



To the Inter-American Court of Human Rights

By email: tramite@corteidh.or.cr

1 July 2025

Dear Sir/Madam,

Submission of the Bar Human Rights Committee of England and Wales in the Advisory Proceedings concerning democracy and its protection under the Inter-American system of human rights

The Bar Human Rights Committee of England and Wales (“BHRC”) hereby presents its submission to the Inter-American Court of Human Rights in relation to the advisory opinion requested by the State of Guatemala on 6 December 2024.

BHRC presents this submission in accordance with Article 73(3) of the Court’s Rules of Procedure. It respectfully invites the Court to consider this submission in formulating its advisory opinion on the issues raised in Guatemala’s request.

We would be grateful if all future communications and notifications concerning this submission could be sent to coordination@barhumanrights.org.uk.

Yours sincerely,

Michael J. Ivers KC

Chair, Bar Human Rights Committee of England and Wales

INTER-AMERICAN COURT OF HUMAN RIGHTS**REQUEST FOR AN ADVISORY OPINION:
DEMOCRACY AND ITS PROTECTION UNDER THE INTER-AMERICAN SYSTEM
OF HUMAN RIGHTS**

SUBMISSION OF THE**BAR HUMAN RIGHTS COMMITTEE OF ENGLAND AND WALES**

I. INTRODUCTION

1. The present submission is filed on behalf of the Bar Human Rights Committee of England and Wales (“BHRC”), in accordance with Article 73(3) of the Court’s Rules of Procedure. BHRC is the independent international human rights arm of the Bar of England and Wales.¹ It is an independent and non-political body with a membership made up of barristers, law academics and students called to the Bar of England and Wales. BHRC works to protect the rights of advocates, judges and human rights defenders around the world. It is concerned with defending the rule of law and internationally recognised legal standards relating to human rights.
2. BHRC’s members have deep expertise in international human rights law, particularly in relation to human rights under the European Convention on Human Rights (“the ECHR”), of which the European Court of Human Rights (“the ECtHR”) is the authoritative interpretive body. There is a rich tradition of the ECtHR and the Inter-American Court of Human Rights (“the Court”) engaging with each other’s jurisprudence in order to establish harmonised human rights standards between different regional regimes; indeed, in the present advisory proceedings, Guatemala’s request for an advisory opinion (“the Request”) refers at several points to judgments of the ECtHR. In the present submission, BHRC seeks to assist the Court by identifying key principles and cases emerging from the ECtHR’s jurisprudence concerning the issues arising in

¹ See <https://barhumanrights.org.uk/about/>.

these advisory proceedings, to assist the Court in continuing this inter-regional judicial dialogue if and to the extent that it sees fit.

3. As in the Inter-American system, under the ECHR democracy is recognised as closely interconnected with, and indeed an essential precondition for, the enjoyment and exercise of a range of human rights. The ECtHR has stated:

Democracy is without doubt a fundamental feature of the European public order. ...

That is apparent, firstly, from the Preamble to the Convention, which establishes a very clear connection between the Convention and democracy by stating that the maintenance and further realisation of human rights and fundamental freedoms are best ensured on the one hand by an effective political democracy and on the other by a common understanding and observance of human rights. ... The Court has ... pointed out several times that the Convention was designed to maintain and promote the ideals and values of a democratic society.

In addition, Articles 8, 9, 10 and 11 of the Convention require that interference with the exercise of the rights they enshrine must be assessed by the yardstick of what is 'necessary in a democratic society'. The only type of necessity capable of justifying an interference with any of those rights is, therefore, one which may claim to spring from 'democratic society'. Democracy thus appears to be the only political model contemplated by the Convention and, accordingly, the only one compatible with it.²

4. There is a clear parallel with the ACHR, the preamble of which affirms the intention to consolidate, “*within the framework of democratic institutions*, a system of personal liberty and social justice based on respect for the essential rights of man”.³
5. The present advisory proceedings provide a timely opportunity for a leading regional human rights court to address how human rights protections provide guarantees against democratic backsliding and authoritarianism.
6. In the present submission, BHRC focuses on two topics arising under “Sub-Block B” of the Request.⁴ These topics relate closely to BHRC’s expertise on democratic institutions as vehicles for promoting the rule of law and upholding human rights. Specifically:

² [United Communist Party of Turkey and Others v Turkey \[GC\]](#), App. No. 133/1996/752/951 (30 January 1998), para. 45.

³ Emphasis added.

⁴ See Request, paras. 37–41, 80–154.

