

**Between:**

**Yordanovi**

**Applicants**

**v**

**BULGARIA**

**Respondent Government**

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THIRD-PARTY INTERVENTION SUBMISSION BY THE CIVIL LIBERTIES UNION  
FOR EUROPE IN ACCORDANCE WITH RULE 44 (3) OF THE RULES OF COURT

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## **INTRODUCTION**

1. This is a third-party intervention submitted by the Civil Liberties Union for Europe<sup>1</sup> with the contribution of its members by the leave of the President of the Court granted on 13 September 2018 pursuant to Rule 44 § 3 of the Rules of the Court.

### **I. Freedom of association**

2. Freedom of peaceful assembly and freedom of association are basic human rights both rooted in freedom of expression.

3. There are two basic international instruments that serve as a basis for a number of international and regional human rights instruments and national statutes regarding freedom of association. One of them is the International Covenant on Civil and Political Rights (hereinafter ICCPR), which recognises the right to freedom of association (Article 22). The other instrument is the European Convention for the Protection of Human Rights and Fundamental

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<sup>1</sup> The Civil Liberties Union for Europe is a non-governmental, non-partisan human rights organisation promoting the civil liberties of everyone in the European Union. The Civil Liberties Union for Europe is built on a network of 18 national, non-governmental, non-partisan human rights NGOs from across the EU.

Freedoms (hereinafter ECHR), which likewise recognises freedom of association (Article 11).

4. According to the practice of the European Court of Human Rights (hereinafter the Court), political parties are within the scope of Article 11 of the ECHR and have been recognised as an important component of a healthy society.<sup>2</sup>

## **II. The role of political parties in liberal democracies**

5. Political parties are necessary important for a healthy society, because they represent different opinions and serve as a means for people to contribute to political debate, which is the essence of a democratic society.<sup>3</sup>

6. Pluralist political societies are founded on political parties that play an active role in ensuring an informed and participative electorate, which maintains a democratic society.

7. Freedom of association provides opportunities for people to express their political opinions individually and collectively and engage in political activities.<sup>4</sup> The possibility for individuals to challenge established a political system through new political initiatives is the basic drive of any multiparty democratic system.

8. As paragraph 3 of the 1990 CSCE/OSCE Copenhagen Document<sup>5</sup> states, political organisations facilitate a pluralistic political environment. It is necessary to ensure that individuals have a real choice.

9. The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association (hereinafter UN Special Rapporteur) has recognised the right to form and join an association is an inherent part of democracy.<sup>6</sup> The UN Special Rapporteur emphasises that even the associations embracing minority or dissenting views may sometimes lead to tensions, but it is the duty of the state to ensure that everyone can peacefully express their views without any fear.

## **III. Restriction on freedom of association**

10. Possible restriction on freedom of association is set out in ECHR Article 11 (2).

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<sup>2</sup> Among others: *United Communist Party of Turkey and Others v Turkey*, Application no. 133/1996/752/951, Judgement, 30 January 1998, *Sidiropoulos v Greece*, Application no. 57/1997/841/1047, Judgement 10 July 1998, and *Gorzelik v Poland*, Application no. 44158/98 Judgement, 17 February.

<sup>3</sup> *United Communist Party of Turkey and others v Turkey* para 44.

<sup>4</sup> Resolution adopted by the Human Rights Council 15/21 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?OpenElement>.

<sup>5</sup> <https://www.osce.org/odihr/elections/14304?download=true>.

<sup>6</sup> [https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27\\_en.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session20/A-HRC-20-27_en.pdf).

11. The limitations on freedom of association under ECHR Article 11 (2) are strictly construed. The limitations imposed on freedom of association and the rights of political parties must be proportionate and prohibitive measures narrowly applied. Any restrictions imposed must be necessary in a democratic society and prescribed by law.<sup>7</sup> As political parties are the foundations of political activity, limitations, such as dissolution, are only allowed in *extreme* cases and only if it is *prescribed by law* and *necessary* in a democratic society. Public authorities must interpret limitations prescribed by law narrowly.

12. The Court has allowed the curtailment of freedom of association where the limitation is proportionate to the aim pursued and that it meets a “pressing social need”.<sup>8</sup> These instances arise when freedom of association is considered to be incompatible with the values of the ECHR, such as political and religious pluralism, or when it is incompatible with the prohibition of the use of violence.

