

# REVIEW OF PRACTICES OF LAW ON POLITICAL PARTIES

**DISCUSSION PAPER**

**PRISHTINA, MARCH 2017**



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by the European Union



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# 1. INTRODUCTION

The functioning and internal organization of political parties represents one of the main factors impacting the behavior of state institutions and the level of development of a given state in general. The more democratic, transparent and comprehensive political parties are, the more developed with the democracy of the country be. In many countries, parties are funded partially or entirely through the national budget. They represent the interest of citizens in the Parliament, and govern on their behalf when in power. Thus, there is a growing need for overseeing political parties, in other words, for establishing legal grounds that prohibit authoritarian governance over them.

This paper offers a general analysis of other countries' practices in regards to legal regulation of the functioning of political parties. The purpose of this paper is to address the potential contents of such a law, discussing models known to date. The paper is concentrated in a number of significant issues, such as: internal regulation of political parties, selection of candidates and internal dispute resolution.

The paper aims to serve a wider discussion that will necessitate the initiation of the Law on Political Parties, which could be used by lawmakers or political party scholars.

Considering that Kosovo does not have special legislation regulating the functioning of political parties, problems related to the management and control of political party finance and the increasing number of emerging political

parties, are some of the acute factors that have sparked the need of the adoption of such a law. Currently, certain aspects of the functioning of political parties in Kosovo are regulated in the Law on General Elections and Law on Funding of Political Entities, which only indirectly regulate the legal functioning of political parties. The other part is regulated through secondary legislation, respectively electoral rules, adopted by CEC. Such rules are only partially applied in practice, and were mostly imposed over smaller parties, which were not eligible for proposing CEC members. One of the reasons for failing to respect such rules include the lack of appropriate legal basis, since in certain occasions CEC exceeded the legal basis.

This discussion paper is based entirely on three earlier works of prominent authors on this matter, including Lauri Karvonene – "Political Party Legislation: A global comparison"; Kenneth Janda – "Adoption of a law on political parties"; and Richard Katz – "Political party reform through legal regulation."

For the purposes of this analysis, other papers from the sphere of political party legislation were reviewed, including those from the Leiden University's database, and "Law on Parties in Modern Europe: Legal regulation of political parties in post-war Europe." A special database was also established by KDI, which encompasses data from all countries that have adopted special laws on political parties. Said laws were further analyzed individually, in order to identify practices and models of political party regulation through applicable legislation.





# 3. WHAT IS THE LAW ON POLITICAL PARTIES

In many countries, legislation determines the condition on the basis of which political parties function. The language in which electoral laws are drafted greatly determines the basic conditions for party activity.<sup>4</sup>

Some countries acknowledge parties in their constitutions, while in others special laws exist to regulate in detail the functioning of political parties – Laws on Political Parties. Other democratic states have adopted legislation pertaining to party funding through national budgets. While some others have provided legal regulation of political party functioning through laws that regulate similar spheres. For illustration purposes, Guatemala applies a law on “political parties and elections”, Columbia applies a law on “political parties and movements, while Great Britain has recently adopted (2000) the Law on Political Parties, Elections and Referenda.

One of the deepest studies on these laws conducted by Lauri Karvonen concludes that their contents and structure are similar to those that “exclusively” regulate political parties.<sup>5</sup> They define parties and legal entities and regulate their tasks and activities.

The definition “Law on political parties” has different meanings for different people, even among political party scholars. This definition is sometimes used to refer to internal regulations, such as party documents and statutes, through which they govern themselves. “Law on political parties” also refers to national laws that regulate what parties may do – what is legal and illegal for political parties. In general, this definition encompasses laws that pertain to what constitutes a political party, which are the forms of activities in which parties may engage, and what forms of political party organization and behavior are appropriate.