- a. In Section II, this submission addresses the protections accorded to political parties in a democratic system,⁵ and
- b. In Section III, it addresses the protections which should be guaranteed to electoral bodies, whether of a judicial, quasi-judicial or administrative character.⁶

II. POLITICAL PARTIES IN A DEMOCRATIC SYSTEM

7. In interpreting and applying the ECHR, the ECtHR has primarily assessed the role and importance of political parties under Article 11 (concerning freedom of assembly and association) and Article 10 (concerning freedom of expression), as well as in some cases under Article 3 of Protocol No. 1 (concerning the right to free elections). These provisions of the ECHR have close analogues in Articles 13, 15, 16 and 23 of the ACHR.
8. As the ECtHR has stated, “[t]hat citizens should be able to form a legal entity in order to act collectively in a field of mutual interest is one of the most important aspects of the right to freedom of association, without which that right would be deprived of any meaning”.⁷ The strength of a State’s protections for such entities, including in particular political parties, “reveal[s] the state of democracy in the country concerned”.⁸

A. THE IMPORTANCE AND ROLE OF POLITICAL PARTIES

9. The ECtHR has characterised political parties as playing a “primordial role ... in a democratic regime” and as being “essential to the proper functioning of democracy” and to “ensuring pluralism”.⁹ For example, it has held that, in relation to a State’s duty to hold “free elections ... which will ensure the free expression of the opinion of the people in the choice of the legislature”:

Such expression is inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country’s population. By relaying this range of opinion, not only within political institutions but also – with the help of the media – at all levels of social life, political parties

⁵ See Request, paras. 41, 126–152.

⁶ See Request, paras. 39, 93–104.

⁷ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 75.

⁸ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 75.

⁹ *Refah Partisi (the Welfare Party) and Others v Turkey* [GC], App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (13 February 2003), paras. 87–88; *Christian Democratic People’s Party v Moldova*, App. No. 28793/02 (14 February 2006), para. 62.

*make an irreplaceable contribution to political debate, which is at the very core of the concept of a democratic society.*¹⁰

10. Political parties are seen as having “a special status” even among politically-oriented entities within a democratic society.¹¹ This is because they are “the only bodies which can come to power” and thus they “have the capacity to influence the whole of the regime in their countries”. They are able to put before the electorate “an overall societal model” and have the “capacity to implement those proposals once they come to power”.¹² In other words, political parties are uniquely “destined to address all the strata of national society and present to them the social blueprint which they hope to implement if they are successful in the elections”.¹³

B. THE STRONG PROTECTIONS AGAINST INTERFERENCES WITH POLITICAL PARTIES

11. Given their centrality in maintaining and facilitating democracy, political parties are accorded significant protections under the ECHR. This is partly because interference with political parties infringe not only the rights of the individuals directly concerned, but also the collective interest in maintaining the integrity of the democratic system as a whole. Any measures taken against political parties “affect[] both freedom of association and, consequently, democracy in the State concerned”.¹⁴ For example, it has been held that political parties not only provide a vehicle for *individuals’* exercise of their human rights, but also “form part of a *collective* exercise of the freedom of expression”.¹⁵ Similarly, when a political party’s representative is subject to an unlawful interference, it can interfere with not only that individual’s own right to be elected under Article 3 of Protocol No. 1, but also the sovereign power of the electorate that elected them.¹⁶

¹⁰ *United Communist Party of Turkey and Others v Turkey* [GC], App. No. 133/1996/752/951 (30 January 1998), para. 44. See also *Christian Democratic People’s Party v Moldova*, App. No. 28793/02 (14 February 2006), para. 66; *Oran v Turkey*, App. Nos. 28881/07 and 37920/07 (15 April 2014), para. 57 (“the free expression of the opinion of the people is inconceivable without the participation of a plurality of political parties representing the different shades of opinion to be found within a country’s population”).

¹¹ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 106.

¹² *Refah Partisi (the Welfare Party) and Others v Turkey* [GC], App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (13 February 2003), para. 87. See also *Oran v Turkey*, App. Nos. 28881/07 and 37920/07 (15 April 2014), para. 64; *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 106. This is in addition to the fact that, under a given State’s domestic law, political parties may be the only bodies with certain powers, such as the power to nominate candidates for election: *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 107.

¹³ *Oran v Turkey*, App. Nos. 28881/07 and 37920/07 (15 April 2014), para. 73.

¹⁴ *Refah Partisi (the Welfare Party) and Others v Turkey* [GC], App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (13 February 2003), para. 87; *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 78.

¹⁵ *Partidul Comunistilor (Nepeceristi) and Ungureanu v Romania*, App. No. 46626/99 (3 February 2005), para. 45 (emphasis added). See also *Refah Partisi (the Welfare Party) and Others v Turkey* [GC], App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (13 February 2003), para. 89.

¹⁶ *Party for a Democratic Society (DTP) and Others v Turkey*, App. Nos. 3870/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10 (12 January 2016), para. 127.

