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Party Law in Modern Europe

The Legal Regulation of Political Parties in Post-War Europe

The Development of European Standards on Political Parties and their Regulation

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The Legal Regulation of Political Parties

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The Development of European Standards on Political Parties and their Regulation¹

Fransje Molenaar

Abstract

Over the last decade many European countries have increased both the scope and content of national party regulation. This trend is mirrored by an ever-increasing interest within European governmental and non-governmental organizations to guide this process and to determine the direction as regards its content. Little systematic scholarly attention has been paid to this supranational dimension, however. First of all, this working paper focuses on the identification of European normative conceptions of the role of political parties in modern democracies through an analysis of the rise of European standards regarding political party legislation. Secondly, it analyzes the (direct or indirect) impact on the national parties and party systems of the legislation adopted at the European level to determine whether these new norms matter. Towards these ends, this paper analyzes the regulation of political parties by supranational European organizations, concentrating in particular on the regulations, guidelines and recommendations adopted by the European Parliament, the Council of Europe, and the European Court of Human Rights.

Introduction

In recent years the regulation of parties, party behavior and party organization has become somewhat of a trend in many European countries. Deliberation on the outlook of party regulation does not form an isolated process that occurs solely at the state level. Instead a wide array of international governmental and non-governmental organizations has come to display its thoughts on the preferred shape of party regulation. Over the last decade the European Court of Human Rights transformed itself into a beacon of hope for national parties that have come to fear for their existence. The Council of Europe's European Commission for Democracy through Law is frequently invited to offer opinions on the conformity of national party law with international standards. Party assistance providers support party development through the active promotion of specific forms of party legislation.

Several common threads, such as the need to regulate party funding, run through the instruments applied by these institutions. However, it is unclear which standards regarding political party regulation the international European institutions apply precisely. Furthermore, little is known on whether these bodies have an influence on national institutions. If international institutions effectively propagate certain standards of party regulation, these element need to be taken into account when attempting to grasp the complete picture of

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political party regulation. In order to answer question of whether *European standards regarding political party legislation affect national institutions*, this working paper identifies the standards for party law that the European institutions promote and subsequently determines whether the implementation of these standards in institutional policy is of effect on national institutions.

Within academic literature on Europeanization, or the effect of European integration on the national political structure and process, the consensus has emerged that Europe matters. However, it is unclear to what extent and in which ways it matters (Börzel & Risse, 2003). Very little has been written on the influence of European standards on national party law and political parties, one exception being Walecki's analysis (2007) of the influence of Europe on party funding legislation in Eastern Europe. Through its focus on the influence of a European standards regarding party legislation on national institutions, this working paper aims to contribute to the debate on how Europe matters by filling in a gap in academic literature regarding European standards and national party law.

The following section of the paper provides a theoretical overview of the literature on parties and party regulation, the neo-institutional concept of norm creation, and the influence of Europe on national norms and policies. This is followed by an analysis of the standards for behavior that are emerging at the European level and by a section that analyses the influence of European institutions on national institutions such as parties and national party law.

Political parties and democracy

One normative perspective regarding political parties that has remained relatively unchallenged over the last fifty years is the one presented by Schattschneider (1942:1), according to which "[m]odern democracy is unthinkable save in terms of political parties". It has become common academic practice to take this assumption as a premise and subsequently focus on the specific manifestations of political parties and the implications that these manifestations have for democracy. The focus on the relationship between parties and civil society is a second perspective that long determined the characterization of political parties within party research. This relationship forms the base of Duverger's (1954) distinction between the 'mass party' and 'elite-based party' and Kirchheimer's (1966) 'catch-all party'. The 'mass party' model came to be seen as an ideal-typical model for parties (Katz & Mair, 1995).

However, one problem with this model is that it fails to take into account the relationship between parties and the state. Katz & Mair (1995) argue that the weakening of ties between civil society and political parties is accompanied by "an anchoring of parties within the state" (p.15). This goes hand in hand with a normative shift from socialist and pluralist definitions of democracy to democracy as a service in the form of contested elections provided by the state for civil society. In the process, the state transforms into a support structure for the existing 'cartel parties' (p.15). With increasing state support comes increasing state involvement in political parties, thereby transforming them from private organizations into public utilities (van Biezen, 2004). Hence, most European countries have created specific party law within public law to regulate party activities and party behaviour as opposed to other types of private

organizations. Because parties are valued guarantors of democracy, the common norm has emerged that they should both be supported and regulated to ensure that they (continue to) effectively provide a democratic service (van Biezen, 2008). Current public disengagement with political parties contributes to the fortification of this normative public role of parties. Concern with this disengagement has created an interest in the intellectual world in constitutional democracy as opposed to popular democracy. “[T]he benefits of transparency, legality and the provision of access to stakeholders are held up against the limits and distortions induced by partisan politics, and are seen to lead to a process which can offer “a fair and democratic substitute for electoral accountability”” (Mair, 2005: p.6). Society thus experiences an increasing stimulus to regulate political parties. This stimulus is the result of the growing integration of parties within the state and the weakening ties between parties and civil society.

National political parties are not only subject to triggers of change at the domestic level but at the European level as well. This is mirrored by the fact that the influence of increasing European integration on national politics has become a popular research theme over the last decade. Authors have focused on aspects such as the influence of Europe on domestic policies (Featherstone, 2003), national party systems (Mair, 2000), and power distribution and organization within individual political parties (Poguntke et al., 2007). Although a direct influence of Europe on national party systems has not been identified (Mair, 2000), parties do respond to challenges to their functioning created through altering environments, which in turn is the effect of increasing European integration (Ladrech, 2002). Although a Europe-wide trend is visible in the creation of national party law, the interaction between national party law and European integration is as of yet largely uncovered territory (but see Walecki, 2007). Given the fact that the functioning of political parties is increasingly shaped through national party law (van Biezen, 2008), this working paper addresses the question whether *European standards regarding political party legislation affects national institutions?* The answer to this question comes in two parts. The first section of the paper focuses on four different European institutions to determine whether European standards regarding political party legislation are indeed emerging. These institutions are: 1) the Council of Europe (CoE), 2) the European Court of Human Rights (ECtHR), 3) party aid provides, and 4) the European Parliament. The second part of this paper determines whether these European standards are of influence on national institutions.

European standards regarding political party legislation

Although political parties are national institutions that largely developed externally to the constitutional and legal order in most European countries (Aldrich, 2006), over time virtually every country developed national party law (van Biezen, 2008). Party law is the general denominator for the legislative work on political parties embodied in the constitution, political party laws, political finance, electoral and campaign laws, and related “legislative statutes, administrative rulings and court decisions” (van Biezen, 2008: p.342). Party law regulates parties and party activities either by: 1) entirely proscribing them through their prohibition; 2) permitting them to operate freely; 3) promoting them through active support; 4) protecting or favouring them over others; or 5)

prescribing certain types of behaviour for them (Janda, 2005). Parties and party activities are not the only focus of party law, however. When looking at party regulation, one should keep in mind that party regulation is always a means to support a higher normative goal. This goal can be deduced from the “empirical assumptions and implicit normative positions” (Persily and Cain, 2000: p.779) that form the base for the legal regulation of politics and political parties. The higher normative goals come in many forms, such as democracy or the status quo embedded within the (non-)party system (van Biezen, 2008; Karvonen, 2007).

The European standards regarding political party legislation are determined through an analysis of both these normative and regulatory elements. The way in which the European institutions aim to prescribe and proscribe party behavior, thereby permitting and inhibiting the effective functioning of parties provides information about the regulatory elements that the European institutions apply. The ills that the proposed changes in party law should address provide information on the higher normative goals that the European institutions aim to achieve in the process. Together these elements form an outline of the European standards regarding political party legislation. This paper focuses on international standards regarding party legislation on three thematic dimensions (Karvonen, 2007): 1) conditions for and restrictions of political parties; 2) political party financing; 3) internal party organization. Party legislation on these dimensions has been identified in most European countries (Karvonen, 2007; van Biezen, 2008). It therefore seems likely that the European institutions will address these three themes as well.

Influence of standards on national institutions

This paper’s focus on the influence of standards held by European institutions on national institutions implies an institutional premise, namely the assumption that institutions play a significant role in determining political outcomes. The way in which institutions perform this role is subject to an ongoing academic debate. Hall and Taylor (1996) discern three broad theoretical strands within new institutionalism: historical institutionalism, rational choice institutionalism and sociological institutionalism. Historical institutionalists apply a path-dependent approach in which institutional variations explain for variations in outcomes. Rational choice institutionalism is characterized by its calculus approach. Actors use rational calculations as an instrument to determine the consequences of their actions. Institutions shape reality and are hence of influence on the actors’ preferences for action. Sociological institutionalism applies a cultural approach in which actors follow norms and conventions, which are diffused through organizational fields or across nations. The European standards regarding political party legislation that are the focal point of this paper closely resemble the concept ‘norms’ present in sociological institutionalism. Like norms, or “the constitutive rules and practices prescribing appropriate behavior for specific actors in specific situations” (March & Olsen, 2006: p.3), these standards prescribe and proscribe party behaviour, thereby permitting and inhibiting the effective functioning of parties. Because of its focus on norms, the sociological institutional approach thus fits best to the research question investigated in this paper.

Institutions are not static entities but are part of a dynamic environment in which they interact with other institutions (March & Olsen, 2006). Within normative institutionalism, interaction between institutions may lead to change because of a “misfit” between various institutions. This misfit creates pressure for institutional adaptation, or the internalization of “new norms, ideas and collective understandings” (Börzel & Risse, 2003: p.13). Whether internalization actually takes place and is thus of effect on the domestic process depends on national institutions. They can either absorb norms, thereby incorporating them in their domestic structures without substantially modifying the institutions themselves; accommodate norms, thereby adapting existing institutions without changing their essential features; or transform norms, thereby replacing institutions by new, substantially different ones. The likelihood of success of norm internalization, or the gradual transformation of the domestic process, increases when new norms and ideas are compatible with existing structures of understanding and meaning. Medium pressure for adaptation is instrumental in this process, as high pressure likely leads to inertia, and low pressure to accommodation/absorption of norms (Börzel & Risse, 2003).

Bulmer & Padgett (2004) have identified a similar dynamic behind policy transfer in the European Union. This transfer can take on the forms of coercion, negotiation, or facilitated unilateralism. Whereas supranational authorities may coerce a state into adopting a certain policy, policy co-ordination through institutions is always of a unilateral, voluntary nature. In this case, institutions rely on persuasion to induce policy change in the member states and apply instruments such as the institutionalization of objectives, guidelines, benchmarking and performance monitoring in the process. In line with Börzel & Risse (2003), the likelihood of abortive transfer increases when conformation with new policies is conflictive with embedded national preferences (Bulmer & Padgett, 2004).

As will become clear below, the European institutions discussed in this paper all apply facilitated unilateralism to create changes with regard to national party law. Even the European Court of Human Rights, which is a supranational authority, does not have the power to coerce states into adopting a certain policy. The institutions use precisely those instruments as identified by Bulmer & Padgett (2003), namely the institutionalization of objectives, guidelines, benchmarking and performance monitoring. As such they apply low to medium pressure for adaptation. When determining the influence of *the European standards regarding political party legislation on national institutions* it is thus important to identify embedded national preferences. If these preferences differ highly from the proposed changes in legislation, pressure for adaptation is likely to result in the accommodation/absorption of norms rather than norm internalization. As such national institutions will either incorporate the new norm in their domestic structures without substantially modifying the institutions themselves or adapt existing institutions without changing their essential features rather than replace institutions by new, substantially different ones.

European standards on political party legislation

Over the last decade, several European institutions have developed an extensive array of rules, regulations, guidelines, and recommendations for political parties. This section of the paper describes the international instruments that currently exist in the field of political party legislation and distils from these instruments the general standards that the institutions apply. As was mentioned above, these standards consists of both a normative component related to the ills that the instrument aims to address and of a regulatory component which prescribes and proscribes certain types of party behavior, thereby permitting and inhibiting the effective functioning of parties. The institutions are discussed in order of normative pressure that they are able to exert over national institutions. As such, the European Court of Human Rights is discussed first, followed by the Council of Europe and the international party aid providers. The European Union is discussed last, as its work on political party legislation has no direct effect on national institutions, but rather reflects the trends in the standards of the other international institutions.