Richard Katz has elaborated on the main differences between internal party regulations and external regulation by the state, and mentions three objectives of the national laws regulating political parties:

- 1 *Definition on what constitutes a political party.* This part usually defines who is eligible for ballots, who benefits from public resources (in form of subsidies or media broadcasting), and who may govern.
- 2 *Regulation of the form of activities in which parties may engage.* This covers the collection and expenditure of funds, campaign activities and matters included in party platforms and manifests.
- 3 *Provision of appropriate forms of party organization and behavior.* This comprises one of the most debatable objectives elaborated by Katz, since it intervenes in internal party leadership matters as well as in social relations. Laws may require from parties to elect officials from among party members, but a given party may prefer to elect its leadership through congresses. Laws may demand gender or ethnic equality, and party presence in various regions of the country. One can only imagine the policies that countries wish to apply through party laws.<sup>6</sup>

Law on political parties can be defined through a common denominator – state regulation determining the legal status of political parties and specifying the role of membership in party governance, organization of parties, conduct of campaigns and maintenance of funding.

The scope of laws on political parties can be determined taking into consideration three other laws: Law on Elections, Law on Campaigns and Law on Political Party Funding.

## THE DIFFERENCE BETWEEN THE LAW ON POLITICAL PARTIES, LAW ON ELECTIONS, LAW ON CAMPAIGNS AND LAW ON POLITICAL PARTY FUNDING

As an addition to the Law on Political Parties, some countries, such as South Korea, have adopted special laws on administration of elections, campaigns and political party funding. Each of these laws covers some parts of the law on political parties, but focuses on more substantial matters.

**LAW ON ELECTIONS:** the main focus is on election administration, including voting, party certification, and rights of candidates to be elected. This, therefore, represents a complex process that requires regulation of political stakeholder behavior. One needs to bear in mind that Laws on Elections often specify how political parties

should function, while Laws on Political Parties seldom specify how elections should function. There is a greater probability for countries to name relevant laws regulating political parties Law on Election than Law on Political Parties. If countries have both laws, their law on elections tends to be more voluminous and to also include party and election rules.<sup>7</sup>

**LAW ON CAMPAIGNS:** needs to specify the length of election campaign, which activities are allowed and how long before the elections can surveys be published, as well as other aspects of the electoral campaign.

**LAW ON POLITICAL PARTY FUNDING:** Karl-Heinz Nassmacher uses the term ‘political finance’ to encompass both laws – law for party funding and law on electoral campaigns<sup>8</sup>. Law on Political Party Funding specifies allowed sources of political party funding, defines the upper threshold of donations from legal and natural persons, regulates accounting, party audits, sanctions and other obligations.



Law on political parties can be defined through a common denominator – state regulation determining the legal status of political parties and specifying the role of membership in party governance, organization of parties, conduct of campaigns and maintenance of funding.



# 4. INTERNATIONAL PRACTICES ON POLITICAL PARTY LAWS

During the last decade, a large number of studies and projects were implemented in relation to political party legislation. Some of the scholars of the matter have established databases of countries that have adopted laws on political parties. Two of the earlier databases are that of the Danish scholar (Lauri Karvonene, 2005) and of the American scholar (Kenneth Janda, 2005). The most ambitious project on political party legislation in Europe is that of the Leiden University, titled “Law of Parties in Modern Europe”, which elaborates on both theoretical and empiric aspects of legal regulation of political parties in post-war Europe.<sup>9</sup> This law also covers the constitutional aspect of the law on political parties, and law on political party funding between 1944 and 2013.

Based on our research and on the analysis of the available political party law database, to date, 57 countries with laws on political parties are identified.

(Table 1). Some of the countries prefer to regulate political parties with other approximate laws (e.g. Great Britain’s Law on Political Parties and Referenda). 24 European countries and 10 countries of the American continent have laws on political parties. Fifteen countries in Africa, seven in Asia and one in Oceania also have laws on political parties. The vast majority of existing political party laws were drafted after the end of the Cold War.

Political parties have initially been recognized in practice, and not necessarily in formal terms, by parliaments in the beginning of XIX century.

The first official recognition of parties in the House of Representatives of the United Kingdom occurred in 1909.<sup>10</sup> Special laws on political parties are designed to regulate the sphere of internal party organization were adopted in USA during the Progressive Era (between 1890 and 1930). At the time, they were incorporated in the law on elections. In Europe, these laws were extensively drafted and adopted between 1960-1970 (Germany 1967, Finland 1969, Austria 1975, Spain 1978, Portugal 1977), and later after the fall of the Berlin Wall (Bulgaria 1990, Czech Republic 1991, Estonia 1994, Hungary 1989, Lithuania 1990; Macedonia and Poland 1990; Romania 1996, United Kingdom 2000 and Russia 2001.) In Latin America earlier laws were adopted in Venezuela (1965) and Argentina (1982).<sup>11</sup> An accelerated spread of the law on political parties in this region occurred in the end of XX and beginning of XXI century.