12. Thus, while Articles 10 and 11 of the Convention contain exceptions which allow for interferences with the rights which these provisions enshrine, these exceptions are, “where political parties are concerned, to be construed strictly”.¹⁷ The ECtHR applies “rigorous ... supervision” to any such interferences, having found on multiple occasions that “only convincing and compelling reasons can justify restrictions on such parties’ freedom of association”.¹⁸
13. In determining the lawfulness of interferences with political parties, the ECtHR has routinely referred to the fact that “one of the principal characteristics of democracy to be the possibility it offers of resolving a country’s problems through dialogue, without recourse to violence, even when they are irksome”; in light of this principle, political parties must be granted strong protection as they “seek[] to debate in public the situation of part of the State’s population and to take part in the nation’s political life in order to find, according to democratic rules, solutions capable of satisfying everyone concerned”.¹⁹
14. Such is the strength of the protections for political parties that they extend to cases where a political party advances a position which is highly controversial within their State, or is even seen as subversive to the existing structures of that State, provided that they do not threaten the democratic system itself. For example, a political party is protected against interference where it “seeks to debate in public the situation of part of the State’s population, or even advocates separatist ideas by calling for autonomy or requesting secession of part of the country’s territory”.²⁰ This is for the following reasons:

In a democratic society based on the rule of law, political ideas which challenge the existing order without putting into question the tenets of democracy, and whose realisation is advocated by peaceful means, must be afforded a proper opportunity of expression through, inter alia, participation in the political process. However shocking and unacceptable the statements of an association’s leaders and members may appear to the authorities or the majority of the population and however illegitimate their demands may be, they do not appear to warrant the association’s dissolution. A fundamental aspect of democracy is that it must allow diverse political programmes to be proposed and debated, even where they call into question

¹⁷ *United Communist Party of Turkey and Others v Turkey* [GC], App. No. 133/1996/752/951 (30 January 1998), para. 46; *Refah Partisi (the Welfare Party) and Others v Turkey* [GC], App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (13 February 2003), para. 100.

¹⁸ See, e.g., *United Communist Party of Turkey and Others v Turkey* [GC], App. No. 133/1996/752/951 (30 January 1998), para. 46; *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 102.

¹⁹ *United Communist Party of Turkey and Others v Turkey* [GC], App. No. 133/1996/752/951 (30 January 1998), para. 57; *Freedom and Democracy Party (ÖZDEP) v Turkey* [GC], App. No. 23885/94 (8 December 1999), para. 44. See also *Partidul Comunistilor (Nepecești) and Ungureanu v Romania*, App. No. 46626/99 (3 February 2005), para. 55 (“there can be no justification for hindering a political group that complies with fundamental democratic principles ... solely because it has criticised the country’s constitutional and legal order and sought a public debate in the political arena”).

²⁰ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 123.

*the way a State is currently organised, provided that they do not harm democracy itself.*²¹

A political party must have the right to introduce “proposals [which] are likely to clash with the main strands of government policy or the convictions of the majority of the public”, as “it is necessary for the proper functioning of democracy that political groups should be able to introduce them into public debate in order to help find solutions to general problems concerning politicians of all persuasions”.²² This right is not, however, untrammelled: Section II(D) below addresses the circumstances in which political parties may be subject to restrictions based on the matters for which they campaign.

15. The ECtHR has repeatedly criticised States which have imposed excessive logistical or formal burdens on political parties. For example:
 - a. The ECtHR has rejected the contention that “only those associations that represent the interests of considerable portions of society are eligible for political party status”, finding that “small minority groups must also have an opportunity to establish political parties and participate in elections with the aim of obtaining parliamentary representation”. Thus, domestic laws should not place on political parties unduly onerous requirements concerning minimum membership numbers.²³
 - b. States should also not interfere with political parties’ internal organisational functioning “to such a far-reaching extent as to ensure observance by an association of every single formality provided by its own charter”. It should be primarily left to the political party itself and its members to ensure compliance with its internal formalities.²⁴
 - c. More generally, a State should not subject political parties to unduly onerous formal requirements, such as requiring them to prove the size of their membership on an annual basis²⁵ or to adapt to frequently-changing domestic requirements for registration as a political party,²⁶ or subjecting a party’s finances to such heavy oversight that it “has the effect of inhibiting its activities” (especially where such inspection is in fact “used as a political tool to exercise control over political parties”).²⁷

²¹ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 123. See also *Freedom and Democracy Party (ÖZDEP) v Turkey* [GC], App. No. 23885/94 (8 December 1999), para. 41; *The United Macedonian Organisation Ilinden - PIRIN and Others v Bulgaria*, App. No. 59489/00 (20 October 2005), para. 61.

²² *Yazar and Others v Turkey*, App. Nos. 22723/93, 22724/93 and 22725/93 (9 April 2002), para. 58.

²³ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 114.

²⁴ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), paras. 87–88.

²⁵ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 115.

²⁶ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), para. 116.

²⁷ *Cumhuriyet Halk Partisi v Turkey*, App. No. 19920/13 (26 April 2016), paras. 71, 88.