European Court of Human Rights

The interpretation of the European Convention of Human Rights (ECHR) by the ECtHR is not a static procedure but a progressive process that evolves over time (Keller & Stone Sweet, 2008). The general approach of the Court in its interpretation of the Convention is a teleological one, meaning that the Court aims to uphold the basic object and purpose of the Convention. However, the Court's room for interpretation is sometimes limited by the clear meaning of the text. The protection of human rights and the maintenance and promotion of the ideals and values of a democratic society are objects and purposes that are often applied in interpretation (Harris, O'Boyle & Warbrick, 2009). In light of the ideals and values of a democratic society, the Court has "recognized that 'democracy' supposes 'pluralism, tolerance and broadmindedness' (Harris, O'Boyle & Warbrick, 2009: p.6). In the process of interpreting the Convention, the Court relies on the principle of 'proportionality', meaning that the restriction must be an appropriate measure to achieve the legitimate aim pursued and upon the 'margin of appreciation doctrine', which means that the prime responsibility for the protection of fundamental rights lies within the democratic state itself. Further important principles are related to: 'fourth instance', meaning that the Court does not function as a further court of appeal; 'consistency', meaning that interpretation of the Convention should be based on the Convention as a whole rather than separate articles; and 'effective interpretation', meaning that the Convention must be interpreted in a way that ensures effective protection of rights. The development of Convention rights by the Court, i.e. the extension of the scope and content of substantive rights, is based on standards found outside of the Convention and on precedent-based case law developed by the Court itself. In general the Court aims to follow state practice and it relies on other sources of international human rights standards. Among these other sources are instruments of the Council of Europe (Harris, O'Boyle & Warbrick, 2009). The Court has built a precedent-based case law. Precedents provide grounds for Court rulings and Convention rights are developed through precedent-based rationales (Keller & Stone Sweet, 2008).

For the purpose of this study, the interpretation and development of the Convention need to be seen in the standard that the Court applies in the process. This standard is not static, however. Instead, it is adjusted on a continuous base through the cases that are brought before the ECtHR. The following sections show that over the last decade, the Court has developed extensive jurisprudence that both supports party proscription through national party law, thereby forbidding some parties from operating entirely, and permits other parties to operate freely as opposed to provisions in national party law. As such the Court protects certain parties over others and effectively prescribes a party ideal. This party ideal is based upon certain assumptions about the importance of political parties for democracy and the type of party that will uphold this role as opposed to other types of parties.

The interpretation of Article 11

The following rights are protected in Article 11 of the European Convention of Human Rights:

1. Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
2. No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or the administration of the State.

The *Young, James and Webster Case* (judgment of 13 August 1981, §57), albeit unrelated to political parties, led to an important first interpretation regarding Article 11 that has subsequently been applied to political parties ever since. In its ruling the Court established a connection between the freedom of association and Article 10, freedom of expression. “The protection of personal opinion afforded by Articles 9 and 10 (art. 9, art. 10) in the shape of freedom of thought, conscience and religion and of freedom of expression is also one of the purposes of freedom of association as guaranteed by Article 11 (art. 11). Accordingly, it strikes at the very substance of this Article (art. 11) to exert pressure, of the kind applied to the applicants, in order to compel someone to join an association contrary to his convictions” (§57). As of the *United Communist Party of Turkey Case*², this link gained importance in cases involving political parties. The Court ruled that parties play “an essential role in ensuring pluralism and the proper functioning of democracy” (§46), thus placing them firmly within the scope of Article 11.

From the *United Communist Party of Turkey Case* onwards, the Court follows three analytical steps to determine whether Article 11 has been breached:

² A list containing the issues, verdicts, and dates of judgment of all the ECtHR cases involving Article 11 and political parties can be found in Appendix 1.

- 1) The Court analyzes whether an interference with the applicant's rights granted by paragraph one of Article 11 took place. Not only the dissolution but also the refusal of authorities to register a party is seen as an interference with the applicant's rights. This does not mean that national authorities violate Article 11 when they refuse to register parties or associations with misleading or defamatory names (Mowbray, 2007).
- 2) If interference did take place, the Court determines whether the justifications for interference provided for under paragraph two of Article 11 were present. The first justification is 'prescription by law' (Mowbray, 2007). A finding of unlawfulness immediately results in the judgment of a breach of Article 11, as happened in the case of the *Presidential Party of Mordovia v. Russia*. Lawfulness implies that the interference is not only made with reference to law, but also that the law is formulated in such a way as to "enable those to whom it applies to foresee to a reasonable degree the consequences of their actions" (Harris, O'Boyle & Warbrick, 2009: p. 521). After establishing that the law prescribes the interference, the Court goes on to check whether the interference is justified because it protects one of the objectives specified in paragraph two and thus has a 'legitimate aim'.
- 3) The third step is to determine whether the interference was 'necessary in a democratic society' (Mowbray, 2007; Harris, O'Boyle & Warbrick, 2009). In cases involving political parties, the Court generally finds that the law did prescribe the interference and that the interference has a legitimate aim. It often differs with national governments on whether the interference was necessary in a democratic society. The Court has subsequently developed an extensive case law on these points.

Case law on political parties and democracy

The *United Communist Party of Turkey v. Turkey* Case created a precedent that has been upheld in all following cases related to political parties. This case contested a ruling of the Turkish Constitutional Court that dissolved the United Communist Party of Turkey (TBKP) and consequently banned its leaders from holding political office in other political parties (as established under Turkish law). The main reasons for this decision were the insertion of the word 'communist' into the name of the party and the mention that was made in the party's constitution and program of a Kurdish minority. Both of these issues conflicted with provisions within the Turkish Constitution and national law. The European Court of Human Rights ruled that the dissolution of the United Communist Party was a disproportionate penalty. It remarked that because of the important role that political parties play in a democratic society, the state only has a limited margin of appreciation when determining the necessity to restrict the right to freedom of association. This "goes hand in hand with rigorous European supervision embracing both the law and the decisions applying it, including those given by independent courts"³ (§46). In the same case the Court determined the limits within which political groups may conduct their activities while enjoying the protection of the Convention's provisions. A

³ Appendix 2 specifies all the cases that have subsequently invoked this argument of 'limited margin of appreciation'.

political group may 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”⁴ (§57). The standard that the Court upholds in this judgment consists of several elements. The first element is a normative one that indicates that the Court came to this specific ruling because of the importance of parties within a democratic society. As was already mentioned above, this case established that political parties fall under Article 11 because their essential role in ensuring pluralism and the proper functioning of democracy. Upholding these principles is the higher goal that the judgment aims to achieve. The regulatory element is very permissive towards the effective functioning of parties and warns states that they have a very limited amount of leeway in this field. The Court takes it upon itself to supervise decisions that inhibit the effective functioning of parties to ensure that they were taken in line with the ECHR provisions protecting party rights. As long as they play by the democratic rules, parties should be able to enter into public debate and into political life, even if they campaign on behalf of only a part of the State’s population.

In the *Socialist Party v. Turkey* Case the Court extended its case law on political parties. The applicants within this case maintained, and the Court ruled, that the dissolution of the Socialist Party by the Turkish Constitutional Court infringed upon their right to freedom of association. The Court determined that an infringement upon rights protected in Article 11 is only necessary in a democratic society when it meets a ‘pressing social need’ and when it is ‘proportionate to the aim pursued’⁵ (§49). It subsequently formulated the conditions under which a political party may campaign for political programs that challenge the basic ideology and constitutional structure of the state: “(1) the means used to that end must in every respect be legal and democratic; (2) the change proposed must itself be compatible with fundamental democratic principles. It necessarily follows that a political party whose leaders incite recourse to violence, or propose a policy which does not comply with one or more of the rules of democracy or is aimed at the destruction of democracy and infringement of the rights and freedoms afforded under democracy cannot lay claim to the protection of the Convention against penalties imposed for those reasons”⁶ (§46-47). In this case, the Court extends the permissive stance that it introduced in the *United Communist Party of Turkey* Case mentioned above. It adds to this position the conditions under which parties should be permitted to function effectively, even when the party’s proposals challenge the ideology and structure of the state. If these conditions are present, no ‘pressing social need’ exists to justify inhibiting their functioning and the dissolution of a party is not

⁴ Appendix 2 specifies all the cases that have subsequently invoked this argument of ‘the limits within which political groups may conduct their activities while enjoying the protection of the Convention’s provisions.’

⁵ Appendix 2 specifies all the cases that have subsequently invoked this argument of ‘necessary in a democratic society’.

⁶ Appendix 2 specifies all the cases that have subsequently invoked this argument of ‘the conditions under which a political party may campaign for political programs that challenge the basic ideology and constitutional structure of the state’.

‘proportionate to the aim pursued’. The Court shows a clear preference for a ‘immunized democratic’ approach to address anti-democratic threats or tendencies. This is an approach that is generally present in “strongly liberal democracies where the presumption is heavily against judicial measures and when the latter are used – in cases where ‘a clear and present danger’ exists ‘beyond a reasonable doubt’ – there are checks and balances which ensure they are stronger and last no longer than is strictly necessary” (Pedahzur, 2001, in Bale, 2007: p.143).

The *Socialist Party Case* thus determines that “the change proposed must itself be compatible with fundamental democratic principles” (§46-47. This poses definitional challenges (Janis, Kay, Bradley & MacColgan, 2008), as is clearly visible in the cases of *Yazar and Others v. Turkey* and *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*. Both cases involve the dissolution of political parties by the Turkish Constitutional Court, based on accusations that they sought to undermine Turkey’s national and territorial integrity by their references to the Kurdish cause. The ECtHR held that principles “such as the right to self-determination and recognition of language rights, are not in themselves contrary to the fundamental principles of democracy. ... if merely by advocating those principles a political group were held to be supporting acts of terrorism, that would reduce the possibility of dealing with related issues in the context of a democratic debate and would allow armed movements to monopolise support for the principles in question. That in turn would be strongly at variance with the spirit of Article 11 and the democratic principles on which it is based” (*Yazar and Others v. Turkey*, §57). According to the Court, the challenge these parties posed to the status quo of the state did no create a ‘pressing social need’ and their dissolution was thus disproportionate to the aim pursued (§57). This judgment again reflects the permissive stance and the ‘immunized democratic’ approach adopted by the Court. Judicial measures should only be taken in light of a clear threat to democracy and should be appropriate to the end they seek to achieve. The Court disagrees with the Turkish Constitutional Court that to advocate the right to self-determination and the recognition of language rights runs contrary to the fundamental principles of democracy. It states that the inhibition of the functioning of parties in such circumstances could create an even bigger threat to democracy and to Convention rights. The Court’s normative stance is also visible in this judgment. As was already mentioned above, political parties are important not only because they uphold democracy but also because they ensure pluralism within the party system.

The same does not go for principles regarding legal and political pluralism, however. In the case of the *Refah Partisi (Welfare Party) and Others v. Turkey* the Court found no violation of Article 11. Applicants in this case were the ‘Refah Partisi’ and its chairmen who held that the dissolution of the party, at the time part of the governing coalition, violated Article 11. The Turkish Constitutional Court had dissolved the party because of its activities against the principle of secularism. The ECtHR ruled the introduction of sharia to be “incompatible with the fundamental principles of democracy, as set forth in the Convention” (§123) and attached importance to extreme views expressed by leading members of the party regarding the use of violent means to achieve their political goals. The dissolution of the party thus met a ‘pressing social need’ as

this decision defended democratic principles that were at risk of being undermined. The Court put forward the following points to examine whether a dissolution is justified in this light: “(i) whether there was plausible evidence that the risk to democracy, supposing it had been proved to exist, was sufficiently imminent; (ii) whether the acts and speeches of the leaders and members of the political party concerned were imputable to the party as a whole; 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”” (§104). This method has subsequently been applied in the cases of *Linkov v. The Czech Republic* and *Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania*. In the *Socialist Party Case* the Court already established that a political party whose leaders incite recourse to violence does not comply with fundamental democratic principles. The fact that the Court finds the ‘Refah Partisi’ to present a ‘pressing social need’ because its leading members do not denounce the use of violent means to achieve political goals is thus nothing new. Its view on the acceptability of the political principles held by the ‘Refah Partisi’ adds a new element to its rather permissive stance on party functioning. In this case the Court moves from its previous permissive stance to a more inhibitive stance. According to the Court, the promotion of legal and political pluralism (i.e. multiple legal and political systems within one country) is incompatible with fundamental democratic principles). With this approach the Court shifts from the ‘immunized democracy’ category where extreme subversive parties are dealt with within the boundaries of the law and under consistent judicial examination to the ‘defending democracy’ category applied by regimes that, when under attack, “might consider flexing the boundaries of ‘the rule of law’ to enable a proper response to the challenges. Democracies of this sort may exclude political parties from taking part in elections as long as there is a constitutional or legal authorization to do so” (Pedahzur, 2001: p.352).