13. As the Court stated in the case *Socialist Party and Others v Turkey*<sup>9</sup> “[i]t is of the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a state is currently organised, provided that they do not harm democracy itself [...] Only convincing and compelling reasons can justify restrictions on such parties’ freedom of association.” Even a temporary ban on a political party’s activities will only be justified by very serious breaches, such as those that endanger political pluralism or fundamental democratic principles.<sup>10</sup>

14. The controversial *Refah Partisi (the Welfare Party) and others v Turkey* case, when considered along with the *Gorzelik v Poland* case, demonstrates that the protection of democratic institutions and the rights of others depend on circumstance, and the restriction on freedom of association is debatable and raises fundamental questions regarding its connection to secularism, religion, human rights and democracy.<sup>11</sup>

15. In the *Refah Partisi (the Welfare Party) and others v Turkey* case, the Court stated that ‘pressing social need’ depends upon the following criteria: a) whether there is plausible evidence that the risk to democracy is sufficiently imminent; b) whether the acts and speeches of the leaders and members are imputable to the party as a whole; c) and whether the model of a society advocated by the party is incompatible with the concept of a ‘democratic society’.

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<sup>7</sup> <https://www.osce.org/odihr/77812?download=true>.

<sup>8</sup> *United Communist Party of Turkey and Others v. Turkey*, Application no. 133/1996/752/951, Judgement, 30 January 1998.

<sup>9</sup> *Socialist Party and Others v Turkey*, Application no. 20/1997/804/1007, Judgement 25 May 1998.

<sup>10</sup> *Christian Democratic People’s Party v Moldova*, Application no. [28793/02](#), Judgement 14 February 2006, para 76.

<sup>11</sup> Harris D.J., O’Boyle M., Bates E. P., Buckley C. M., *Law of the European Convention on Human Right*, Oxford University Press, 2009, pp 547.

16. Regarding restrictions, Resolution 1308 (2002) of the Parliamentary Assembly of the Council of Europe, "Restrictions on Political Parties in the Council of Europe Member States",<sup>12</sup> sets out:

- the basic principles of restrictions on or dissolution of political parties should be regarded as exceptional measures to be applied only in cases where the party concerned uses violence or threatens civil peace and the democratic constitutional order of the country;
- as far as possible, less radical measures than dissolution should be used; a political party should be banned or dissolved only as a last resort, in conformity with the constitutional order of the country, and in accordance with the procedures that provide all the necessary guarantees to a fair trial;
- the legal system in each member state should include specific provisions to ensure that measures restricting parties cannot be used in an arbitrary manner by public authorities.

17. According to the opinion of the Venice Commission on Moldova, the "[s]tate may be entitled to insist on certain minimum standards of size, organisation and democratic standards as a condition of registering a party but it seems [...] doubtful that it can be regarded as necessary in a democratic society to prescribe the precise manner in which a political party is to be founded once the party's programme does not represent a danger to the free and democratic order or to the rights of individuals".<sup>13</sup>

18. As the Venice Commission states in its Code of Good Practice in the field of political parties, a party that aims at a peaceful change of the constitutional order through lawful means cannot be prohibited or dissolved on the basis of proportionate limitation of freedom of association. Merely challenging the established order in itself should not be considered an offence in a liberal and democratic state.<sup>14</sup>

#### **IV. Anti-discrimination and equal treatment**

19. Freedom of association, and thus the establishment of political parties, is an individual right that must be respected without discrimination.<sup>15</sup> The principle that fundamental human rights are applicable free from discrimination to all is essential to exercising and protecting human rights.

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<sup>12</sup> Resolution 1308 (2002), Restrictions on political parties in the Council of Europe member states, 18 November 2002.

<sup>13</sup> CDL-AD(2002)028 Opinion on the draft law on political parties and Socio-Political organisations of the Republic of Moldova, endorsed by the Venice Commission at its 52nd Plenary Session (Venice, 18-19 October 2002), §28.

<sup>14</sup> CDL-AD(2009)021 Code of Good Practice in the field of political parties, adopted by the Venice Commission at its 77th Plenary Session (12-13 December 2008) and Explanatory Report

<sup>15</sup> Non-discrimination requirement is defined in Articles 2 and 26 of the ICCPR and Article 14 of the ECHR.

20. The resolution adopted by the Human Rights Council 15/21<sup>16</sup> on the rights to freedom of peaceful assembly and association affirms that freedom of association must be read jointly with Article 2 of ICCPR, which obliges each state party to respect and ensure “the rights recognised in the Covenant, without distinction of any kind, such as race, colour, sex, language, *religion*, political or other opinion, national or social origin, property, birth or other status” (emphasis added).