16. Restrictions on political parties will be especially difficult to justify if they apply on “a blanket assumption” to a category or type of party rather than being applied on a case-by-case basis, or if they last for a long time.²⁸

C. STATES’ POSITIVE DUTIES TO PROTECT POLITICAL PARTIES

17. The Request invites the Court to advise on “States’ obligations to guarantee the multiple political party system”, including with respect to “the positive measures to protect political parties as vehicles for essential individual rights in a democratic regimen”.²⁹ The *positive* duties which States owe to political parties is a matter of concern under both the ACHR and the ECHR.
18. Under the ECHR, the State is considered the “ultimate guarantor of the principle of pluralism”.³⁰ The ECtHR has repeatedly emphasised that, in carrying out its protective role, a State has positive duties to ensure the realisation of ECHR rights, including under Articles 10 and 11. The ECtHR has held that:

*[A] genuine and effective respect for freedom of association cannot be reduced to a mere duty on the part of the State not to interfere; a purely negative conception would not be compatible with the purpose of Article 11. ... There may thus be positive obligations to secure the effective enjoyment of the right to freedom of association. Accordingly, it is incumbent upon public authorities to guarantee the proper functioning of an association or political party, even when they annoy or give offence to persons opposed to the lawful ideas or claims that they are seeking to promote.*³¹

19. The ECtHR does not distinguish the criteria to be applied between cases involving the State’s negative duties under Article 11 and those involving positive duties. In both contexts the ECtHR has regard to the fair balance to be struck between the interests of the individual and the community.³²
20. The ECtHR has emphasised that “[p]luralism, tolerance and broadmindedness are the hallmarks of a ‘democratic society’”.³³ The fact that tensions may arise from the views or position of a particular political party cannot justify limits on the right to association as such tensions are “one of the unavoidable

²⁸ *Republican Party of Russia v Russia*, App. No. 12976/07 (12 April 2011), paras. 129-130. Nonetheless, even a temporary interference with a political party may be unlawful if it is found to have had “a ‘chilling effect’ on the party’s right to exercise its freedom of expression and to pursue its political goals”, as was the case in one claim where the ban was “imposed on the eve of the local elections”: *Christian Democratic People’s Party v Moldova*, App. No. 28793/02 (14 February 2006), paras. 77-78.

²⁹ Request, paras. 40, 139.

³⁰ *United Communist Party of Turkey and Others v Turkey* [GC], App. No. 133/1996/752/951 (30 January 1998), para. 44.

³¹ *Ouranio Toxo and Others v Greece*, App. No. 74989/01 (20 October 2005), para. 37; *Zhdanov and Others v Russia* App. No. 58282/12 (16 July 2019), para. 162.

³² *Sørensen and Rasmussen v Denmark* [GC], App. Nos. 52562/99 and 52620/99 (11 January 2006), para. 58.

³³ *Levta Şahin v Turkey* [GC], App. No. 44774/98 (10 November 2005), para. 108.

consequences of pluralism, that is to say the free discussion of all political ideas”.³⁴ In such circumstances the State’s duties are “not to remove the cause the cause of tension by eliminating pluralism, but to ensure that competing groups tolerate each other”.³⁵ Where two opposing political parties are seeking to exercise their right to freedom of expression and association in conflict with each other, the State bears positive obligations to protect the rights of both groups by finding the least restrictive means to enable both parties to exercise their rights.³⁶

21. A State’s positive obligations to secure the effective enjoyment of the right to freedom of association is considered particularly important in the context of minorities or those holding unpopular views due to their vulnerability to victimisation.³⁷ The State must also ensure that political groups may hold a demonstration without fear of being subjected to physical violence or intimidation.³⁸
22. In certain circumstances, a State may be obliged to regulate the relationships between private individuals to discharge its positive obligations to ensure the effective enjoyment of the right to freedom of association.³⁹ For example, given the importance of democracy to the ECHR system, there must be appropriate judicial safeguards in place to ensure an employee can challenge dismissal from employment solely on account of their membership of a political party.⁴⁰
23. The rights of political parties may also be protected by measures positively taken to realise associated ECHR rights including the right to freedom of expression (protected by Article 10 of the ECHR, and correspondingly Article 13 of the ACHR). The ECtHR has repeatedly emphasised the interdependence between the rights to freedom of expression and to free elections noting that “[d]emocracy thrives on freedom of expression”, and “[i]t is of the essence of democracy to allow diverse political programmes to be proposed and debated”.⁴¹ One area in which positive duties to political parties arise under Article 10 is in relation to press coverage of elections and political developments. The Court has recognised that freedom of the press is “one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders”.⁴² Accordingly:
 - a. The State has a positive obligation (in addition to the negative obligation to refrain from interference with a free press) to ensure that there is an

³⁴ *Zhdanov and Others v Russia*, App. No. 58282/12 (16 July 2019), para. 163.

³⁵ *Zhdanov and Others v Russia*, App. No. 58282/12 (16 July 2019), para. 163; *Ouranio Toxo and Others v Greece*, App. No. 74989/01 (20 October 2005), para. 40; *Serif v Greece*, App. No. 38178/97 (14 December 1999), para. 53.

³⁶ *Faber v Hungary*, App. No. 40721/08 (24 July 2012), para. 43.

³⁷ *Baczowski and Others v Poland*, App. No. 1543/06 (3 May 2007), para. 64.

³⁸ *Identoba and Others v Georgia*, App. No. 73235/12 (12 May 2015), para. 95.

³⁹ *Redfearn v United Kingdom*, App. No. 47335/06 (6 November 2012), para. 42.

