elections: parliamentary, presidential or local ones.

Art. 43. The decisions to terminate a political party under the preceding paragraphs shall be subject to appeal before the Supreme Administrative Court.

Art. 44. Decisions that came into force under Art. 41 and Art. 42 shall be recorded in the Register of Sofia City Court and within seven days of their recording shall be promulgated in the *State Gazette*.

Art. 45. (1) In the cases of Art. 41, item 2 and item 3, the body that took a decision to terminate the party activities shall define the way of distribution and disposal of its property.

(2) In the cases of Art. 41, item 1 and Art. 42 property shall become state ownership. The state shall be responsible for obligations up to the amount of the received property.

Chapter Seven

ADMINISTRATIVE AND PENAL PROVISIONS

Art. 46. (1) Leaders of political parties who violate or permit violation of the financing and

financing accountability requirements shall be penalised by a fine from 1,000 to 10,000 Lv.

(2) Penal provisions shall be issued by the Head of the Audit Office.

(3) Drawing up acts, issuing penal provisions and their appeal shall be done under the terms of the Law on Administrative Violations and Sanctions.

Art. 47. A fine of 1,000 to 5,000 Lv shall be imposed on a municipal mayor or district governor who fails to provide premises for a political party within one month of the court abrogation of their refusal.

Art. 48. A fine of 1,000 to 5,000 Lv shall be imposed on leaders of organisations registered under the Law on Persons and the Family, including trade union leaders, should they commit a violating of Art. 24, Par. 1 and Par. 2.

TRANSITIONAL AND FINAL PROVISIONS

§ 1. All political parties registered under the Law on Political Parties (*State Gazette*, issue 30 of 2001) shall be re-registered within 6 months of this Law coming into force in accordance with the requirements of Art. 15, Par. 1, Art. 18 and Art. 19. After this deadline parties that have failed to reregister shall be deleted from the court register of political parties.

§ 2. Six months after the enforcement of this Law, district governors and municipal mayors shall confiscate to the benefit of the state or the municipalities the club premises made available to the already inexistent parties.

§ 3. This Law shall abrogate the Law on Political Parties (promulgated in the *State Gazette*, issue 30 of 2001).

§ 4. This Law shall enter into force on the day of its promulgation in the *State Gazette*.

MOTIVES

Adduced to the Law on Political Parties

The Law on Political Parties adopted by the 38th National Assembly in March 2001 did little to alter the obsolete legislation on party activities regulated by the preceding Law on

Political Parties of 1990.

Its sole intention and achievement was to provide state subsidy to the political parties presented in Parliament.

12 years ago the stimulation of political plurality was essential to the transition from a one-party totalitarian system to a multi-party democratic society. For all these years, though, the principle of political plurality has become unconditional. By January 2000 the country had 238 political parties registered under the Law of 1990.

Following the adoption of the Law on Political Parties of 2001, the relations between parties that are part of society and civil society as a whole were not remodelled while contradictions only became deeper. Public confidence in the parties has been dropping continuously while parties in their turn keep multiplying for reasons that are not always publicly justified. By this day, the number of parties amounts to 270. The large majority of them have no real political life, no real political members and no real presence in Bulgarian society.

Given the established political plurality in the country, the all too liberal regime of founding, legitimising and functioning of political parties so far as well as the large number of parties in the country do not contribute to the democratisation of Bulgarian political life any more. On the contrary, all this is rather misleading and confusing to Bulgarian citizens; it does not assist the development and functioning of the Bulgarian political system but is mainly nourishing the leadership ambitions of certain persons; it does not bring us closer but places us further from the traditional democratic values of European political life.

The proposed draft law aims to use the experience accumulated over the last 12 years and the achieved degree of social relations development in order to outline the legal framework for conducting the present day political activity in the Republic of Bulgaria.

The draft law comprises seven chapters.

Chapter One “General Provisions” regulates the general principles of party activities springing from the Constitution and legislation of the country.

Chapter Two offers an approach that differs from the current approach to founding and registering political parties. It envisages an innovation to the Bulgarian practice that comprises a stage-by-stage procedure of initiation, foundation and subsequent court registration of the political parties as political and legal subjects enjoying full rights under the condition of achieving certain characteristics. This normative base, which differs from the practices so far, guarantees real plurality in political relations as well as the democratic principle in initiating and building political parties. On the other hand, the new legal norms create conditions only for the political parties that can rely on their real presence on the political arena, that express real public interests and that formulate a socially significant political will. Conditions are created for the normal structuring of political space after the model of states with deeply democratic and pluralist traditions.

Chapter Three of the Law outlines the unified parameters that should be used as the basis for political parties' activities. Under the current Law, these general characteristics of political party activities are absent, which makes civil and public oversight over their activities difficult.

Chapter Four regulates issues related to the financing and property of political parties. The functions of the parties are specified and amended. So are the functions of the state in the area of financial relations. There is a more precise definition of the sources of financing, the aim being to intercept channels for 'black economy' cash flows to and from the political parties.

Giving due consideration to the fact that corruption in every society starts from and finishes with the political parties, Chapters Four and Five present detailed stipulations on party financing and financial control. This part of the draft law differs from current practices in that it wholly abolishes anonymous donations and eliminates the possibility for parties to receive different forms of financial support from enterprises and companies where there is any state or municipal participation etc.

The proposal that parties should have limited but legitimate and controllable business activities is also essentially novel. The main reason for this proposal is that the current full prohibition of any business activities carried out by the parties is practically evaded and is also leading to black economy business activities of the party headquarters that are not under control.

The new ideas developed in Chapter Four aim at maximal transparency of party financing sources. In this way parties are given the right to earn in a controllable way the funds they need and to be maximally protected against the financial pressure of conglomerates.

The financial control over political parties provides for maximal transparency, strict order and unified criteria for each party.

Chapter Six defines the method of party termination.

Chapter Seven stipulates the penalties for breaking the Law. Unlike the current Law, the penalties shall apply both to political party leaders and public officials.

The Transitional and Final Provisions put all parties under the obligation to re-register in accordance with the provisions of the new Law within a reasonable time period set for this purpose.

Sofia, 22 May, 2002

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