The Court also deemed a ‘pressing social need’ to allow for the dissolution of the Spanish Batasuna party and its proxies (*Herri Batasuna and Batasuna v. Spain*). The Spanish Court had banned the party after a review of evidence that showed the party to function as the political wing of the armed Basque separatist group ETA. “The Court endorses the arguments of the Supreme Court and Constitutional Court, and considers that the actions and speeches attributed to the political parties that constitute the group of complainants, give a clear image of the model of society conceived and advocated by the parties that would contradict the concept of “democratic society” (§93, translation FM). Again, an inhibitive element is added to the general permissive stance of the Court. The presence of a party that functions as a political wing for a terrorist organization is incompatible with fundamental democratic principles.

One last example of political party case law that the Court has established over the last decade is of a rather different nature than the previous ones. Instead of focusing on the conditions under which parties should be permitted or can be inhibited to function, this case focuses on the obligations of states towards parties. The Convention transfers not only negative obligations onto the Contracting Parties, i.e. obligations to refrain from violating the rights and freedoms embodied within the Convention, but also positive obligations to “secure the effective exercise of Convention rights” (Heringa & van Hoof, 2006:

p.836). With regard to Article 11, a positive obligation was established in the case of *Ouranio Toxo and Others v. Greece*. This case dealt with a situation in which authorities refrained from intervening in, and even participated in, a mob attack on the headquarters of a political party with links to the Macedonian minority living in Greece. The Court held that “where the authorities could reasonably foresee the danger of violence to members of an association and clear violations of freedom of association they should take appropriate measures to prevent, or at least contain, the violence. A related positive obligation is the duty to undertake an effective investigation into complaints of interference with freedom of association by acts of private individuals” (Harris, O’Boyle & Warbrick, 2009: p. 536). The Court thus established the precedent that protection of political party rights under the ECHR does not only mean that states should respect their rights, but also that states should actively ensure that party rights are not violated.

National and international standards

As was explained above, the development of Convention rights by the Court, i.e. the extension of the scope and content of substantive rights, is partly based on standards found outside of the Convention. In general the Court aims to follow state practice, although this does not necessarily mean that it waits until all states have adopted a specific interpretation of a right before it adjusts its interpretations. The Court furthermore relies on other sources of international human rights standards. Among these other sources are instruments of the Council of Europe (Harris, O’Boyle & Warbrick, 2009). Both of these standards have been used in cases related to political parties.

In the case of the *Partidul Comunistilor (Nepeceristi) and Ungureanu v Romania* the judgment of the Court relied in part on the practices in other states. The refusal of Romanian courts to register a communist political party was deemed a violation of Article 11 and a disproportionate measure as the party’s constitution and programme were found to uphold democratic principles. “[The Court] observes that that context cannot by itself justify the need for the interference, especially as communist parties adhering to Marxist ideology exist in a number of countries that are signatories to the Convention” (§58). In its judgments the Court thus has an eye for established practices in the member states.

The case of the *Parti Nationaliste Basque – Organisation Régionale D’Iparralde v. France* illustrates the fact that the Court uses other sources of international human rights standards to support its own opinion. The Court had to assess whether the rejection to authorize a funding association with connections to a foreign political party of the Basque Nationalist Party – Iparralde Regional Organization was a violation of Article 11. The Court was of the opinion that this prohibition “undoubtedly has a significant impact on [the party’s] financial resources and hence its ability to engage fully in its political activities” (§37). In its assessment of whether convincing and compelling reasons justified this restriction of the freedom of association, the Court noted that it failed to see how funding from a foreign political party (rather than a foreign State) undermined state sovereignty, especially in the light of the creation of transnational parties in the European Union. However, it ruled that this issue falls within the Contracting Party’s margin of appreciation and that this opinion

is supported both by other sources of international human rights standards such as the opinion of the Venice Commission and by national practice. In line with these standards, the Court found no violation of Article 11. Whereas in cases involving the dissolution of political parties, the Court has put a clear limit on the member states' margin of appreciation, this argument does not go for matters regarding party financing. Perhaps this is due to the fact that no clear standard for the regulation of party financing exists within the member states.

The case of *Herri Batasuna and Batasuna v. Spain* also included references to other sources of international human rights standards. The Court ruled that the Spanish authorities had not violated Article 11 when they banned the Batasuna party and its proxies in response to a pressing social need. For its assessment of whether this need was present, the Court relied on the European Framework Decision on the fight against terrorism, resolution 1308(2002) of the Parliamentary Assembly of the Council of Europe, and the Common Position of the European Council of 2003 (2003/402/CFSP) on the application of specific measures to combat terrorism. This shows that the Court can take into account human rights instruments of other European bodies, such as the Council of Europe and the European Union, when assessing the proportionality and the pressing social need that provide the rationale for the inhibition of effective party functioning.

Standard of the European Court of Human Rights regarding political party rights

The last decade has witnessed a profusion of ECtHR precedent-based case law on the right of freedom of association for political parties, which for the larger part resulted from cases against Turkey. The Court's judgments show a clear appreciation both for national practices regarding human rights standards and for other international human rights standards found at the European level. In order for states to stay clear of violating the ECHR, they should ensure that their political party legislation reflects the standard regarding political party rights established through this case law.

The previous analysis brought to light several normative and regulatory elements that make up this standard. The normative elements hold that parties are important within a democratic society because of their essential role in ensuring pluralism and the proper functioning of democracy. Upholding these principles is the higher goal that ECtHR judgments aim to achieve. Because the Court puts such importance on parties, it adopts a permissive regulatory stance towards the effective functioning of parties. States have a very limited amount of leeway to interfere with the effective functioning of parties and can only do so in light of a 'pressing social need' through the application of a measure proportionate to the aim pursued. A pressing social need is present when parties show an inclination to use violent means to achieve their goals or when they propose principles that run counter to fundamental democratic ones. Parties should be allowed to campaign for political programs that challenge the basic ideology and constitutional structure of the state, as long as they use legal and democratic means in the process and do not propose principles that run counter to fundamental democratic ones. They should also be allowed to advocate the right to self-determination and the recognition of language rights, as the prohibition of such programs runs counter to the normative goal of ensuring pluralism. The Court does not stretch the principle of democratic pluralism as far

as to include legal and political pluralism or terrorism. Parties that advocate such principles pose a threat to democracy, thereby creating a 'pressing social need' that allows for interference with their functioning. The Court has furthermore ruled that issues related to party financing fall within the margin of appreciation of its member states and that states have the positive obligation to protect party rights.

The Court's main standard is that because of their essential role within democracy and pluralism, the effective functioning of political parties should not be inhibited unless their behavior or principles pose a clear threat to democracy. Because of the Islamic and terrorist threats to democracy present in the *Refah Partisi v. Turkey* and the *Herri Batasuna and Batasuna v. Spain* Cases its standard changed from one that is commonly found in 'immunized democracies', or strongly liberal democracies that are generally opposed to judicial measures against political parties to one commonly found in 'defending democracies', or liberal democracies that change the boundaries of the 'rule of law' in response to a serious threat.

Council of Europe

Just as party law in various European countries, the work of the Council of Europe (CoE) on party law touches upon parties and party legislation in three ways. Its earliest body of work addresses the issue of prohibition and dissolution of political parties and looks at the more specific issue of extremist parties and movements and the consequences they present for the freedom of association. This is followed by work related to political party funding and corruption. Over the last two years the CoE has started working on the promotion of desirable internal characteristics of political parties. The following sections discuss each dimension in more detail to identify the normative and regulatory standards that the CoE applies.

Conditions and restrictions for political parties

The European Commission for Democracy through Law (Venice Commission) of the CoE has regulated the prohibition and dissolution of political parties in two sets of guidelines (see: Venice Commission, 1999; Venice Commission, 2004). Concerns with "the promotion of the fundamental principles of democracy", "the rule of law", and "the protection of human rights" (Venice Commission, 1999: p.4; 2004: p.2) lay at the base of these guidelines. The essential role that political parties play in democracy is emphasized and parties, freedom of political opinion and freedom of association are labeled the "primordial elements of any genuine democracy as envisaged by the Statute of the Council of Europe" (Venice Commission, 1999: p.4). Both documents stipulate that the right to associate freely in political parties is protected as part of the freedom of association protected under Article 11 of the European Convention of Human Rights and reference is made to the case law of the European Court of Human Rights.

The Recommendation and Resolutions adopted by the Parliamentary Assembly of the Council of Europe (PACE) show an interesting shift in the way that the Parliamentary Assembly addresses the threat to democracy by extremist parties and movements in Europe and the subsequent need to restrict political parties in the Council of Europe member states (Rec. 1438(2000), Res.

1308(2002) and Res. 1344(2003)). All documents apply the same ECHR-inspired legislative and normative framework as the previously mentioned guidelines, i.e. the principles of “legality”, “proportionality”, and “what is necessary in a democratic society”. The shift in the political and societal contexts that gave rise to the adoption of the Recommendation and Resolutions is accompanied, however, by a shift in the principles that the Recommendation and Resolutions place emphasis upon. The principle of proportionality is stretched to meet the growing need of democratic societies.

In 2000 the Assembly (Rec. 1438(2000)), concerned by the erosion of democratic values, makes no mention of the possibility to restrict extremist parties and movements but recommends its member states to combat “intolerance, xenophobia, discrimination and racism at the root” through education and the addressing of social and economic needs. After the events of 9/11, the Assembly adopts Resolution 1308(2002) in which it states that if a political party resorts to violence or poses a threat to law and order and the country's democratic system, it may be legitimate to ban or dissolve it. Preference is nonetheless given to less radical steps.

Resolution 1344(2003) moves even farther away from the preventive solution offered to the problem of political extremism in the first Recommendation. Countries are instructed to use restrictive measures whenever this is deemed necessary. Dissolution of extremist parties is acceptable in exceptional cases where parties pose a threat to the country's constitutional order. Whereas the 1999 Guidelines recommended prohibition of political parties in cases where parties use violence or advocate this use, Resolution 1344(2003) states that “even if [political extremism] does not directly advocate violence, it generates a climate conducive to the escalation of violence. It is a direct threat because it jeopardizes the democratic constitutional order and freedoms, and an indirect threat because it can distort political life”. Likewise, the 1999 Guidelines differentiate between party behavior and the behavior of individual party members, whereas Resolution 1344(2003) calls for the application or introduction of “effective penalties where cases of proven damage caused by an extremist political party or one of its members are established”. It is not clear whether the party is to be punished for the behavior of its members or not, but this invitation certainly links extremist political parties to their members. The Resolution's concern with the party's internal functioning is another new aspect linked to political extremism that was not mentioned in the previous Guidelines and Resolutions. According to the preambles “[e]xtremist parties and movements are often oligarchies with a strong hierarchical structure, which do not apply democratic principles internally”. This concern may well have resulted in point 4 of the Resolution which invites political parties “to devise a new code of ethics, basing their programmes and activities on respect for fundamental rights and freedoms”.

The CoE documents on the prohibition and dissolution of political parties show a clear shift from the standard that they apply regarding this issue. With regard to the normative side of this standard, the documents mention that political parties play an essential role within democracy and should therefore be protected against measures that aim to prohibit or dissolve them. Before the events of 9/11 extremist parties and movements are seen as a representation of undemocratic sentiments in society. The CoE thus seeks to counter their rise

through measures that address the roots of these sentiments, rather than the parties themselves. In 2002 the CoE states that extremist parties that resort to violent means pose a threat to democracy. If necessary, states can legitimately decide to ban or dissolve them. In 2003 the CoE takes this point of view even further by establishing that not only violent extremist parties pose a threat to democracy but that political extremism in general does so as well. It also introduces the internal party structure as one of the elements that determine whether a party is an extremist one or not. The standard of the CoE has thus moved from permissive towards more restrictive of the effective functioning of parties. As such, it portrays a similar shift as the ECtHR from applying an approach common in 'immunized democracies' to one commonly found in 'defending democracies'.

Political party financing

The Guidelines and report on the financing of political parties (Venice Commission, 2001) are the CoE's first body of work regarding political party financing. The document is based on a comparative report of national legislation of political party finance and thereby pays attention to state practice in this area. In the introduction to the Guidelines the Commission notes its concern caused by recent financial scandals involving political parties in Europe. This type of behavior is incompatible with "the essential role of political parties within democracy" (p.2). The document addresses issues such as public financing, private financing, electoral campaigns, and control and sanctions. Public funding should be distributed equally and entail an element of transparency. Private financing is acceptable, but limitations upon it can be envisaged. Electoral campaign expenses should be subject to a ceiling and irregularities in party financing should be met by sanctions.