**TABLE 1: COUNTRIES WITH A LAW ON POLITICAL PARTIES, DISAGGREGATED BY CONTINENT**

EUROPE	LATIN AMERICA	ASIA	AFRICA	OCEANIA
Austria	Argentina	Israel	Somaliland	Papua New Guinea
Finland	Venezuela	Jordan	Cambodia	
Germany	Guatemala	Yemen	Algeria	
Poland	Uruguay	Armenia	Sudan	
Spain	Bolivia	Burma	Ghana	
Bulgaria	Ecuador	Russia	Mali	
Hungary	Chile	Turkey	Sao Tome and Pr.	
Romania	Honduras	Thailand	Angola	
Portugal	Columbia	Indonesia	Egypt	
United Kingdom	Brazil	South Korea		
Czech Republic		Taiwan		
Estonia		Nepal		
Lithuania		Kazakhstan		
Macedonia				
Moldavia				
Croatia				
Cyprus				
Latvia				
Norway				
Serbia				
Slovakia				
Slovenia				
Ukraine				
Albania				

SOURCE: DATABASE ESTABLISHED BY DR. KENNETH JANDA AND AUTHOR RESEARCH.

# 5. MODELS OF POLITICAL PARTY LAWS

The political science professor of Northwestern University, Kenneth Janda, identified five different models of party regulation in different countries: models that proscribe, permit, promote, protect or prescribe political party activities<sup>12</sup>. Countries tend to follow these models, but specific laws may adapt to various policy rules that reflect the complexity of lawmaking processes. In general, countries that proscribe functioning of parties by law deprive them of free activity; countries that permit party functioning provide them with freedom of activity; countries that actively promote parties support them; countries that protect parties tend to favor some more than others; countries that prescribe parties request from them to adapt to a given ideal. Any evaluation of political party laws should be done over the principle of facilitating or hindering party politics. Plasser and Plasser, in their 2002 study on ‘global political campaigns,’ provided an assessment of political campaign laws. They ordered rules they gathered in 52 countries and classified countries regulating campaigning as “rigorously regulated”, “moderately regulated” and “minimally regulated”.<sup>13</sup>

## PROHIBITION/EVICTION MODEL

To prohibit means to declare something as illegal or to evict. However, definitions “illegal” or “evicted” were never used in any of political party laws.

In certain countries, tendency to prohibit political parties is manifested through the denial of their legal status. This is concretized with their non-inclusion in the highest acts of the country – Constitution. However, non-inclusion in this document is not a certain indicator of the prohibition/eviction model.

## PERMISSION MODEL

Permission model laws provide them the possibility of existing and activity, without specifying modalities on political party membership, party organization, leader election, or activity funding. This is the minimalist regulation model. In his study on political parties, Janda claims that apparently no country is entirely permissive towards political parties, but some do practice the minimalistic practice, which is depicted in the Andorran constitution. In this case too, the permission of political parties in Andorra is restricted with the requirement for internal party democracy.

## PROMOTION MODEL

Countries sometimes adopt laws that promote not only political party activities, but also their establishment. Typically, such promotion is provided in electoral legislation that favors establishment or existence of multiple political parties. One of these means may be the definition of a proportional electoral system with multiple members, which will produce a largest number of parties. However, some scholars argue that proportional representation systems do not create more parties, but rather protect the existence of existing once.

Another form of party promotion is through public subsidies. Richard Katz and Peter Mair have argued that political parties in many countries have managed to attain funds from the state to support its goals. In countries in which legal rules are issued by political parties, they are provided with resources that help them not only ensure their existence, but also increase capacities to resist challenges coming from new alternatives.<sup>14</sup>



## PROTECTION MODEL

The protection model is the most extreme for any political party, as it provides for the functioning of only one party, such as the case of Syria and Ba'th.<sup>1</sup> In some developing countries, party leaders have structured the legal framework so as to increase legal discipline among party members in the parliament. Some countries have adopted constitutional provisions that force members of parliament to forfeit their term in the event they “cross the border”, respectively transfer to other parties. Such legislation gives a great deal of power to party leaders.