⁴⁰ *Redfearn v United Kingdom*, App. No. 47335/06 (6 November 2012), para. 42.

⁴¹ *Centro Europea 7 S.R.L. and Di Stefano v Italy [GC]*, App. No. 38433/09 (7 June 2012), para. 129.

⁴² *Centro Europea 7 S.R.L. and Di Stefano v Italy [GC]*, App. No. 38433/09 (7 June 2012), para. 131.

appropriate legislative and administrative framework to guarantee effective pluralism in the audio-visual sector, “reflecting as far as possible the variety of opinions encountered in the society at which the programmes are aimed”.⁴³

- b. The State also must organise elections in conditions which ensure that there is equality of opportunity between political parties in relation to the election campaign and coverage by the media.⁴⁴
 - c. The State may also be required to intervene to open the media to multiple viewpoints to ensure that opposition political parties and candidates have at least minimum visibility in public media, although there is a margin of appreciation in the exercise of these responsibilities.⁴⁵
24. States’ obligations to facilitate and support political parties are not without limits. The ECtHR declined to find that a political party had been treated less favourably in breach of non-discrimination rights where they were not entitled to public funding because they did not meet the criteria for funding. The Court found that the applicant party was not treated any differently to any other political party in an analogous position.⁴⁶

D. LEGITIMATE RESTRICTIONS ON POLITICAL PARTIES

25. Despite the strict scrutiny applied to interferences with political parties, the ECtHR has held that only political parties whose aims and activities are compatible with democracy and human rights enjoy those protections. It is well established that:

*[A] political party may promote a change in the law or the legal and constitutional structures of the State on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite to violence or put forward a policy which fails to respect democracy or which is aimed at the destruction of democracy and the flouting of the rights and freedoms recognised in a democracy cannot lay claim to the Convention’s protection against penalties imposed on those grounds.*⁴⁷

26. As has been set out above (see para. 14), the fact that a State considers a political programme to be incompatible with the principles and structures of the State does

⁴³ *Centro Europea 7 S.R.L. and Di Stefano v Italy* [GC], App. No. 38433/09 (7 June 2012), paras. 130, 134.

⁴⁴ *Communist Party of Russia and Others v Russia*, App. No. 29400/05 (19 June 2012), paras. 107–108.

⁴⁵ *Communist Party of Russia and Others v Russia*, App. No. 29400/05 (19 June 2012), para. 126.

⁴⁶ *Demokrat Parti v Turkey*, App. No. 8372/10 (7 September 2021), paras. 33–34, 39.

⁴⁷ See, e.g., *Yazar and Others v Turkey*, App. Nos. 22723/93, 22724/93 and 22725/93 (9 April 2002), para. 49. See also cases cited at footnote 21 above.

not necessarily make it incompatible with the rules of democracy. The ECtHR has held that the “essence of democracy” is “to allow diverse political programmes to be proposed and debated, even those that called into question the way a State was currently organised, provided that they did not harm democracy itself”.⁴⁸ The ECtHR closes scrutinises whether interferences with a political party ostensibly on the basis that the party undermines democracy are defensible. Specifically, the ECtHR interrogates whether the restriction in question is permitted under domestic law, whether it pursues a rational aim, and whether it is necessary in a democratic society — with the latter element focusing on whether there is a pressing social need for the restriction, as well as the proportionality of the measure in question.

27. The ECtHR has held that, as a matter of principle:

[I]ts examination of whether the refusal to register a political party met a ‘pressing social need’ must concentrate on the following points: (i) whether there was plausible evidence that the risk to democracy was sufficiently imminent; (ii) whether the leaders’ acts and speeches taken into consideration in the case under review were imputable to the political party concerned; and (iii) whether the acts and speeches imputable to the political party formed a whole which gave a clear picture of a model of society conceived and advocated by the party which was incompatible with the concept of a ‘democratic society’. Its overall examination of the above points must also take account of the historical context in which the refusal to register the party concerned took place.⁴⁹

28. In many cases, applying this approach has resulted in findings that interferences with political parties have been incompatible with the ECHR. For example:

- a. The ECtHR has found there to be a violation of Article 11 of the ECHR where a political party was dissolved by the State because of its promotion of a peaceful solution to “the Kurdish problem”, in circumstances where speeches given by its leaders did not encourage the use of violence, armed resistance or insurrection.⁵⁰
- b. It has also found interferences with a political party to be unlawful where the principles for which a party stands, such as the right of self-determination and

⁴⁸ *Socialist Party and Others v Turkey*, App. No. 20/1997/804/1007 (25 May 1998), para. 47.

⁴⁹ *Partidul Comunistilor (Nepeceristi) and Ungureanu v Romania*, App. No. 46626/99 (3 February 2005), para. 48, citing *Refah Partisi (the Welfare Party) and Others v Turkey [GC]*, App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (13 February 2003), para. 48.