The Parliamentary Assembly expresses a concern similar to that of the Venice Commission when it notes that citizens are increasingly distrustful of political parties due to corruption scandals and the fading independence of political parties from financial means. Since parties are "an essential element of pluralistic democracies", the Assembly proposes changes in legislation on political party financing to help citizens regain their confidence in the political system. Issues that need to be addressed through the regulation of party finances consist of corruption, the loss of independence of political parties, and the wielding of disproportionate influence on political decisions through financial means. The main difference with the Venice Commission Guidelines lies in the addition of rationale for several of these measures. Political parties should receive financial contributions from the state budget in order to prevent dependency on private donors and to guarantee equality of chances between political parties (but: excessive reliance on state funding can lead to the weakening of links between parties and their electorate); specific rules need to be applied to private financing as this type of financing, and donations in particular, creates opportunities for influence and corruption. The Parliamentary Assembly also introduces a new measure, namely the encouragement of citizen participation in political parties as an additional source of financial support for them.

The Committee of Ministers' Recommendation (2003)⁴ on common rules against corruption in the funding of political parties and electoral campaigns has

two goals. Firstly, it aims to achieve greater unity between member states' rules in this field. Secondly, it aims to fight corrupt practices that are currently plaguing political parties. The Recommendation largely mirrors the concerns put forward in the previous documents regarding the important role that parties play in democracy and the discrediting of parties that occurs through corruption scandals. The rules that the Committee recommends to member States embody most of the points mentioned in the previous two texts: public funding, private funding, donations, elections, transparency, supervision, and sanctions. It does not mention rationale for these rules, as the PACE Recommendation did. Instead, the focus of these rules lies more in the specification of general principles that legislation should apply. As such, "states should ensure that any support from the state and/or citizens does not interfere with the independence of political parties", and donations should 'avoid conflicts of interest; ensure transparency of donations and avoid secret donations; avoid prejudice to the activities of political parties; and 'ensure the independence of political parties' (Article 3:a).

Funding from foreign donors presents a thorny issue for the CoE. Whereas the Recommendation of the Committee of Ministers prohibits all donations from foreign donors (Article 7), the Venice Commission explicitly holds that "this prohibition should not prevent financial donations from nationals living abroad" (Guideline 6). At the request of the European Court on Human Rights the Venice Commission drew up an opinion on the prohibition of financial contributions to political parties from foreign sources (2006). Through a comparison of national party legislation on the financing of political parties by foreign political parties the Venice Commission found that the financing of political parties by foreign political parties is commonly prohibited or limited by the member States. However, under Community law, financing of a political party established in a member country of the EU by a party established in another member state of the EU may only be restricted or prohibited based on exceptional circumstances related to public security. This opinion does not provide any new guidelines on political party financing. However, it does touch upon the interplay between European legislation and national legislation.

The standard regarding political party financing applied by the three CoE bodies consists of normative and regulatory elements. The normative element is formed by the argument that political parties play an essential role in democracy. Corruption scandals lead to the loss of public trust in their functioning and are therefore detrimental to the parties' ability to fulfill this essential role. Furthermore, the providers of party funding should not be able to exert influence over the party as this would create a situation of unequal representation. All three bodies roughly apply similar regulatory elements to address these perceived ills. Political parties should receive public funding in an equal, transparent, and independent manner to prevent party dependency on private donors. Private financing is acceptable but should be of a limited value, should be provided in a transparent manner, and should not endanger the independence of parties. Not all legal entities should be able to give private donations to parties. Electoral campaign expenses should be subject to a ceiling, accounts should be publicized and monitored independently, and irregularities in party financing should be met by sanctions. The Parliamentary Assembly would also like to see parties increase their membership base as an additional source of funding. Although the Venice Commission recommends enabling some forms of foreign

party funding, the Recommendation of the Committee of Ministers, which has a higher standing, outlaws all foreign donations.

Internal party organization

From the mid-2000s onwards the CoE has directed its focus towards the development of democracy. Within its integrated 'Making democratic institutions work' project constant mention is made of the importance of and problems related to effective representation (Pratchett & Lowndes, 2004: p.53) and of political discontent and its effects on liberal democracy (Schmitter & Trechsel, 2004). The development of internal party democracy is offered as a desirable solution to these developments (Schmitter & Trechsel, 2004).

PACE Resolution 1407(2004) New concepts to evaluate the state of democratic development addresses the "dangerous crisis which can be seen in the low turn-out at elections, lack of interest and low participation of citizens in public life [and] decreasing respect for and confidence in political parties and politicians" (p.1). According to the Assembly the full integration of democratic norms and practices is needed to ensure sustainable democratic reform and development. PACE Recommendation 1680(2004) 'New concepts to evaluate the state of democratic development' focuses on the courses of action that the CoE bodies need to undertake to complement the proposals put forward in the previous Resolution. Two things stand out in this Recommendation. Firstly, the Recommendation states that there is a need for "clear European guidelines on how political parties could be financed" (p.1). It does not mention Recommendation 2003(4), which produced clear European guidelines on how political parties should be financed. Secondly, the Assembly instructs its competent steering committee to develop a code of good practice for political parties.

The aim of PACE Resolution 1546(2007) Code of good practice for political parties is to address the crisis in public confidence that political parties face as it discredits the entire democratic system. It introduces several steps that political parties should take to enhance the reputation of the political system. These steps consist of improving their receptiveness to the concerns of individual citizens; improving their accountability; enhancing the role of the elected representatives; becoming more transparent and open; and refraining from making unrealistic promises to voters. It furthermore discusses the idea of a code of good practice for political parties, which would reinforce parties' internal democracy, thereby increasing citizen appreciation of parties.

As mandated in PACE Resolution 1546(2007), the Venice Commission created a Code of good practice in the field of political parties (2009). In line with previous CoE documents, prohibition or enforced dissolution of political parties is only justified in cases where parties advocate the use of violence or use violence as a political means to overthrow the democratic constitutional order. The Code applies the following guiding principles for political parties: 'rule of law', i.e. political parties should uphold international values on the exercise of civil and political rights; 'democracy', i.e. commitment to internal democracy is beneficial towards a democratic party system; 'non-discrimination', i.e. parties should adhere to ECHR standards regarding discrimination; and 'transparency and openness', i.e. "parties should offer access to their programmatic and ideological documents and discussions, to decision-making procedures and to

party accounts in order to enhance transparency and to be consistent with sound principles of good governance” (p.7). Other principles that are not explicitly mentioned in the explanatory section but that the Commission applies throughout the document consist of ‘representativeness and receptiveness’ and ‘responsibility and accountability’. These principles can perhaps be interpreted as belonging to the principle ‘democracy’. Likewise, ‘democracy’ appears to entail an element of participation (point 35) and international co-operation (point 58). Education is introduced as an aspect that needs to be arranged through parties. It is probable that training is added to spread democratic values or to encourage good practice within parties. Either way, this point adds an educational democratic norm to the Code. Point 28 is an interesting one in that it reveals that this Code targets European parties as well which it recommends should look at the contribution that direct membership could make on the legitimacy of transnational parties.

The Code of good practice very precisely specifies the best practices with regard to the internal organization of political parties. The membership criteria of a political party should be transparently communicated through party statutes and should not be discriminatory or obligatory. Party membership may be refused to individuals that reject the values of the party or that are prohibited through domestic law to affiliate with a party. Transnational parties should think about the reinforcing effect on legitimacy that direct membership could provide them with. The party should clearly specify its structure and procedures in a party statute. These structures and procedures should reflect the opinion of the party members, should be available in a transparent manner, and should encourage accountable and responsible party behavior. Decision-making procedures that rely on principles of direct democracy or democratic delegation are preferable over other ones. The same goes for procedures regarding the appointment of leaders and candidates for election. Appointments should be made in a non-discriminatory manner. Care must be taken to create channels of communication between grassroots members and party leaders. Party statutes must be drawn up in line with constitutional, legal, and ECHR regulations, should establish a procedure for statutory change, must specify disciplinary procedures, and should define the national, regional or local organization of the party.

The Code of good practice also touches upon the issue of party funding. Some differences are visible between these guidelines and the documents on the regulation on party funding discussed above. The Code has a broader aim than merely battling corruption, namely the need to reinforce political parties’ internal democracy. This is reflected in one of the points on party funding, which states that a party may not discriminate through the amount of dues it asks its members to pay. The Code furthermore targets political parties themselves, rather than political party legislation. The guidelines prescribe certain types of behavior that parties should display with regard to party financing: parties must adhere to laws; parties must refrain from receiving certain types of financial assistance; parties must ensure that their candidates adhere to regulations, party funding should be organized in an accountable and transparent manner, and parties should include auditory and supervisory mechanisms in their statutes. Interestingly enough, the Venice Commission fails to refer to the 2003 CoE Committee of Ministers Recommendation on common rules against corruption in the funding of political parties and electoral campaigns.

As mentioned above, the Code discusses several specific functions of political parties. Parties should create a party program in a democratic manner. Although party programs are not binding, they should be published to promote transparency and accountability. Alterations to the program should be explained to the public. Parties should provide civic and political training and should cooperate internationally with other parties as a measure to creating solid democratic party systems. When in office, party members should take note of existing legislation when implementing their party program and should refrain from taking measures that create discriminatory conditions for other political forces. Both ruling and opposition parties must take care that their practices do not lead to erosion of the democratic debate and should inform civil society and voters in a transparent manner about their actions. They should also aim to fight corruption because of its ability to create public discontent with parties. Representatives should not change parties out of private interests and parties should actively create policies that counter these tendencies.

According to the CoE, the representational impasse that parties currently find themselves in, which is the result of a crisis of public confidence and political discontent, forms an ill that undermines the functioning of liberal democracy. The CoE hopes to solve this impasse through the full integration of democratic norms and practices in political parties. Parties should therefore attempt to become more receptive, open, transparent, and accountable. They must show their responsibility by dedicating themselves to credible electoral promises and by enhancing the role of their representatives. These normative elements are reflected within the Venice Commission's Code of good practice. This document prescribes guidelines for parties on the principles of 'rule of law', 'democracy', 'non-discrimination', 'transparency and openness', 'receptiveness and representativeness', and 'responsibility and accountability'. The Code offers standards and examples of good practice on the following aspects related to political parties: internal organization of political parties (membership, organization, and appointment of leaders and candidates for election), funding (private and public sources, restrictions, and supervisory mechanisms), and political functions (program, training, elections, performance in office and opposition, and international co-operation). The Code and its explanatory report do not elaborate on the selection of these specific aspects or the omission of other aspects related to political parties. This is particularly questionable for the political functions part, where the Code identifies functions such as training and international co-operation. It does not become clear why these functions are essential elements of parties and why standards of good practice need to be developed for them.

Standard of the European Court of Human Rights regarding political parties

The standard regarding political parties and political party legislation that the CoE applies has changed over the years. This change has occurred both within the normative element of the standard and within the dimensions that the CoE addresses. The first body of work of the CoE is concerned with the protection of political parties' freedom of association and with the rise of extremist parties in Europe. The normative argument that the CoE applies is that political parties play an essential role within democracy and should therefore be protected against measures that aim to prohibit or dissolve them. Before the events of 9/11

extremist parties are seen as an ill of society rather than democracy. The normative element changes after 9/11 when extremist parties come to be seen as a direct threat to democracy because of the creation of violent tendencies that their policies may entail. As such the approach has shifted from that of an “immunize democracy” to that of a “defending democracy”. From 2002 onwards, the Parliamentary Assembly thus announces that states can legitimately decide to ban or dissolve them. In its 2003 Resolution the Parliamentary Assembly includes the internal party structure as one of the determinants of an extremist party. The regulatory standard of the CoE has thus moved from permissive towards more restrictive of the effective functioning of parties.

Political party funding is a second dimension that the CoE becomes interested in. The Venice Commission publishes its first body of work on party funding in 2001, which culminates in a Committee of Ministers Recommendation in 2003. Again, the normative element of the standard applied here is formed by the argument that political parties play an essential role in democracy. Corruption scandals lead to the loss of public trust in their functioning and are therefore detrimental to the parties’ ability to fulfill this essential role. Furthermore, the providers of party funding should not be able to exert influence over the party as this would create a situation of unequal representation. All three bodies roughly apply similar regulatory elements to address these perceived ills. The CoE touches upon elements such as public and private funding, electoral campaign expenses, and monitoring and sanctioning procedures. The issue of foreign donations is a contentious one. These guidelines and recommendations are rather prescriptive and proscriptive of various types of party behavior.

From 2004 onwards the CoE becomes more concerned with the dimension of internal party organization. The norm behind this new direction reflects the normative concern present in its work on party funding. Parties find themselves in a crisis of public confidence, which undermines the functioning of liberal democracy, and should therefore incorporate democratic norms and practices into their internal structure to address this ill. They should attempt to become more receptive, open, transparent, and accountable. These normative elements are reflected within the Venice Commission’s Code of good practice, which applies the principles of ‘rule of law’, ‘democracy’, ‘non-discrimination’, ‘transparency and openness’, ‘receptiveness and representativeness’, and ‘responsibility and accountability’ to internal organization of parties, their funding, and their political functions. The Code of good practice is thus very prescriptive and proscriptive of the various types of party behavior.