## PRESCRIPTION MODEL

To prescribe means to give and order, to dictate. A physician prescribes medications to cure a disease; state governments make laws for political parties to cure whatever they consider is wrong in their functioning. Extreme forms

of the prescription model of political party regulation allow regimes to control the organization of political parties and their behavior. Portuguese Constitution is more detailed in prescribing political party organization, as it not only requires parties to demonstrate “democratic organization and management”, but also sanctions party names and party symbol use.<sup>2</sup> German and Spanish constitutions also require political parties to act in accordance with “democratic” principles. Law on Political Parties in developed democracies and those in transition differ a great extent in terms of when they were drafted, and by whom. German Law on Political Parties was adopted after 35 years of practice with political party, and with a strong involvement of political parties. Even though German law regulates party practices, it effectively recognizes known practices of competitive parties.

<sup>1</sup> Constitution of Syria, Article 8: “The only party leading the society and state shall be the socialist party Ba'th.”

<sup>2</sup> Constitution of Portugal, Article 52 “Without prejudice to the philosophy or ideology that underlies their manifestoes, political parties may not employ names that contain expressions which are directly related to any religion or church, or emblems that can be confused with national or religious symbols.”



German Law on Political Parties was adopted after 35 years of practice with political party, and with a strong involvement of political parties. Even though German law regulates party practices, it effectively recognizes known practices of competitive parties.





# 6. WHAT SHOULD THE LAW ON POLITICAL PARTIES CONTAIN

The most direct means to advance democracy in a given country is through improving internal institutional governance. This includes political parties, as they are an integral part of the institutions, whereas this can be effected within a short time through legislation. The number of countries with special laws on political parties is increasing. The lack of law defined as “Law on Political Parties” does not imply that political parties are not regulated by law. Moreover, even when such laws exist, they do not contain all provisions pertaining to political party functioning. In specific, such regulation is enshrined in constitutional provisions, laws on elections, laws on political party funding and laws on election campaigns. All these provisions represent the legal framework within which political parties are to operate.

## LEGAL DEFINITION AND STATUS OF POLITICAL PARTIES

The most basic element of any law on political parties is the definition of a “political party”. On one side, they explicitly or implicitly identify the general nature of parties – how they are distinguished from other organizations. On the other hand, they establish criteria that needs to be met from a form of special organization, which can be legally recognized as a political party, benefit from the state, or be subject to extraordinary requirements/limitations.<sup>3</sup>

Two main indicators of the private/public dimension are: the extent determined by law for parties to be distinguished as public, and the extent to which internal party regulation is subject to detailed legal regulation, similar to institutions that are entirely public. For instance, in relation to the first indicator, Article 21 of the German Constitution sets an obligation for the parties to “participate in the creation of the people’s political will”<sup>4</sup>, while the Constitutional Court of Germany recognizes parties as “institutions of constitutional law”.

The German law on political parties goes beyond to give the parties another function:

*To inspire and advance public education; promote active public participation in political life; train and raise capacities of persons to take over public responsibilities; participate in elections for the federal, land and local government, by nominating candidates, exercising influence on political developments in parliament and government; including their political objectives in national decision-making processes; and ensuring continuation of vital ties between citizens and state instruments (Article 1.2).*

By establishing the order of these functions, the law does not simply recognize the significance of what parties do, but also identifies them with public functions. Even though the rhetoric or private party organization remains visible, trends are moving towards the Epstein and van Biezen variations, which identify the “public service” model, in which parties are recognized as essential performers of public functions and are, therefore, granted the special status and privileges, in exchange for advancing the level of legal regulation.<sup>15</sup>

3 Such as the case in Canada, where if the number of members of a political party falls under 250, or the party fails to nominate election candidates, then the party’s legal status is forfeited.

4 Similarly, the Australian Constitution stipulates: “One of the main functions of political parties is to take part in forming politic decisions.”