⁵⁰ *Party for a Democratic Society (DTP) and Others v Turkey*, App. Nos. 3870/10, 3870/10, 3878/10, 15616/10, 21919/10, 39118/10 and 37272/10 (12 January 2016), paras. 101–111.

recognition of language rights, are not contrary to the fundamental principles of democracy.⁵¹

- c. Restrictions on a political group that complied with the fundamental principles of democracy solely because it had criticised the constitutional and legal order of the country and had sought a public debate in the political arena were not justified, even where a State has a troubled past with totalitarian communism.⁵²

29. In contrast, in other cases the ECtHR has found States' interferences with certain political parties to be ECHR-compliant, given that the parties in question promoted messages or used strategies which were themselves inconsistent with the tenets of a democratic society. For example:

- a. Where a party had a long-term policy of setting up a regime based on Sharia law within the framework of a plurality of legal systems, and had not excluded recourse to force in order to implement its policy, the ECtHR found that these plans were incompatible with the concept of a "democratic society" and that the real opportunities the party had to put them into practice "made the danger to democracy more tangible and more immediate". Consequently, the ECtHR found that the penalty imposed on the applicants by the Constitutional Court, even in the context of the restricted margin of appreciation in relation to interferences with political parties (especially in the case of "drastic" interferences such as a party's dissolution), met a "pressing social need" and did not violate Article 11.⁵³
- b. In another case, the ECtHR found the Spanish Supreme Court's decision to declare certain parties illegal, to order their dissolution, and to liquidate their assets did not constitute a violation of Article 11. This was because, inter alia, the Spanish courts had arrived at reasonable conclusions that "there was a link between the applicant parties and a terrorist organisation", and "in light of the situation that had existed in Spain for many years with regard to terrorist attacks, those links could objectively be considered as a threat for democracy".⁵⁴
- c. The ECtHR has held that a State may be entitled to take preventive measures to protect democracy against associations if "a sufficiently imminent prejudice to the rights of others threatens to undermine the fundamental values on the basis of which a democratic society exists and functions".⁵⁵ For example, the ECtHR found no violation of Article 11 following the dissolution of a political

⁵¹ *Yazar and Others v Turkey*, App. Nos. 22723/93, 22724/93 and 22725/93 (9 April 2002), para. 57.

⁵² *Partidul Comunistilor (Nepecceristi) and Ungureanu v Romania*, App. No. 46626/99 (3 February 2005), paras. 50–58.

⁵³ *Refah Partisi (the Welfare Party) and Others v Turkey [GC]*, App. Nos. 41340/98, 41342/98, 41343/98 and 41344/98 (13 February 2003), paras. 106–136.

⁵⁴ *Herri Batasuna and Batasuna v Spain*, App. Nos. 25803/04 and 25817/04 (30 June 2009), para. 89.

⁵⁵ *Vona v Hungary*, App. No. 35943/10 (9 July 2013), para. 57.

association in Hungary on the basis of rallies and demonstrations it organised throughout the country, including in villages with large Roma populations, calling for the defence of ethnic Hungarians against so-called “Gypsy criminality”.⁵⁶ The ECtHR commented that the paramilitary formation was “reminiscent of the Hungarian Nazi (Arrow Cross) movement, which was the backbone of the regime that was responsible, amongst other things, for the mass extermination of Roma in Hungary”.⁵⁷ In the ECtHR’s view, the party’s paramilitary marches had gone beyond the mere expression of a disturbing or offensive idea, which was protected under the ECHR, and the threat to the rights of others “could be effectively eliminated only by removing the organisational back-up of the Movement provided by the Association”.⁵⁸ The State was not required to await further developments (such as violence materialising) before intervening to secure the protection of the rights of others, since the party “had taken concrete steps in public life to implement a policy incompatible with the standards of the [ECHR] and democracy”.⁵⁹

III. ELECTORAL BODIES IN A DEMOCRATIC SYSTEM

30. The Request invites the Court to address in its advisory opinion the protections accorded to electoral bodies, specifically regarding their independence, given their role in promoting and defending a democratic system.⁶⁰ Given that the protections accorded to courts as judicial bodies is already well established, the novel focus of the Request is on electoral bodies of an administrative nature, whether they be permanent or temporary.
31. In overview and as developed below, under the ECHR, the issue of the independence of administrative or judicial bodies tasked with electoral matters is critical, as it is considered necessary to “ensure the proper functioning of an effective political democracy”.⁶¹ Guarantees of impartiality should apply, regardless of whether the relevant body is judicial or administrative in nature.
32. The key legal provision in the ECHR framework is Article 3 of Protocol No. 1 which protects the right to free elections. The Article provides that States parties to the ECHR “undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature”. Although not worded in identical terms, Article 23(1)(b) of the ACHR also protects the right to vote and participate in free and fair elections.

⁵⁶ *Vona v Hungary*, App. No. 35943/10 (9 July 2013), paras. 10, 59, 61, 67, 69.

⁵⁷ *Vona v Hungary*, App. No. 35943/10 (9 July 2013), para. 65.

⁵⁸ *Vona v Hungary*, App. No. 35943/10 (9 July 2013), paras. 66, 71.

⁵⁹ *Vona v Hungary*, App. No. 35943/10 (9 July 2013), para. 68.