International party aid

Party aid offered by international organizations addresses national political parties and political party legislation. Party aid is best defined as “any type of international assistance geared towards individual parties or the party system as a whole, with the purpose of strengthening democracy in a given country” (Catón, 2007: p.6). The aid providers consist of partisan non-governmental organizations (NGOs), multi-partisan NGOs, non-partisan NGOs and intergovernmental organizations (Catón, 2007). Their support comes in the form of a party-to-party or multi-partisan approach, a cross-party dialogue or a focus

on institutions. Aid providers usually do not apply one type of aid but combine several ones (Burnell, 2004).

Within the party-to-party approach, partisan NGOs collaborate with ideological partners, the so-called fraternal or sister parties, in other countries (Burnell, 2004). Examples of partisan NGOs that apply this approach are found in Germany, Spain, Sweden, and the United Kingdom (Öhman et al., 2005). Some difficulties exist in the process of selecting suitable sister parties. Parties on other continents often refrain from using ideologies as a foundation to build their work on. The desirability of favoring one party over others may be questionable, and the limited life span of new parties often inhibits cooperation (Burnell, 2004).

Within the multi-partisan approach organizations assist several, but not necessarily all parties in the process of developing democracy and parties. When using this approach it is important to offer equal opportunities to all parties. However, parties may be excluded because of a non-democratic or anti-democratic character or because they portray a preference for the use of violent methods. The British Westminster Foundation for Democracy (WFD) is an organization that combines close party-to-party relations with a cross-party approach (Burnell, 2004). In the United States the National Democratic Institute for International Affairs (NDI) and the International Republican Institute (IRI) are the main actors engaged in party aid. They receive funding from the National Endowment for Democracy (NED) and the United States Agency for International Development (USAID) and mainly undertake their work on a non-partisan basis (Öhman et al., 2005).

Cross-party dialogue aims to improve the party system through discussions among parties. This type of program focuses on reaching inter-party agreements on the rules of the democratic game, leading to the consolidation of multi-party democracy. The Netherlands Institute for Multi-party Democracy (NIMD) applies this approach. Many democracy promotion organizations also apply this approach themselves as a means to coordinate their activities in the field (Burnell, 2004).

The institutional approach focuses on the influence of the institutional context on political parties. Main points within this approach are the electoral system, the way parties are financed and the regulation concerning expenditure in elections, and the rules related to party registration and the sanctioning of their activities (Burnell, 2004). Organizations such as International IDEA and the UNDP specifically apply the institutional approach (Catón, 2007).

The following sections analyze several of the approaches used to provide political party aid and thereby determine the standards regarding parties and party legislation that this aid applies.

Multi-party approach

The Westminster Foundation for Democracy was founded in 1992 and has two functions. It transfers money to British political parties to support party-to-party aid and it runs its own multi-party programs that aim to support political parties and pluralistic democratic institutions (Öhman et al., 2005). According to a publication of the WFD (Burnell, 2004) an effective party system, one of the essential elements of the process of democratization, is a system that is neither fragmented nor polarized. The electorate should be presented with meaningful

choices and parties should engage in responsible political competition. An effective system is also institutionalized, which means that it offers the electorate the opportunity to hold the elected leaders responsible for their behavior in office. Strategies that address the current worldwide decline in public confidence in political parties should be tailored to specific political situations. A variety of approaches (multi-party, institutional, etc.) are often thought to be most appropriate given the political context of a country's party system. The strategies should promote a party structure that is open to influence and participation at the grass-roots level and that is increasingly open to women's participation. Benchmarks for party development should include "levels of financial transparency, the development of a membership base, internal party democracy and opportunities for political progression by women" (Burnell, 2004: p. 23).

Both the International Republican Institute (IRI) and the National Democratic Institute for International Affairs (NDI) were formed in 1980s. Although they are linked to the two main American political parties, their support is of a non-partisan nature (Öhman et al., 2005). The NDI's program for political parties encompasses five areas: comparative research, party systems, internal organization and structure, elections and campaigning, and legislative performance. With regard to the internal organization and structure of political parties, the NDI aims to create clear internal management and communication structures, organizational strength, and internal democracy. Parties should apply transparent and participative procedures to select candidates, elect leaders, and formulate policies. The NDI therefore focuses on enhancing internal party rules and procedures, on strengthening party branches, on improving a party's membership outreach practices, and on increasing opportunities for participation by historically marginalized groups. A series of papers on various aspects of political parties within democracy, such as the selection of candidates for legislative office, the implementation of intra-party democracy, and the developments in party communications, form the theoretical basis for this party aid design (NDI, 2009).

The NED is a private NGO that receives an annual appropriation from the U.S. Congress to provide grants to groups that strengthen democratic institutions around the world. Its grants for political party projects are structured through the NDI and IRI (NED, 2009). Its aim is to establish multiparty systems with institutionalized parties that are accountable to society at large. The NED applies a multi-party approach and only allows for the exclusion of parties that are not committed to democratic values. NED grants are used to provide infrastructure support and training in the fields of party organization and grassroots membership recruitment. The grants may not be applied to finance political campaigns (NED, 2008).

USAID is an independent federal U.S. government agency that among other things provides financial assistance to projects that promote more genuine and competitive elections and political processes. For USAID, political parties are central to a well-performing democracy. Special attention should be paid to the performance of parties in office, as this is where they gain credibility and legitimacy. USAID political party aid aims to achieve four goals: 1) develop and consolidate representative democracies; 2) develop transparent political environments; 3) establish viable democratic parties; and 4) ensure free and fair elections. Like the NED, USAID offers multi-party support and does not provide

party aid during election time. In order to determine whether a party adheres to democratic values, and is thus eligible for aid, USAID applies the following indicators: 1) support for peaceful, democratic means to obtain power; 2) respect for human rights and the rule of law; and 3) respect for freedom of religion, press, speech, and association (USAID, 2003). Programming in organizational development is most prevalent (Shaiko, 1999). In this area political party aid encourages parties to “demonstrate commitment to transparent, inclusive, and accountable democratic political processes”, to “adopt institutional structures that enable them to reflect the interests of those they choose to represent, and to compete effectively in periodic elections at all levels”, and to gain “the confidence of citizens, encourage citizen participation, and reinforce the legitimacy of democracy governance” (USAID, 1998: p.12-13).

Cross-party approach

The Netherlands Institute for Multiparty Democracy was founded in 2001. The NIMD is financed by the ministry of foreign affairs and sponsors impartial and inclusive projects. All Dutch parliamentary parties provide representatives for the organization's administration. The parties also participate in and cooperate with the various projects (Öhman et al., 2005).

According to NIMD's *Institutional Development Handbook: a framework for democratic party-building* (2005) too much emphasis is put on the competitive function of democracy and more attention should be paid to the process through which democracy is constructed. This process consists of party elements such as participation, inclusiveness, tolerance and consensus building. Institutional development is defined as “the process whereby parties become better organized, practice democratic values and establish rules and procedures that will allow them to compete more effectively and be more successful in elections and at implementing their policy preferences” (p.8). The NIMD's strategy is to avoid moving too rapidly when trying to democratize a party. Priority is given to gaining knowledge of (informal) party behavior before a course of action is decided upon (Mimpen, 2007).

Criteria and indicators for measurement of the degree of democratic institutionalization of political parties lie in at least five areas: organizational strength, internal democracy, political identity, internal party unity, and electioneering capacity. Organizational strength means that parties can create durable strength through the application of foresight, endurance, resources and stability. Internal democracy means that a political party has “impersonal rules and procedures to avoid the arbitrary control of internal elections and party functioning by individual leaders or cliques” (Mimpen, 2007: p.11). Party finance and issues of electivity, accountability, transparency, inclusivity, participation, and representation are crucial in this area (Mimpen, 2007). Political identity is important because once identity is based on a clear policy orientation it can compete with materialistic opportunities and rewards over recruitment. Internal unity must be strengthened to ensure that democratic pluralism will not lead to factionalism. The NIMD aims to strengthen the electioneering capacity of parties through a strategy that combines party programs with constituency needs and the political environment. However, it does feel that party activists must refrain from too much party structuring, as this could inhibit institutional change and

renewal and might even provoke a rupture between the party or party system and a changing civil society (NIMD, 2004).

Institutional approach

International IDEA is a Swedish-based intergovernmental organization with a mission to support sustainable democracy. Its division on political parties has developed the following initiatives: internal democracy in political parties; effective party aid; parties in conflict-prone societies; political party finance; and research and dialogue on political parties (International IDEA, 2009a). The internal democracy initiative focuses on the development of more democratic, transparent and effective political parties through the identification of specific challenges for the internal management and functioning of parties and party systems. IDEA puts a specific focus on candidate selection, leadership selection, policymaking, membership relations, gender, minorities, youth and party funding (International IDEA, 2009b). Its aid focuses on party regulations in an attempt to create a favourable framework within which parties can work. Of importance in this regard are topics such as party registration, compliance requirements and party financing (Catón, 2007: p.15).

Standard of the party aid providers regarding political parties and party legislation

Party aid aims to address the ill of problematic democratic development, which is the consequence of the malfunctioning of political parties. Malfunctioning parties do not govern effectively and create a loss of public confidence and of participation in parties. The standard that party aid providers apply in their work regarding party systems and party organization has a normative element that prescribes an ideal for parties and party systems that would do away with this ill.

Carothers (2006) deduced that “party aid organizations operate from a number of more specific ideas of what is a desirable party system: (1) political power within the system should be distributed among at least a few parties and not held primarily or by just one party; (2) at the same time, the system should not be fragmented among a large number of parties; (3) the system should be relatively stable but not so much that it prevents the entry of new parties; (4) the system should embody a fair amount of ideological diversity yet not be polarized around extremes” (p.98). The presence of such party systems is expected to lead to stable democracies. This element is visible in the analysis of the various party aid providers presented above. The WFD identifies party systems that are neither fragmented nor polarized, that offer meaningful choices and that are characterized by responsible party competition and institutionalization as essential elements for democratization. Likewise the NED aims to establish accountable multiparty systems with institutionalized parties.

Creating effective parties is a central element within the strategies that aid providers apply to promote democratic change and development. They apply several regulatory principles, such as inclusiveness, representativeness, transparency, accountability, and institutionalization, that parties need to live up, in order for them to be able to play their democratizing role. In the words of Carothers (2006) they “seek to help build parties that are competently managed, internally democratic, well-rooted in society, law-abiding, financially transparent and adequately funded, ideologically defined, inclusive of women and youth,

effective at campaigning (especially grassroots campaigning), and capable of governing effectively. As was shown above, all party aid providers apply regulatory programs that aim to prescribe and proscribe party behavior based on these ideals, be it through their work with parties themselves, with party systems or with party legislation. In the process the party aid providers prefer to work with existing parties that adhere to democratic values. This preference, combined with their preference for smaller party-systems without parties that hold an extreme ideology, makes that they are less concerned with the permission of effective functioning of parties than organizations that highly value the maintenance of democratic pluralism.

European Union

The Maastricht Treaty

The history of the European Parliament goes back to the creation of the Common Assembly of the European Coal and Steel Community (ECSC) in 1952. This body was subsequently transformed into the consultative European Parliamentary Assembly in 1958 and the European Parliament in 1962. In 1970 the Parliament gained power over areas of the Community's budget and in 1975 this power was extended to power over the whole budget (Dinan, 2005). 1979 saw the first direct elections to the parliament, which led to the formation of transnational party federations at the European level (Lightfoot, 2005). These federations built upon the long history of party cooperation in the Common Assembly of the ECSC and the European Parliamentary Assembly (Jansen, 2006). The elected parliament obtained increasing legislative and supervisory authority through several rounds of treaty reform (Dinan, 2005).

A first mention of political parties in the context of the European Parliament is made in Art. 138a of the Maastricht Treaty, which states that:

“Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union.”

Several European political scholars hold that intense pressure exerted by the transnational party federations lay at the base of the incorporation of Article 138a into the Maastricht Treaty. (Dinan, 2005; Lightfoot, 2005; Hix & Lord, 1997). According to Dinan (2005) the transnational party federations' use of concepts such as democracy and accountability has been a common feature of their attempts over the years to gain more power. The European People's Party (EPP), formed “a coalition of the willing” with the Socialist CSP and Liberal ELDR party federations (Johansson & Raunio, 2005: p.522). It used its connections to European high officials to ensure that the clause on political parties entered the Treaty (Jansen, 2006; Johansson & Raunio, 2005). The Maastricht European Council did indeed accept the clause, although the wording of the article remained open (Jansen, 2006), falling short of the “more substantial and precise wordings proposed on various occasions by the presidents of the three party federations. The Article specified neither the funding of Europarties nor their role in European elections and nomination procedures” (Johansson & Raunio, 2005: p.522).