In the name of enhancing democracy, parties may be required to undertake special measures to promote the inclusion of women or other traditionally marginalized groups in their structures.

## REGISTRATION AND STATUTE

One of the most popular political party scholars, Richard Katz, defines party statutes as “an entirety of rules adopted by each party to define their internal governance.” The most specific problem for political party legislation is to establish criteria and procedures for an organization to fulfill, in order for it to be recognized as a party, especially as a party eligible for public institution benefits. Even though specific combinations of requirements differ to a great extent, most are disaggregated into three general categories: organizational regulation; size and seriousness, and democratic commitment.<sup>5</sup>

## INTERNAL ORGANIZATION

In the name of enhancing democracy, parties may be required to undertake special measures to promote the inclusion of women or other traditionally marginalized groups in their structures. This may be effected through the introduction of gender quotas in party candidate lists, in order to ensure greater gender equality. For instance, the Law on Political Parties in Indonesia (02/2008) imposes an obligation for all parties to apply a 30% quota in their party decision-making structures. Often, parties are sanctioned by law in cases of discrimination of candidates based on gender or race.<sup>6</sup>

<sup>5</sup> In addition, many systems impose a series of technical requirements, such as the name of the party not to be easily mixed with the name of an existing party, or that their symbols shall not resemble national or religious iconography.

<sup>6</sup> For instance, in 2010 the Dutch Supreme Court decided that the state is obliged, by the UN Convention of 1979 on Elimination of All Forms of Discrimination Against Women (CEDAW), to undertake effective measures to push the Reformatory Political Party (SGP – Staatkundig Gereformeerde Partij), to accept women as candidates without the imposition of any numeric quota.

Similarly, parties may be prohibited by law to discriminate their constituency in terms of membership criteria.

Discrimination on ideological grounds seems unreasonable, since in general parties are composed of groups of individuals that share a common politic perspective. However, prohibition of discrimination based on gender or ethnicity is present in some countries. This mostly pertains to ethnic differences, where the prohibition could stand against negative discrimination (exclusion from party membership), or positive discrimination (establishment of mono-ethnic parties).<sup>16</sup>

## CANDIDATE SELECTION

The main characteristic which distinguishes political parties from other political organizations is the presentation of candidates in elections. There are numerous ways in which parties can nominate their candidates. They can be selected by a sole leader, or in consultation with some advisors, but there are also cases where candidates are elected by voters that are not party members.<sup>17</sup>

Currently, there is a trend in many countries to increase in a way the scope of candidate “electors” through internal elections (primaries). However, this form of election needs to give due consideration to a number of issues:

1

If the so called primaries are public elections managed by public officials based on the principles of public law, as is the case in USA or Argentina, or if the internal party elections are managed by party officials, in compliance with the rules determined by each party for its own purposes.



**2** The issue of the right to vote. In elections organized by the party itself, it is normal for the right of vote to be granted only to party members. However, an ever increasing number of parties allow the voting of their supporters (supporters that have given a small contribution, known in public elections as a 'voting fee').

**3** To which extent are results of such elections taken into consideration by the party's main structures. For instance, in the beginning of the XXI century in Denmark, the central party leadership was entitled to veto the decision taken by party members, whereas in Finland the law allows for central party leadership to change up to 1/4 of the candidate list elected by members.<sup>18</sup>

This form of elections can be evaluated from two aspects. On one side, direct member voting can result in increased control over central leadership, making the coordination between middle-level party activists more difficult, and thus may result in overthrowing the voting of party supporters, which is more prone to be subjected to party structure decisions.<sup>19</sup>

The other dimension is related to claims on justification of internal elections (election of best candidates), based on criteria used by the voters in their ballots. It is generally expected that electors that comprise party leadership enjoy the priority of electing as 'winners' candidates that will raise the party's attractiveness in general elections. These elections, especially if conducted by secret voting, have a different result, because voters choose the candidates that they personally wish to see elected, and not candidates that have the best chances of being elected.<sup>20</sup>

Internal elections, as means to select party candidates, often violate regulations drafted with the aim of increasing diversity within the party. This because in such elections, the outcome is the selection of electors' preferred candidates, therefore there is an underlying need to use gender quotas.