21. According to the OSCE/ODIHR Guidelines of Political Party Regulation, “political parties may not discriminate against any individual or group on any ground such as ‘race’, colour, gender, language, *religion*, political or other opinion, national or social origin, property, birth, sexual orientation or other status”<sup>17</sup> (emphasis added).

22. As the Copenhagen Document states, participating states must ensure that political parties operate and compete with each other on a basis of equal treatment before the law and by the authorities.<sup>18</sup> No individual or group wishing to associate as a political party should be advantaged or disadvantaged in this endeavour by the state, and the regulation of parties must be uniformly applied.<sup>19</sup>

23. State authorities should refrain from any measures that could privilege some political parties and discriminate against others, let them be national minorities or religious minorities. All political parties should be given opportunities to participate in elections free from discrimination or unequal treatment by authorities.

## V. Specific Regulation across the European Union

24. In the following chapter, the Intervenor submits a summary of specific rules of freedom of associations across the EU member states and at EU level.<sup>20</sup>

25. With the exception of the United Kingdom<sup>21</sup>, all member states of the European Union (hereinafter EU) recognise freedom of association in their Constitutions, and certain restrictions are also delineated in their Constitution.

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<sup>16</sup> Resolution adopted by the Human Rights Council 15/21, The rights to freedom of peaceful assembly and of association.

<sup>17</sup> OSCE/ODIHR, Guidelines on Political Party Regulation Adopted by the Venice Commission at its 84th Plenary Session Venice, 15–16 October 2010.

<sup>18</sup> Copenhagen Document, para. 7.6.

<sup>19</sup> Resolution 15/21 adopted by the Human Rights Council, The rights to freedom of peaceful assembly and of association, 6 October 2010. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/166/98/PDF/G1016698.pdf?>

<sup>20</sup> See: Bardi L., Bressanelli E., Calossi E., Gagatsek W., Mair P., Pizzimenti E, Political Parties and Political Foundations at European Level. Challenges and Opportunities, Eudo Report 2014, [http://cadmus.eui.eu/bitstream/handle/1814/43424/2014-08-RR\\_eudo.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/43424/2014-08-RR_eudo.pdf?sequence=1).

<sup>21</sup> In the UK the Human Rights Act (1998) recognises freedom of association.

## **Party registration**

26. The registration of political parties is compulsory in 18 countries of the EU (Bulgaria, Czech Republic, Cyprus, Croatia, Estonia, Finland Hungary, Latvia, Lithuania, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden,). For political parties at European level, the registration process is a precondition to apply for EU funding.<sup>22</sup>

27. In some countries there are requirements for a minimum number of party members (for example, in Bulgaria, Croatia, Estonia, Finland, Hungary, Latvia, Lithuania, the Netherlands, etc.) to be submitted to the responsible public authority. In these cases, specific documentation has to be submitted, such as the statute of the political party and the legal address of its headquarters. European political parties must comply with a number of requirements in order to be registered.<sup>23</sup>

## **Party organisation**

28. Specific provisions on the internal organisation of a party are required in 16 EU member states. All Central and Eastern European Countries and Germany, Spain, Portugal and Finland legislate internal organisation in detail. The content of the statute (Bulgaria, Croatia, Romania, Slovakia, Slovenia); membership requirements (Estonia, Germany, Hungary, Latvia, Poland, Portugal, Romania, Spain), the composition and powers of internal bodies (Germany, Poland, Portugal, Romania, Slovakia, Slovenia); the frequency of the meetings (Germany, Romania); and the resolution of disputes (Germany, Portugal, Romania) are all regulated in detail in these countries. As for European-level political parties, administrative and legal provisions must be regulated in the statute.

## **Party programmes**

29. In those countries where political parties are regulated in detail, compulsory documents must be attached to the registration form in order to demonstrate the devotion of the party to democratic principles (Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia). In some countries, however, despite the compulsory party registration, it is not compulsory to file with the relevant authority the political programme of a party (Ireland, the Netherlands, Sweden, and the UK). In the case of European-level political parties, the application to register is to be accompanied by a list of specific documents, among others the written political programme setting out the purpose and objective of the party.

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<sup>22</sup> Reg. 2004/2003, European political parties and European political foundations. COM(2012) 499 final, 2012/0237 (COD).

<sup>23</sup> Reg. 2004/2003, European political parties and European political foundations. COM(2012) 499 final, 2012/0237 (COD).