The Nice Treaty

Upon conclusion of the Maastricht summit, several attempts were made to broaden the scope of Article 138a. No progress on the issue of a party statute was made during this Amsterdam Intergovernmental Conference (IGC) as more salient issues with regard to EU enlargement and the development of the foreign and security policy took precedence (Johansson & Raunio, 2005). The Amsterdam Treaty made but one change to the party article; it changed the article's position from Art. 138a to Art. 191 (Schönlau, 2006).

The five main Europarties combined their strengths to put a revision of the Article, so as to include legislation and funding of European political parties, on the agenda of the Nice IGC held in 2000 (Johansson & Raunio, 2005; Lightfoot, 2005; Hix & Lesse, 2002). The line of argumentation used in support of this view was similar to that used to clear the way for Article 138a, namely that strong European parties could become essential for the upholding of democratic life and political debate in the Union" (Johansson & Raunio, 2005). The parties were aided in their quest by a ruling of the European Court of Auditors, which held that the financial support that European party federations received from their parliamentary groups' budgets was illicit and had to be terminated (Johansson & Raunio, 2005; Lightfoot, 2005; Jansen, 2006). Intensive lobbying of individual MEPs and the leaders of the Europarties brought the issue to the IGC agenda. The day before the European Council summit, the EPP hosted a summit during which the leaders reached a cross-party agreement on the issue. The Nice European Council in December 2000 adopted a legal basis for legislators to create a statute for political parties at European level. The following paragraph was added to Article 138a of the Maastricht Treaty:

"The Council, acting in accordance with the procedure referred to in Article 251, shall lay down the regulations governing political parties at European level and in particular the rules regarding their funding"

Regulation (EC) No 2004/2003

The Nice Treaty cleared the way for the introduction of European party legislation, but remained silent on matters of content. In 2001 the Commission submitted a proposal to the Parliament and the Council (Johansson & Raunio, 2005). The Council of Ministers failed to unanimously accept a statute due to several disagreements regarding the need for parties to adhere to democratic principles, the need for representation in a certain amount of countries in order to be recognized, and issues of party funding (Hix & Lesse, 2002). Furthermore, several countries feared that a legal status or personality of European political parties would create momentum for the "'federal' development of the union into a more and more 'state-like' polity" (Schönlau, 2006: p. 145).

With the coming into force of the Nice Treaty in 2003, Qualified Majority Voting (QMV) was introduced to the process, thereby eliminating the need for unanimity in the Council. The Commission swiftly proposed a new directive (Jansen, 2006). The statute was a far cry from the initial ideas of the Parliament's Constitutional Affairs committee (Schönlau, 2006), but the Parliament and the Council both accepted it in June 2003 (Jansen, 2006).

Regulation (EC) No 2004/2003 defines a political party at European level as a body with members that are either citizens gathered together in the form of

a political party or political parties which together form an alliance. In order to be recognized as a party, this body must “have legal personality in the Member State in which its seat is located”; must “be represented in at least one quarter of Member States, by Members of the European Parliament or in the national Parliaments or regional Parliaments or in the regional assemblies, or it must have received, in at least one quarter of the Member States, at least three per cent of the votes cast in each of those Member States at the most recent European Parliament elections” (§3). It furthermore establishes that parties need to observe the principles on which the European Union is founded and that they should (intent to) participate in European elections. The procedures through which parties can apply for funding are specified as are the measures through which the Parliament can verify whether the applicants still qualify as parties. The regulation puts some restrictions on party behavior with regard to types of funding that parties are not allowed to accept and types of spending that they are not allowed to engage in. It prescribes behavior with regard to transparency of party funding and the nature of expenditure that is allowable.

Resolution 2005/2224 (INI)

Article 12 of Regulation (EC) No 2004/2003 stipulates that:

“The European Parliament shall publish a report not later than 15 February 2006 on the application of this Regulation and the activities funded. The report shall indicate, where appropriate, possible amendment to be made to the funding system.”

In March 2006 the Constitutional Affairs Committee presented this report to the European Parliament. The proposals for a European party statute, the establishment of political foundations at European level to encourage cross-border political communication, and the creation of European lists in future European elections reached a lot further than the financial aspects that had been regulated so far (Leinen, 2006).

Upon reception of this report, the Parliament adopted non-legislative Resolution 2005/2224 (INI) in which it noted the existence of public ignorance of and disinterest in European institutions because of inadequate political communication and information on policy. The resolution presented strong European parties as the key element to address this problem. It furthermore advocated the elaboration of a genuine European party statute, including provisions on individual membership of European parties, on their management, and on the nomination of candidates, in order to create such strong parties. The Resolution mentioned several new structural issues that it requested the Commission to take into account: European political foundations, European party lists, and European political youth foundations.

The Resolution resulted in Regulation (EC) 1524/2007 amending Regulation (EC) No 2004/2003 and in a Feasibility study of a future European Statute of European Political Parties issued by the Committee of Constitutional Affairs.

Regulation (EC) 1524/2007

Although Regulation (EC) 1524/2007 is a lengthy document, it merely amends Regulation (EC) 2004/2003 on five points. Most importantly, it adds political

foundations to those political institutions eligible for European funding as they “may through their activities support and underpin the objectives of the political parties at European level notably in terms of contributing to the debate on European public policy issues and on European integration, including by acting as catalysts for new ideas, analysis and policy options” (p.1). Note that contrary to the Parliament’s wishes, the Regulation does not include youth organizations as institutions eligible for European funding. Secondly, ‘donations from any public authority from a third country’ are added as a new restriction on funding for parties and foundations at the European level. Thirdly, political parties at the European level may now use their funding for the financing of campaigns conducted for elections to the European Parliament. The Regulation states that this amendment is made “with a view to further enhancing and promoting the European nature of the elections to the European Parliament” (p.1). Fourthly, the European Parliament must adhere to transparency principles by creating a section of its website through which the public can access reports on funding of political parties and foundations at the European level. Lastly, the percentage of funding that the parties and foundations at European level may charge to the general budget of the European Union is raised from 75 % to 85%. The Regulation states that this amendment is made “in order to improve the conditions for the funding of political parties at European level, while encouraging them to ensure adequate long-term financial planning” (p.1).

Feasibility study of a future European Statute of European Political Parties

A request of the European Parliament’s committee on Constitutional Affairs led to the creation of a feasibility study that explores whether European law offers a legal base for the creation of a European political party statute. The study starts out with a comparative analysis of the development of legislation of political parties in the EU member states. Goal of this analysis is to determine whether specific trends in the development of party legislation are visible at the EU member state-level. The authors “assume that this will also impact the design of an EU-statute for parties at European level” (p.17). They find that a trend towards stronger regulation of political party registration, financing, and obligations and tasks does indeed exist, “which only provides more evidence for the need to mirror this trend at the EU level. The reasons for this trend have to do with transparency and party financing, clearer election rules, the consolidation of representative democracy and efforts to regain citizens’ trust in political parties and party politics through clearer laws and regulations” (p.10).

The authors determine that only a statute for political parties at European level in the form of EU regulation can lead to the creation of a legal status and personality for European parties that is compatible with member state law. They find a legal base for such a statute in Art. 191 and a normative base in the previous efforts to regulate European political parties, which indicates altogether the will on part of the member states and the European Parliament for giving European political parties an important role in EU democracy” (p.11). The authors recommend that party regulation be based around general provisions and specific subjects such as internal party organizations and funding, “with particular paragraphs or articles on the status and functions of political parties at European level, their definition and legal personality, registration rules, party bans, internal structures, such as conventions or congresses, councils or political

bureaus, presidiums, conferences of party leaders, decision-making rules, membership provisions and, finally, provisions on funding aspects and taxation” (p.11).

Although the European Parliament’s committee on Constitutional Affairs requested the creation of this study, the documents of its committee meetings make no mention of the discussion, or even reception, of this study. For the remainder of 2007 and 2008 the meetings focused on the ratification of the Lisbon Treaty (signed 13 December 2007).

The Lisbon Treaty

The coming into force of the Lisbon Treaty has had several consequences for the status of parties within the European Union. First of all, the Lisbon Treaty gave force to the Charter of Fundamental Rights of the European Union. A first version of this Charter had already been adopted in 2000 and a modified version of the Charter formed part of the now defunct European Constitution. The Charter of Fundamental Rights mentions political parties under the article on Freedom of assembly and association. During the drafting process, the question of whether to include political parties had been subject to debate, with political parties appearing and disappearing from the various draft versions (European Parliament, 2000a, b, c). In the final version of the Charter (2000) Article 12 Freedom of assembly and of association mentions in its second paragraph that

Political parties at Union level contribute to expressing the political will of the citizens of the Union.

The explanation of the content of this paragraph given by the Parliament is that “[p]aragraph 2 of this Article corresponds to Article 191 of the Treaty establishing the European Community (European Parliament, 2000d, p.15). Although the Charter has been modified, this paragraph remained unchanged (Charter of Fundamental Rights, 2007).

The Treaty of Lisbon furthermore splits the content of Article 191 TEC into two separate articles. This is a direct result of the political deliberation process that culminated in the defunct ‘Treaty establishing a Constitution for Europe’. The European Council mandated the 2007 IGC that created the Lisbon treaty to integrate all the innovations resulting from the IGC on the European Convention into the new ‘Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union’ (General Secretariat, 2007). A first draft version of the European Constitution only mentioned that “Political parties at European level contribute to forming a European awareness and to expressing the political will of the citizens of the Union.” An explanatory note comments that as such, the Article resembles the wording of both Article 191 TEC and Article 12(2) of the Charter (European Secretariat, 2003a). Members of the European Parliament made various requests to change the wording of the Article to reflect the entire content of Article 191 and even to substantiate it further with additions regarding internal party democracy (European Parliament, 2003). The Chairman of the Praesidium stated that the latter issue should be left to the Member States themselves (European Secretariat, 2003b). However, the revised text of the Constitution was amended to take into account the entire content of Article 191, albeit in two separate articles. The second paragraph of Article 191 became transplanted into the

institutional provisions of the Constitution (European Secretariat, 2003c). The Treaty of Lisbon adopted these revisions in its text, which resulted in Article 10 and Article 224 in the consolidated versions of the treaties:

Article 10

4: Political parties at the European level contribute to forming European political awareness and to expressing the will of citizens of the Union.

Article 224

The European Parliament and Council, acting in accordance with the ordinary legislative procedure, by means of regulations shall lay down the regulations governing political parties at European level referred to in Article 10 of the Treaty on European Union and in particular the rules regarding their funding.

The main change with Article 191 is that the Lisbon Treaty leaves out the part which states that “[p]olitical parties at European level are important as a factor for integration within the Union”. It does not become clear why this is the case.

Standard of the European Union regarding political parties

The standard that the European Union applies towards parties has increased in regulatory scope over the years. Its normative element remains rather static. The party article in the Maastricht Treaty cleared the way for all other legislation on political parties. The transnational party federations initiated the process towards the adoption of this article through use of the argument that parties express the political will of citizens. The party article in the Maastricht Treaty does not stipulate any regulatory elements but puts down the normative element that parties are important both for European integration and as a means for European citizens to express their will. The Charter of Fundamental Rights mirrored the normative argument put forward in this article through its creation of a paragraph on political parties under the freedom of association. Because parties contribute to expressing the political will of the citizens of the Union, their rights are guaranteed under the charter. The transnational party federations continued to lobby for a statute for political parties at European level, claiming that strong parties are essential for upholding democratic life. The Nice Treaty mandated the creation of regulations governing parties and their funding, which were subsequently substantiated in Regulation EC 2004/2003. The regulation provides a definition of parties and specifies the procedures for their funding. From its definition it follows that European parties necessarily adhere to the values of the Union and to specific criteria regarding representation. These issues led to disputes in the process of adopting the regulation because some states and parties feared that the rules discriminated against certain parties or provided an undesired impetus for further European integration. Perhaps this is the reason why the European Convention, which was created in the same year, dropped the part of the party article that identifies as an important factor for integration within the Union. In 2005 the European Parliament proposed changes to Regulation EC 2004/2003 because it felt that stronger European parties were needed to improve communications with European citizens. It furthermore proposed the creation of a genuine party statute that would regulate the internal organization of parties more closely. As a result Regulation (EC) 1524/2007 modifies several issues related to party

funding and determines that parties may use this funding for electoral campaigns. It also introduces and defines European party foundations. Furthermore, a feasibility study of a future European party statute was created, which provides several recommendations on issues related to internal party organization that a future statute should address. The Union has not come so far as to address these issues through proposals or regulations. What becomes clear is that the regulatory element of the European standard regarding political parties is divided to say the least. The normative argument that parties represent the political will of citizens of the Union has remained unchallenged. The European parties lobby on a continuous base for a party statute that focuses more on the internal regulation of parties. However, these desires have not been matched by regulatory developments in the Union.