## POLITICAL PARTY FUNDING

Funding of political parties is one of the main issues regulated by the Law on Political Parties. This is a clear group of financial rules that restrict the categories in which individuals or entities that are eligible to make political contributions/costs and from which parties or candidates may receive contributions, or restrict the allowed level of contributions from any source.<sup>21</sup>

It is debatable whether such political party funding rules should be applied only during electoral campaigns or for all party activities. Regarding electoral campaigns, it is important to know if funding for candidates and parties is regulated by law. If so, it is necessary to define whether they act as a group or individually. On the other hand, regarding party activities, the issue is to see whether regulation is applied only for externally focused activities (for instance, electoral propaganda) or also for party's internal function.<sup>22</sup>

Another group of financial rules pertains to reporting. Publication (and reliable audit) of financial disclosure serves two purposes. The first one is to facilitate the implementation of financial regulations. This requires trustworthy audits, which, taking into consideration the associated costs and time, may only be meaningfully conducted at the end of an electoral cycle or financial year. Regarding possible irregularities that may occur in terms of electoral finance, it is disputable as to what should be undertaken in the event that such irregularities are only identified after elections have concluded. Another purpose of financial reporting is to inform voters, so that they show gratitude, even if the impact of money is not eliminated. Reports that were published only weeks or months after elections, and those published before the voting, clearly can't serve this purpose; the only acceptable solution is to present the request to disclose earlier unaudited or preliminary reports.<sup>23</sup>

Certainly, the functioning of a political party in the democratic world is a costly exercise, therefore in order to limit the dependency of political parties from donors and private supporters, a system of support for them is established in the shape of state subsidies. This form of financial support may be provided in a number of manners, including free access to media, support in tax relief, tax credits, discount for political contributions, grants, etc.



## ORGANIZATION AND BEHAVIOR IN THE PARLIAMENT

Members of parliament are free to switch parties within a parliamentary term, however, this phenomenon seldom occurs for most consolidated democracies. Even when this occurs, they are subject to no sanctions. Switching parties causes two major problems: first, this undermines government stability, and second, this prevents party progress beyond the interest of inter-party groups.

In a significant number of these cases, there has been recourse to legislative action to enforce party stability. For instance 14% of older democracies (India, Israel, Portugal, etc.), 24% of new democracies and 33% of semi-democracies have laws against desertion from parliamentary parties (groups).<sup>24</sup>

However, according to international norms and some of the constitutions, the term of a member of parliament is independent from that of a party after election. Nevertheless, many international organizations have consented to oppose party switches, claiming that this practice is more so symptomatic of corruption than principles.<sup>25</sup>

## IMPLEMENTATION OF RULES AND DISPUTE RESOLUTION

The state may be involved in the functioning of political parties in two ways. On one side, if rules/legal obligations are set and effective in a country, there need to be implementation procedures, including investigation of alleged violations and assessment of sanctions, if the latter are considered appropriate for the circumstances. On the other hand, in some societies, there is an ever growing tendency to call upon courts to resolve internal disputes – interpret internal party rules, or respect thereof by the party itself, as well as inter-party disputes.<sup>26</sup>

Parties may have their own dispute resolution mechanisms, and may address the state courts in relation to internal party disputes only after all internal means are exhausted and only in relation to issues for which procedures of the party itself were respected.

In some cases, the central election management body may investigate accusations brought by damaged parties; in others, it may initiate an investigation at its own initiative.

If violations are found, the election management body may have the authority to impose sanctions (usually, but not always, subject to court appeals); in other cases, it may only initiate or recommend criminal prosecution to courts.<sup>27</sup>

It is a clear independent standard to apply rules in an impartial manner, and by an impartial body, with a strong lenience towards utilization of independent bodies – in order to avoid risks related to implementation only against current government opposition, or any sort of pact for mutual protection between large parties – and to judicial enforcement, or at least judicial review for all, but subject to smaller sanctions.