⁶⁰ Request, para. 39.

⁶¹ *Gunnarsson and Norðdahl v Iceland*, App. Nos. 24159/22 and 25751/22 (15 April 2024), para. 71.

33. Article 3 of Protocol No. 1 does not expressly enumerate procedural safeguards that States should adopt to guarantee the independence of electoral bodies in the promotion and defence of a democratic system. States are afforded a considerable margin of appreciation in relation to electoral regulation.⁶² The ECtHR has recognised that a State’s approach to such matters may permissibly reflect context and “the political evolution of the country concerned”.⁶³ Put simply, Article 3 of Protocol No. 1 is not intended to be a “code on electoral matters designed to regulate all aspects of the electoral process”.⁶⁴
34. Nonetheless, it is well-established in ECtHR jurisprudence that electoral bodies must be accorded robust procedural guarantees, in order to safeguard their impartiality and their ability to exercise effective oversight; such guarantees are considered to be essential to carrying out free and fair elections. Specifically, the ECtHR has stated that:
- a. The proper functioning of the electoral system is necessary to “ensure the proper functioning of an effective political democracy”.⁶⁵ For example, the ECtHR has held that, pursuant to Article 3 of Protocol No. 1, it is “particularly important for an agency in charge of electoral administration to function in a transparent manner and to maintain impartiality and independence from political manipulation”.⁶⁶
 - b. The respect of the principles set out in Article 3 of Protocol No. 1, which reflect common principles of European constitutional heritage, “form the basis of any genuinely democratic society”.⁶⁷
 - c. The obligation to guarantee free elections implies “positive obligation[s] o[n] the State,” which comprise “a number of guarantees ... extending to the careful regulation of the process in which the results of voting are ascertained, processed and recorded”.⁶⁸
35. The ECtHR has a developed body of jurisprudence concerning the requirement that proceedings to resolve electoral disputes (including to challenge electoral results) provide sufficient guarantees of impartiality. Although the ECtHR has held that electoral disputes do not fall within the scope of Article 6 of the ECHR (because they are not proceedings to determine “civil rights and obligations”),⁶⁹

⁶² *Ždanoka v Latvia* [GC], App. No. 58278/00 (16 March 2006), paras. 103–104.

⁶³ *Ždanoka v Latvia* [GC], App. No. 58278/00 (16 March 2006), para. 106.

⁶⁴ *Communist Party of Russia and Others v Russia*, App. No. 29400/05 (19 June 2012), para. 108.

⁶⁵ *Gunnarsson and Norðdahl v Iceland*, App. Nos. 24159/22 and 25751/22 (15 April 2024), para. 71.

⁶⁶ *Georgian Labour Party v Georgia*, App. No. 9103/04 (8 July 2008), para. 101.

⁶⁷ *Davydov v Russia*, App. No. 75947/11 (30 May 2017), para. 285.

⁶⁸ *Davydov v Russia* [C], App. No. 75947/11 (30 May 2017), para. 285.

⁶⁹ *Geraguyin Khorhurid Patgamavorakan Akumib v Armenia*, App. No. 11721/04 (14 April 2009), para. 28; *Mugemangango v Belgium* [GC], App. No. 310/15 (10 July 2020), para. 96.

the Court has repeatedly emphasised that those proceedings must provide sufficient guarantees of their impartiality.⁷⁰

36. Accordingly, the ECtHR has held that, despite Article 6 not being directly applicable, “certain requirements also flow from [Article 3 of Protocol No. 1] in terms of the impartiality of the body determining electoral disputes”.⁷¹ And the Court has also held that the “existence of a domestic system for effective examination of individual complaints and appeals in matters concerning electoral rights is one of the essential guarantees of free and fair elections”.⁷²
37. As to the substance of the requirement of impartiality, the ECtHR has stated that any decision on electoral disputes must be “taken ... based solely on factual and legal considerations, and not political ones”.⁷³ It has also further clarified that the decision of electoral disputes “must not become a forum for political struggle between different parties”.⁷⁴
38. The requirement of impartiality applies broadly, regardless of whether the body before which an electoral issue is challenged is administrative, judicial, or legislative.⁷⁵ For example, in both *Mugemangango v Belgium* and *Gunnarsson and Norðdahl v Iceland* (the latter being a very recent case), the Court held that the respondent States had breached their respective obligations to guarantee impartiality because the electoral body that determined the election complaint — in both instances a legislative body — included individuals that would be directly affected by the result of the decision.⁷⁶ The ECtHR has thus focused on the substance of those guarantees of impartiality rather than on the type of body that decides the electoral disputes.
39. The ECtHR has also recently suggested that, when an electoral dispute first comes before a body that could have the appearance of not being fully independent (such as a legislative entity), the guarantee of impartiality requires the possibility of recourse to an independent body (although without expressly requiring that recourse be to a *judicial* body). In *Gunnarsson and Norðdahl*, the Court held that there had been a breach of Article 3 of Protocol No. 1 because the applicable electoral rules did not “prescribe[] any rules capable of countering

⁷⁰ *Mugemangango v Belgium* [GC], App. No. 310/15 (10 July 2020), para. 94; *Podkolzina v Latvia*, App. No. 46726/99 (9 April 2002), paras. 36–37.