The effect of European standards on national institutions

As was mentioned above, the influence of European standards on national institutions can take on the form of norm absorption, norm accommodation, or norm adaptation. A first step in determining the influence of European standards comes in the form of determining the type of pressure that the European institutions can apply, i.e. coercive pressure or facilitated unilateralism. Facilitated unilateralism is present when the policy co-ordination between institutions is of a voluntary nature and when the institutions thus rely on persuasive instruments such as the institutionalization of objectives, guidelines, benchmarking and performance monitoring (Bulmer & Padgett, 2004). National preferences are highly influential in determining whether facilitated unilateralism succeeds in stimulating norm adaptation rather than norm absorption or accommodation. When national preferences diverge highly from international standards, the likelihood that these national standards will adapt to international ones decreases. The following sections discuss each European institution separately to (1) show that the type of pressure for change that it can apply falls under the category of facilitated unilateralism and (2) to determine whether this limited amount of pressure has been able to stimulate normative adaptation in national institutions, i.e. national party law and national political parties.

European Court of Human Rights

The ECtHR is a possible exception to the 'rule' of facilitated unilateralism because it is a supranational organ. It adjudicates disputes over alleged breaches of rights protected in the European Convention of Human Rights. Its judgments are binding under international law. From Article 46(1) of the Convention it follows that the Contracting Parties "undertake to abide by the final judgment of the Court in any case to which they are parties". The Convention has very strong enforcement mechanisms and provides for both state and individual applications. The Committee of Ministers of the Council of Europe, which is composed of the government representatives of all member states, monitors the execution of Court judgments by the party involved (Harris, O'Boyle & Warbrick, 2009; Keller & Stone Sweet, 2008). The Committee has developed the practice of keeping cases on its agenda until the Contracting Party concerned has taken all the necessary measures to abide by a judgment. However, due to the fact that the

Committee of Ministers is a political body, countries have been able to come away with delays or minimal compliance (Harris, O'Boyle & Warbrick, 2009). Non-compliance with ECtHR judgments has never occurred (Harris, O'Boyle & Warbrick, 2009), but if this were the case, a state would be found in breach of its obligation to the Convention scheme and could therefore be suspended from membership or forced to withdraw from the Council of Europe (Janis, Kay, et al., 2008). The ECtHR thus applies substantial pressure on member states to take measures to solve situations that led to a breach of rights protected in the Convention. In theory, a state could be expelled from the Council of Europe due to non-compliance, but in practice the monitoring Committee of Ministers is too political to enforce the effective compliance of all states with ECtHR rulings.

The Court has treated 21 cases with regard to the violation of rights protected under Article 11 and political parties. The following section discusses the influence that ECtHR judgments had on individual parties and general party law in each of the countries ruled in violation of Article 11 regarding political parties in a chronological order.

Normative influence of the European Court of Human Rights

In the case of *Vogt v. Germany* (judgment of 26 September 1995) the Court ruled that the applicant's dismissal as a disciplinary sanction for having refused to dissociate herself from the communist party (DKP) amounted to a disproportionate interference with the exercise of the freedom of association. The German Government transmitted the judgment to the Länder. An accompanying letter explained to the authorities that they would have to "examine all future cases of this kind in detail, in the light of the Court's judgment" (van Dijk et al., 2006, p.309) to prevent similar violations.

Between 1998 and 2005 the Court discussed 11 cases regarding the dissolution or the refusal to register political parties in Turkey. The Court only found a violation of Article 11 to be present in the case of the *Refah Partisi and Others v. Turkey* (judgment of 31 July 2001; judgment of 13 February 2003). On the individual level, the authorities removed all obstacles to the re-registration of the dissolved parties. As a general measure, the Turkish government amended the Constitution in 1995 and 2001 to bring it in line with the ECHR. This has lessened the consequences for members of dissolved parties and has introduced the requirement of proportionality. Other sanctions for political parties are now available and a party can no longer be sanctioned without evidence of anti-democratic activities. Article 90 was amended in 2004 to elevate the status of international human rights treaties over that of national law in cases of conflict. The Law on Political Parties (LPP) was amended in 2003, reflecting the constitutional changes mentioned above. In addition, political parties are given a right of appeal against motions for dissolution. "In the light of these developments, the government now expects that all domestic courts, including the Constitutional Court, will give direct effect to the ECHR and the case-law of the ECtHR, not least when deciding matters relating to the dissolution of parties or the penalties to be imposed on their members" (Council of Europe, 2009: p.168). However, because of current developments in Turkey the question rises whether Turkey has indeed adapted its norm regarding the prohibition of the effective functioning of parties. The Constitutional Court dissolved the Democratic Society Party (DTP) in response to accusations that it had become "a

focal point of activities against the sovereignty of the state and the indivisible unity of the country and the nation” (Alpay, 2008). As its main argument for this decision, the Court relied on the allegation that the party was linked to the Kurdistan Workers Party (PKK) (BBC, 2009). Interestingly enough, the PKK is one of the parties mentioned on the list annexed to the EU’s “Common position on the application of specific measures to combat terrorism”. The ECtHR used this same list to support its ruling that Spain had not violated Article 11 when it dissolved the Batasuna party. It would seem that Turkey has accommodated ECtHR standards in its national practice of banning pro-Kurdish parties. Or, to put it in the terminology of the previous chapter, Turkey’s approach is that of a ‘militant democracy’, which is characterized by “an uncompromising struggle against the challengers” (Pedahzur, 2001: p.352). The standard promoted by the ECtHR clashes with and is unable to take precedence over this approach. In response to this clash, the Turkish state likely attempts to accommodate ECtHR norms within its legal practice rather than adapt its practices to these norms.

Russia was found to have violated Article 11 when it refused to renew the registration of the Presidential Party of Mordovia in 1999 on the unlawful ground that it had not created branches in more than half the districts and cities of the region of Mordovia (Presidential Party of Mordovia v. Russia, judgment of 5 October 2004). No individual measures could compensate for the damage caused, as regional political parties ceased to be recognized by law because of legislative changes in 2001. As a general measure, the Court’s judgment was published and disseminated to the regional authorities. Attention was drawn to the fact that any limitation of individual rights must be in accordance with domestic law (Council of Europe, 2009).

In 1996 the Romanian authorities refused to register a political party based on its communist political program. Because the party never portrayed the desire to use unlawful and non-democratic means to achieve its aims, the Court ruled that Romania had violated Article 11 (Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania, judgment of 3 February 2005). In response to this judgment, the party was allowed to re-register. The Romanian courts made special conditions available for the party, thereby enabling it to fulfill the requirements imposed on parties by the new 2005 legislation on registration (Council of Europe, 2009). The ECHR and the Court’s case law have a direct effect in Romanian law. Because the interpretation of the law was the main problem in this case, the authorities published and disseminated the Court’s judgment and assured the Committee of Ministers that judicial practice has been put into conformity with the ECHR (Council of Europe, 2009).

According to the ECtHR Bulgaria violated Article 11 in the case of the *United Macedonian Organisation Ilinden – Pirin and Others v. Bulgaria* (judgment of 20 October 2005) when it dissolved a political party that sought to achieve the recognition of a Macedonian minority in Bulgaria. The decision to dissolve it was based upon the notion that the organization’s separatist ideas were a threat to national security even though the applicants had never expressed any intention to use violence or other undemocratic means. Bulgaria took no effective individual measures to address this violation. The applicants have twice sought to re-register their dissolved party but their applications were rejected because of stricter membership requirements under a new law on political parties. With regard to general measures, it is important to note that ECtHR case law has

direct effect in Bulgarian law. The judgment of the ECtHR has thus been sent to the Constitutional Court and to the competent court for the registration of political parties. Several training activities have been organized for the judges of the Supreme Court of Cassation (Council of Europe, 2008).

After the case of *Ouranio Toxo and Others v. Greece* (judgment of 20 October 2005), in which Article 11 was violated when the national authorities did not live up to their positive obligation under the Convention to protect the rights that political parties enjoy under the freedom of association, “the police adopted a new anti-crime strategy taking into consideration, *inter alia*, the relevant Recommendations of the CM” (Council of Europe, 2008: p. 165). The Court’s judgment was disseminated among the relevant authorities and courts (Council of Europe, 2008).

In 2002 the Moldovan Ministry of Justice imposed a ban on the activities of the Christian Democratic People’s Party because of its organization of unauthorized demonstrations against the introduction of the compulsory study of the Russian language in schools. The Court judged that Article 11 had been violated. The temporary ban on the party’s activities had already been lifted after enquiries of the Secretary General (Christian Democratic People’s Party v. Moldova, judgment of 14 February 2006). The Court’s judgment was translated, published and disseminated among the relevant authorities and courts (Council of Europe, 2008).

In the case of *Segerstedt-Wiberg and Others v. Sweden* (judgment of 6 June 2006) the Court ruled that Sweden had violated Article 11 when it stored information about the leaders and members of a political party on a secret police register. This information was subsequently removed from the records of the Swedish Security Service and the Court’s judgment was published and disseminated among the relevant authorities (Council of Europe, 2008).

In the case of *Linkov v. the Czech Republic* (judgment of 7 December 2006) the Court ruled that the authorities of the Czech Republic violated Article 11 when they refused to register a political party based on the fact that, according to its program, it aimed to break the legal continuity with totalitarian regimes. The party never portrayed the desire to use unlawful and non-democratic means towards this end. The Ministry of Internal Affairs assured the Committee of Ministers that the ground upon which the application was rejected would be considered as unlawful, were the applicant ever to try to register again (Council of Europe, 2008).

The effect of the Court’s judgment has been most profound on the Turkish national legal system; the country involved in the majority of these cases. Turkey amended its Constitution and its law on political parties to bring both in line with ECHR norms. The principle of proportionality was incorporated in its legal system through the addition of less disruptive penalties for political parties. On the individual level, all parties were allowed to re-register. In line with Turkey, all other countries that were found to violate Article 11 undertook general measures where needed to prevent similar violations. Not all countries were as able or willing to undertake individual measures, however. As can be seen from the cases of Bulgaria and Russia, national practices or law can prevent the effective remedy of the damage inflicted by the violation of Article 11. Likewise, it is doubtful whether states will actually adapt their norms in light of ECtHR decisions. This is especially difficult in countries where the state repeatedly

prohibits the effective functioning of parties that represent an unrecognized minority (e.g. Turkey, Bulgaria, and Greece) and where domestic standards will probably continue to take precedence over international ones.

Council of Europe

The pressure that the institutions within the Council of Europe can apply differs between the various bodies. However, all institutions use facilitated unilateralism to apply pressure, since the statutes of the CoE leave little room for binding agreements. The only CoE body that can create binding agreements is the Committee of Ministers in the form of conventions and agreements. Recommendations are not binding, although the Committee may inquire after the actions taken by member states to address them (Statute of the CoE, §15b). The Parliamentary Assembly is a consultative and deliberative organ that can present recommendations to the Committee of Minister (Chapter V of the Statute of the CoE, §22). The Council's Commission for Democracy through Law, known as the Venice Commission prepares studies and draft guidelines and agreements. It may also supply opinions upon request of other international and national institutions (Statute of the Venice Commission, §3-4). A final CoE institution that applies pressure to change national political party legislation is the Group of States against Corruption (GRECO). GRECO was established in 1999 to "improve the capacity of its members to fight corruption by following up, through a dynamic process of mutual evaluation and peer pressure, compliance through undertakings in this field" (Appendix to Resolution (99)5, §1). In cases of non-compliance with recommendations made to countries in the country-specific evaluation reports, GRECO may request regular progress reports, invite the Secretary General of the Council of Europe to send a letter to the Minister of Foreign Affairs, arrange a high-level mission, or bring the case before the Statutory Committee, which can issue a public statement regarding the member's passive attitude towards taking action (Rules of Procedure, Rule 32).

The CoE applies recommendations, guidelines, and opinions. Facilitated unilateralism is therefore the only means of pressure that can be applied to achieve the aims of these documents. The CoE appears to follow rather than lead the way for the ECtHR regarding the prohibition and dissolution of political parties. The ECtHR is the institution that applies pressure to influence national party law in the face of the prohibition and dissolution of political parties. The CoE only recently elaborated its Code of good practice for political parties so it is hard to imagine that it has been able to influence national party law on this issue. However, the CoE is very active in the field of influencing legislation on party funding. To determine the amount of influence that the CoE can exert over national institutions, the following section analyzes the work of GRECO.