Sanctions too are to be imposed in proportion with the violations conducted, in line with two international standards. The first one pertains to the sanction, which needs to be proportional to the severity of the violation. For instance, technical or smaller violations should not result in party dismemberment, because such dismemberment or deregistration should be reserved for more serious violations. The second important standard is for parties not to be collectively considered responsible for unauthorized actions of one or more of its members.<sup>28</sup>

## SANCTIONS AND PROHIBITIONS AGAINST POLITICAL PARTIES

Spanish Law on Political Parties, adopted in 1979 and reviewed in 2002, contains detailed provisions that aim to prohibit cooperation between political parties and terrorist organizations (Article 9). This law clearly prohibits connections with terrorist organizations and use of symbols related to terrorism. Paragraph 33 of the German Law on Political Parties prohibits political parties to establish bodies that function as a replacement for parties considered anti-constitutional. In concrete terms, such parties are Neo-Nazi and Communist parties that were declared anti-constitutional by the Constitutional Court of Germany in 1952 and 1956<sup>29</sup>. Portuguese Law on Political Parties prohibits use of individuals or religious or national symbols in their emblems (Article 5). Moreover, Article 19 of said law distinctly prohibits any vow for loyalty towards party leadership. The fact that the Portuguese law chose to prohibit these forms of personality cult is understandable when considering the length of dictatorship in this country (1933-1974), under Oliveira Salazar.<sup>30</sup>



Algerian law prohibits sectarian-based parties, regionalization, feudalism or nepotism, as well as parties that put under question “values of Islamic moral or national identity” (Article 5). They are obliged to use only the official national language in their activities (Article 4).

Karvonen’s study “Political Party Legislation: A Global Comparison” identified sanctions and prohibitions for political parties in new democracies, which currently rigorously respect political rights and civil freedoms.<sup>31</sup> These cases are to be found in countries characterized by ethnic and cultural heterogeneity: Bulgaria, Ghana, Mali, Papua New Guinea and Sao Tomé & Príncipe. Legal restrictions in laws on political parties prohibit the establishment of parties on linguistic, religious or regional grounds. In most new democracies party membership is acceptable for police officers, members of security or military forces, or judges. In many cases, use of national emblems as party symbols is prohibited, as well as creation of paramilitary units within parties. Most of the semi-democratic and non-democratic countries have imposed restrictions in order to keep at bay government officials from political party policies and to prevent parties from engaging into any sort of military organization.<sup>32</sup>

Countries with consolidated democracies also provide considerable sanctions for political parties. The Spanish law prescribes party dissolution by means of a court decision in the event it flagrantly violated rules pertaining to internal democracy or cooperated with a terrorist organization (Article 10). Severe sanctions in other forms are also enshrined in the applied laws in Israel, Spain and Germany. For instance, serious fraud in financial accounts may result in a maximum sentence of three years imprisonment (German Law on Political Parties, paragraph 31d). Manipulation of internal party ballots may be sanctioned by up to one year imprisonment in Israel.<sup>33</sup>

The overall conclusion that Karvonen presents from his study is that various states have enacted laws on political parties for various purposes. In at least a number of non-democratic states the main purpose of the law is to prevent certain types of politic mobilization. Fright relation to state fragmentation on ethnic or regional grounds manifested in a number of other laws. In younger democracies, there is an overarching will to neutralize party activities related to earlier non-democratic regimes.



Members of parliament are free to switch parties within a parliamentary term, however, this phenomenon seldom occurs for most consolidated democracies. Even when this occurs, they are subject to no sanctions. Switching parties causes two major problems: first, this undermines government stability, and second, this prevents party progress beyond the interest of inter-party groups.



## 7. CONCLUSION

Regulation of registration and definition of minimum criteria for the functioning of political parties through special law is of extraordinary significance for Kosovo. Political parties are considered substantial institutions for democracies. If they are internally governed in a democratic manner, this governance spirit will also be transferred to state institutions. The more political party membership is consulted on their decisions and programmatic orientations, moving from the current top-down to a bottom-up type of governance, the more comprehensive and appropriate will the decisions taken by such parties become. This spirit of consulting members would further transfer to institutions once such parties come to power, only to extend to also consulting the public in decision-making and law drafting activities.