## **Termination of party activities**

30. There are European states where there are no rules on prohibition of parties, while in other states, there are rules, but they are strictly interpreted. The most common rules on prohibition set out in national constitutions are the following:

- the interests of national security or public safety;
- activities directing against the constitutional order;
- the prevention of disorder or crime;
- paramilitary associations;
- the protection of health or morals or the protection of the rights and freedoms of others.

31. In 15 countries of the EU, the termination or dissolution of the activities of political parties and as a consequence removal from the party register is derived from an act adopted by a public authority, such as a court, registry office, or a tribunal (Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, Germany, Hungary, Latvia, Lithuania, Poland, Portugal, Romania, Slovakia, Slovenia, Spain). These countries overlap with those in which party registration is compulsory, with the only exception being Germany. In Finland and Hungary, parties are removed from the register if they do not have parliamentary representation in two consecutive national elections. In Romania, inactivity is a cause for cessation.

32. Within the European Union, there are 27 countries where “Christian values” serve as the basic values of certain political parties (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden). There are a few countries where Islam serves as a basic value for the formation of political parties (Belgium, France, Greece, the Netherlands, Spain, Sweden). This means religious values play an active role in the exercising of freedom of association across Europe.

## **VI. Closing remarks**

33. In the last decade we have seen an “abundance of cases on freedom of assembly and association with a high proportion of violations. Most of these cases originated from Central and Eastern Europe”.<sup>24</sup>

34. The Intervenor makes no specific comment on the proportionality of the sanctions at issue and whether discriminatory measures had been imposed on the Applicant, since this is a matter for the parties and the Court.

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<sup>24</sup> Harris D.J., O’Boyle M., Bates E. P., Buckley C. M., Law of the European Convention on Human Right, Oxford University Press, 2009, pp 547.

35. The Intervenor notes the severity of the potential consequences of the decision in the *Yordanovi* case:

a) Any disproportionate limitation on freedom of association and disproportionate criminal sanctions could have a substantial chilling effect on freedom of expression, freedom of association and on the freedom to express political will and participate in healthy political debate.

b) Suspension or termination of a political party deprives the possibility of the individuals to express their political views freely. The roles of political parties are to represent different values and opinions, to ensure contribution to political debate, and to build and sustain pluralistic democracy.

c) Furthermore, the possibility for individuals to challenge an established political system through new political initiatives is central to any multiparty democratic system.

d) National legislation differs from country to country, however certain trends can be discerned from the data collected. In Eastern European countries, freedom of association is regulated in detail and several requirements and obstacles are in place to control political parties. Arbitrary application of the law is a violation of the pluralist liberal democratic system and deprives individuals from exercising their freedom of expression and hinders their ability to form an informed and participative electorate.

36. In those countries where the establishment and operation of political parties is regulated in detail, the requirement is even more appealing for state authorities to treat political parties on an equal basis and remain neutral with regard to the establishment, registration and activities of political parties.

37. The right to freedom of association is applicable to everyone, which means it must also be guaranteed for all members of minority groups. Minorities should be able to establish their own associations, without discrimination. It may also be appropriate to adopt legislative incentives aimed at supporting associations that promote the role of minorities in a democratic society.<sup>25</sup>

38. In addition, it is important to note that in most European countries, there are political parties that follow certain religious values, mostly inspired by the Christian Democratic philosophy. Muslim Democratic philosophy has exactly the same normative foundation as Christian Democratic values.

39. As stated in the joint guidelines of the Venice Commission and OSCE/ODIHR, freedom of religion is closely related to other human rights, such as freedom of

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<sup>25</sup> European Commission for Democracy Through Law (Venice Commission) Once Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Joint Guidelines on Freedom of Association Adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014), para 141.

expression, the freedom of assembly and association<sup>26</sup> and the right to non-discrimination.<sup>27</sup> When organisations of the religious community are at issue, Article 9 of the Convention must be interpreted with due consideration to Article 11.<sup>28</sup>

Berlin, 30 October 2018

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<sup>26</sup> *Hasan and Chaush v Bulgaria*, Application no. 30985/96, Judgement 26 October 2000, para. 62.

<sup>27</sup> European Commission for Democracy Through Law (Venice Commission) Once Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Joint Guidelines on Freedom of Association Adopted by the Venice Commission at its 101st Plenary Session (Venice, 12-13 December 2014).

<sup>28</sup> Opinion on Act CCVI of 2011 on the right to freedom of conscience and religion and the legal status of churches, denominations and religious communities of Hungary, CDL-AD(2012)004, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), para. 19.