⁷¹ *Mugemangango v Belgium* [GC], App. No. 310/15 (10 July 2020), para. 96; *Gunnarsson and Norðdahl v Iceland*, App. Nos. 24159/22 and 25751/22 (15 April 2024), para. 81.

⁷² *Namat Aliyev v Azerbaijan*, App. No. 18705/06 (8 April 2010), para. 81.

⁷³ *Mugemangango v Belgium* [GC], App. No. 310/15 (10 July 2020), para. 96; *Gunnarsson and Norðdahl v Iceland*, App. Nos. 24159/22 and 25751/22 (15 April 2024), para. 81.

⁷⁴ *Mugemangango v Belgium* [GC], App. No. 310/15 (10 July 2020), para. 96; *Gunnarsson and Norðdahl v Iceland*, App. Nos. 24159/22 and 25751/22 (15 April 2024), para. 81.

⁷⁵ *Mugemangango v Belgium* [GC], App. No. 310/15 (10 July 2020), para. 87.

⁷⁶ *Mugemangango v Belgium* [GC], App. No. 310/15 (10 July 2020), para. 108; *Gunnarsson and Norðdahl v Iceland*, App. Nos. 24159/22 and 25751/22 (15 April 2024), para. 90.

the appearance of a possible lack of impartiality, such as a subsequent review of the relevant decision by an independent body”.⁷⁷

40. In determining the protections to be accorded in relation to electoral regulation, the ECtHR has relied on⁷⁸ the work of the European Commission for Democracy through Law (Venice Commission) (a body established by the Council of Europe), and particularly its Code of Good Practice in Electoral Matters.⁷⁹ The Code contains certain provisions concerning the independence and impartiality of electoral bodies. It provides that “[o]nly transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the preelection period to the end of the processing of results”.⁸⁰ Further, it states that an indispensable condition for implementing democratic principles of “Europe’s electoral heritage” require certain procedural guarantees, including that elections are organised by an impartial body.⁸¹ The Code expressly recommends that:

An impartial body must be in charge of applying electoral law.

*Where there is no longstanding tradition of administrative authorities’ independence from those holding political powers, independent, impartial electoral commissions must be set up at all levels, from the national level to polling station level.*⁸²

41. The Code of Good Practice further suggests that, to ensure impartiality, those bodies should ensure broad, adequate representation. The Code states that an electoral body *should* include a judge or law officer and representatives of political parties that are either already in parliament or that have won a certain percentage of the vote, and it should equal representation of political parties; and further that such a body it *may* include representatives of “national minorities” and of the Ministry of the Interior.⁸³ Critically, the Code recommends that the “bodies appointing members of electoral commissions must not be free to dismiss them at will”.⁸⁴

⁷⁷ *Gunnarsson and Norðdahl v Iceland*, App. Nos. 24159/22 and 25751/22 (15 April 2024), para. 89.

⁷⁸ See, e.g., *Communist Party of Russia and Others v Russia*, App. No. 29400/05 (19 June 2012), paras. 51, 124; *Mugemangango v Belgium [GC]*, App. No. 310/15 (10 July 2020), paras. 32, 99; *Davydov v Russia*, App. No. 75947/11 (30 May 2017), paras. 196, 283–285, 287; *Namat Aliyev v Azerbaijan*, App. No. 18705/06 (8 April 2010), paras. 54, 86.

⁷⁹ Venice Commission, *Code of Good Practice in Electoral Matters: Guidelines, explanatory report and interpretative declarations* (2002).

⁸⁰ Venice Commission, *Code of Good Practice in Electoral Matters: Guidelines, explanatory report and interpretative declarations*, Explanatory Report (18–19 October 2002), p. 34.

⁸¹ Venice Commission, *Code of Good Practice in Electoral Matters: Guidelines, explanatory report and interpretative declarations*, Guidelines (5–6 July 2002), pp. 14–15.

⁸² Venice Commission, *Code of Good Practice in Electoral Matters: Guidelines, explanatory report and interpretative declarations*, Guidelines (5–6 July 2002), p. 14, para. II.3.1(b).

⁸³ Venice Commission, *Code of Good Practice in Electoral Matters: Guidelines, explanatory report and interpretative declarations*, Guidelines (5–6 July 2002), pp. 14–15, paras. II.3.1(d)–(e).

⁸⁴ Venice Commission, *Code of Good Practice in Electoral Matters: Guidelines, explanatory report and interpretative declarations*, Guidelines (5–6 July 2002), p. 15, para. II.3.1(f).

IV. CONCLUSION

42. BHRC considers that both political parties and independent electoral bodies are critical to the fabric of a democratic society and merit the robust protections which they have been accorded under the ECHR. BHRC hopes that this submission will be of assistance to the Court in responding to Guatemala's Request for an advisory opinion on questions of such profound importance.

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