The law needs to stipulate minimum criteria to be implemented by parties in their internal elections, such as the election of party president and other leadership structures. Nomination of candidates in political party lists prepared for central and local level elections should also be defined in the law. Knowing in advance the steps

that need to be taken for inclusion in such lists makes the candidacy easier for all those expressing interest, as their (non-) inclusion will no longer depend on the will of the leader of party elite. Forms of revenge against members of parliament that have not rigorously followed party lines should be eliminated. This because often members of parliament are threatened with exclusion from lists in case they don't vote for matters of interest for the leader.

One of the main issues, which should by all means be incorporated in the Law on Political Parties, is the determination of internal dispute mechanisms, in order not to leave the matter to the will of party statutory commissions, but rather to ensure that they are addressed by independent institutions, such as the judiciary. This would have an influence on political party democratization, would diminish autocracy and end permanent party leadership, opening the competition for new candidates.



Nomination of candidates in political party lists prepared for central and local level elections should also be defined in the law. Knowing in advance the steps that need to be taken for inclusion in such lists makes the candidacy easier for all those expressing interest, as their (non-) inclusion will no longer depend on the will of the leader of party elite.



# 8. REFERENCES

- 1 Warw, Alan, *“Political parties and party systems”*, Oxford University Press, 1996.
- 2 Kathleen Thalen and Sven Steinmo, *“Historical Institutionalism in Comparative Politics”*, Cambridge: Cambridge University Press, 1993.
- 3 Warw, Alan, *“Political parties and party systems”*, Oxford University Press, 1996.
- 4 Grofman, B. and A. Lijphart, eds., 1986. *Electoral Laws and Their Political Consequences*. New York: Agathon Press, Inc.
- 5 Lauri Karvonen, *“Legislation on Political Parties: A Global Comparison”*, paper presented at the Southwestern Political Science Association 2005 Annual Meeting, New Orleans, March 23-26: 4
- 6 Kenneth Janda, *“Adopting Party Law”*, National Democratic Institute for International Affairs, Washington, D.C., 2005, 8.
- 7 Ibid.
- 8 Karl-Heinz Nassmacher, *“Comparative Political Finance in Established Democracies”* (Introduction), in Karl-Heinz Nassmacher, ed., *Foundations for Democracy: Approaches to Comparative Political Finance* (Baden-Baden: Nomos Verlagsgesellschaft, 2001), 10.
- 9 Party Law in Modern Europe, <http://www.partylaw.leidenuniv.nl/page/about-us>
- 10 Katz, Richard S. *“Political party reform through legal regulation”*, CEP and CEPLAN: 8
- 11 Ibid. 9
- 12 Kenneth Janda, *“Adopting Party Law”*, National Democratic Institute for International Affairs, Washington, D.C., 2005, 8.
- 13 Fritz Plasser with Gunda Plasser, *“Global Political Campaign”*, 151.
- 14 Richard S. Katz and Peter Mair, *“Changing Models of Party Organization and Party Democracy: The Emergence of the Cartel Party,”* *Party Politics* 1 (January 1995): 16.
- 15 Katz, Richard S. *“Political party reform through legal regulation”*, CEP and CEPLAN: 12
- 16 Ibid. 16
- 17 Ibid. 17
- 18 Ibid.
- 19 Ibid. 18
- 20 Ibid. 19
- 21 Ibid. 21
- 22 Ibid. 23
- 23 Ibid. 25
- 24 Ibid. 30
- 25 Ibid. 31
- 26 Ibid. 31
- 27 Ibid. 32
- 28 Ibid.
- 29 Lauri Karvonen, *“Legislation on Political Parties: A Global Comparison”*, paper presented at the Southwestern Political Science Association 2005 Annual Meeting, New Orleans, March 23-26: 11
- 30 Ibid.
- 31 Ibid.
- 32 Ibid.
- 33 Avnon, D. 1996. *“Parties Laws in Democratic Systems of Government”*, *The Journal of Legislative Studies*, Vol. 1, No. 2, Summer 1995: 296.



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The European Union is made up of 28 Member States who have decided to gradually link together their know-how, resources and destinies. Together, during a period of enlargement of 50 years, they have built a zone of stability, democracy and sustainable development whilst maintaining cultural diversity, tolerance and individual freedoms. The European Union is committed to sharing its achievements and its values with countries and peoples beyond its borders