Normative influence of the Council of Europe

GRECO's aim is to enforce the national implementation of legislative, institutional, and practical reforms through the identification of deficiencies in national anti-corruption policies. 45 European States and the United States of America are currently members of GRECO (GRECO, 2009a). GRECO monitors progress through horizontal evaluation procedures in which all members are evaluated and assigned specific recommendations for reform. It also uses

compliance procedures in which an assessment is made of the members' efforts to implement these recommendations. It is currently conducting its third evaluation round, which focuses on the criminalization of corruption and on the transparency of party funding (GRECO, 2009b). Evaluation reports have been elaborated on twenty countries. Unfortunately, compliance reports are not available yet. To determine the normative influence of the Council of Europe, an assessment is first made of compliance rates within the previous evaluation rounds. This is a reliable indicator for compliance with the recommendations made in round 3. Following the assessment, the remainder of this section provides an overview of the recommendations made regarding the transparency of party funding.

GRECO conducted its first evaluation round in the period 2000-2002. Focus of this round was on the "independence, specialization and means of national bodies engaged in the prevention and fight against corruption. It also dealt with the extent and scope of immunities of public officials from arrest, prosecution, etc." (GRECO, 2009b). Thirty-four countries took part in this round. The second evaluation round ran from 2003 to 2006 and addressed the "identification, seizure and confiscation of corruption proceeds, the prevention and detection of corruption in public administration and the prevention of legal persons (corporations, etc.) from being used as shields for corruption (GRECO, 2009b). Forty-one countries participated in this round. Newcomers were obliged to also implement recommendations that had already been addressed in the first round. Luxembourg and Georgia were large defectors in the first round and Turkey and Bosnia Herzegovina in the second.

Table 1: The implementation of GRECO recommendations

	Countries	Total	Implemented/dealt with satisfactorily	Partly implemented	Not implemented
Round 1	34	396	101	20	34
Round 2	41	498	192	53	41

Sources: GRECO evaluation rounds 1 and 2.

The second part of evaluation round three, which focuses on the transparency of party funding, addresses the following aspects related to corruption and party funding on a country-specific base: general issues, thereby identifying recent controversies, the specific manifestation of political culture, system and regulatory practices within a country, and all sources of political financing; issues related to transparency, thereby identifying audit functions and challenges of ensuring full disclosure by parties; issues related to supervision, which focuses on all aspects related to the monitoring function of the state; and the issue of sanctions, which evaluates the effectiveness of prosecution and of the range of sanctions (GRECO, 2007). In total GRECO recommended 163 points to the twenty members that were evaluated.

Most of these recommendations entail adaptation of national party law for countries to be able to effectively implement them. As such, GRECO advises Albania to introduce secondary legislation to implement new provisions on election campaign funding and encourages Belgium to undertake a consultation

on the need for a comprehensive review of party financing and election campaigns law. GRECO furthermore recommends that Belgium amend its legislation so as to ensure that parties lose their obligations to all forms of public assistance in the case of party failure regarding funding requirements. Croatia needs to harmonize its various election laws and France is advised to lay down rules that aim to avoid affiliation of members of parliament out of financial considerations. Iceland, Poland, and Slovakia are required to introduce regulations that ensure transparency of the campaign finances in presidential elections. GRECO recommends that Luxembourg grants a legal status to political parties, since the absence of such a status causes political parties to resort to arrangements that discourage transparency in their financing. These are but a few examples of proposed legal changes. The majority of the recommendations have to do with party behavior. GRECO mentions in various reports that countries need to enforce party behavior such as the disclosure of donor identity, the provision of annual accounts with detailed information on income, expenditure, debts, and assets. In these accounts, parties should include entities, which are related directly or indirectly to the party, or are under its control. They should also provide detailed information on campaign finances. These documents should be made available to the public. Other recommendations address the issue of effective and independent monitoring, supervision and auditing. All countries are recommended to introduce more flexible and effective, proportionate and dissuasive sanctions (GRECO evaluation round 3).

Based on the previous compliance reports a substantial amount of accommodation or absorption of new norms may be expected. GRECO specifically recommends changes in national party law to create an impetus for party change. Previous experiences in Montenegro, Georgia and Macedonia show that countries have been willing to amend national law because of GRECO recommendations. However, in Serbia recommended legislative instruments are currently pending adoption, showing that this is not necessarily the case. Once national practices are amended they come to proscribe and prescribe specific types of party behavior. That this can become a defining influence on political parties becomes clear from recommendations to Belgium, where parties could lose their obligations to all forms of public assistance in the case of party failure regarding funding requirements.

International party aid

Keck and Sikkink (1998) provide a useful overview of the pressure techniques that international organizations can apply to influence party disposition towards a preferable type of state behavior, policies or institutional structures. These techniques include: "(1) *information politics*, or the ability to quickly and credibly generate politically usable information and move it to where it will have the most impact; (2) *symbolic politics*, or the ability to call upon symbols, actions, or stories that make sense of a situation for an audience that is frequently far away; (3) *leverage politics*, or the ability to call upon powerful actors to affect a situation where weaker members of a network are unlikely to have influence; and (4) *accountability politics*, or the effort to hold powerful actors to their previously stated policies or principles" (p.16). All these techniques fall within the category of facilitated unilateralism.

Normative influence of international party aid

In his analysis of party aid providers Thomas Carothers (2006) found that the output of party aid strategies does not necessarily lead to the desired outcome of party change. Foreign party aid has a limited effect on political parties due to problems embedded within the nature of parties and party leaders, the structural conditions within which parties operate, and the provision of aid itself. Assuming that party aid provides apply an effective strategy that manages to put normative pressure on the party from within, from below, or from the party system, these strategies are not necessarily conducive to party change. This is the case when the top of the party counters the pressure to change or when structural factors inhibit party change. Several reasons exist to expect the resistance of party leaders. First of all, party leader personality may come into play. According to Carothers (p.177) “[a] certain kind of personality type usually ends up at the top of parties, a type not generally characterized by humility, flexibility, or a willingness to listen to and incorporate the ideas of others”. Secondly, party leaders often vigorously defend their hold on power and therefore refuse to cooperate with schemes that might eat away at their internal control of the party. Thirdly, party leaders do not necessarily share the vision of party aid providers regarding the higher party goal of upholding democracy. Instead, leaders may view parties as a means to gain access to office. Party leaders may thus possess little incentives to cooperate with party aid providers. Next to these elements related to party leaders, structural factors that inhibit party change are often present in developing countries. These structural factors consist of the presence of a weak rule of law; poverty; constraints on policy choices; antipolitical legacies; and presidential systems. (Carothers, 2006)

In 2007 international NGO ‘Democracy International’ was contracted by USAID to conduct a study of its political party development aid in Eastern Europe and Eurasia. The findings of this study largely reflect the problems associated with party aid already identified by Carothers. Democracy International thus advises USAID to take into account “structural and environmental constraints” and the “incentives of politicians and political parties” that can be applied to entice them to implement reforms (p.51). Efforts to reform the party system and the legal party framework were found to be most effective in countries where sudden opportunities for change appeared in the political context.

Generally speaking, party aid programs have not been found to lead to a direct change in party behavior. Instead, party aid providers are advised to build a solid but flexible presence in developing countries to continue to confront parties with European norms on what parties and party legislation should look like and to take advantage of the political openings for change whenever they present themselves (Carothers, 2006; Democracy International, 2007). Because the success of party aid providers is depended on the incentives present within parties and party system to implement reforms, it is highly unlikely that they are able to create enough pressure for national normative adaptation.

European Union

As was shown above, the European Union is a special case because the development of party legislation within the European Union does not directly influence national party legislation. Instead developments within the European Union reflect national and European developments regarding the creation of a common norm on party law. However, during the latest rounds of accession to the Union, the Europe Commission established legislation on party funding as one of the conditions for EU membership (Walecki, 2007). The following sections discuss how European developments regarding party legislation affected the European parties and describe how European conditionalities for membership have affected national legislation on party funding.

Normative influence of the European Union

The report of the Court of Auditors and the subsequent introduction of Regulation (EC) 2004/2003 had several consequences for political parties at the European level. First of all, the financial connections between the political groups in the European Parliament and their transnational party federations needed to be severed, as the Court of Auditors had ruled on the illegality of these connections. The Europarties were forced to find new office-space and new staff, rather than borrow them from their political groups, which led to a professionalization of the parties and a clearer separation of the function of the party and of its political groups. Organizational change and ideological compromise were especially necessary for the European Green party, which had previously managed its affairs based on the principles of decentralization and internal democracy, and for the European Free Alliance (EFA), which consisted of members with a focus on the sub-national rather than the European level (Lightfoot, 2006). Several parliamentary groups unsuccessfully challenged the new regulation in the European Court of Justice, based on the argument that “it is discriminatory to smaller forces not represented in existing Europarties or to parties that opposed European integration” (Johansson & Raunio, 2005: p.527). The court deemed these accusations inadmissible on the grounds that the individual freedom of thought, expression and association had not been directly violated (Schönlau, 2006). As a result these groups united themselves in two Eurosceptic parties, thereby expanding the number of recognized Europarties to ten (Lightfoot, 2006). Both developments substantiate the argument that the creation of European political parties has had the consequence that the previously relatively free party federations are now subject to increasing regulations.

In his study on the influence of European conditionality and party financing legislation, Walecki (2007) shows how the process of accession to the European Union produced pressure on the candidate countries to change or add legislation regarding party financing regulations. The amount of pressure applied for change varied between the countries. In the cases of Bulgaria and Romania, the European Union actively proscribed and monitored the desired changes in this field, whereas the pressure on other countries was less consistent. All countries but Hungary changed or added legislation on party funding as a result (see Appendix 5).

Whether these changes in legislation will actually succeed in regulating party behavior with regard to financing remains to be seen, however. “The problem with adding restrictions in CEE countries is that in general they don’t address the underlying fragility of parties, their weak institutionalization, the lack of popular funding, and the decrease in public confidence which they enjoy” (Walecki, 2007: p.17). A second problem related to these changes in party financing legislation is that the measures are not necessarily matched by institutional changes that improve implementation of the law. This implies that normative absorption or accommodation, rather than normative adaption, is taking place in these countries.

Conclusion

This paper has shown that the European institutions that aim to change political party behavior and political party legislation all apply a strong normative and regulatory standard in the process. The content of their standards does vary, however, as do the thematic dimensions that they apply standards to. First of all, the institutions address different types of ills through the proposed changes in party law and party behavior. The ECtHR and the CoE prescribe and proscribe similar types of party behavior to promote the higher goal of protecting democracy against party decay caused by the loss of public confidence and against extremist parties. The European Parliament and the party aid providers prescribe and proscribe party behavior to create democracy through responsible party development. Party regulations are thus applied as a solution to a multitude of problems. As a consequence of these normative differences, the institutions also differ in the regulatory elements that they propose.

The ECtHR values parties because of their important role in a democratic society and because they ensure pluralism. It therefore adopts a permissive regulatory stance towards the effective functioning of parties and requires that states protect party rights. States may only interfere with the effective functioning of parties when they show an inclination to the use of violent means to achieve their goals or when they propose principles that run counter to fundamental democratic ones. Because of the Islamic and terrorist threats to democracy present in the *Refah Partisi v. Turkey* and the *Herri Batasuna and Batasuna v. Spain* Cases its standard changed from one that is commonly found in ‘immunized democracies’, or strongly liberal democracies that are generally opposed to judicial measures against political parties to one commonly found in ‘defending democracies’, or liberal democracies that change the boundaries of the ‘rule of law’ in response to a serious threat. Parties that advocate principles of legal and political pluralism or terrorism pose a threat to democracy, thereby creating a ‘pressing social need’ that allows for an interference with their functioning. The Court does not take its regulatory power so far as to include issues related to party funding.

The standard regarding political parties and party legislation applied by the CoE has changed over the years, as have the thematic dimensions it addresses. The CoE’s main normative point of view is that parties play an essential role within democracy. In the eyes of the CoE, this role is endangered by the rise of extremist parties, by corruption scandals, and by the subsequent loss of public confidence in parties. In light of the threat of extremist parties the

CoE has changed its regulatory focus from permitting the effective functioning of parties towards becoming more inhibitive. Again, a shift is present from an approach of 'immunized democracies' to that of 'defending democracies'. In light of the threat that party behavior leads to a loss of public trust, the bodies of the CoE have turned towards prescribing some behavior related to party funding and even more behavior related to internal party organization and political functions.

Party aid providers aim to address the ill of problematic democratic development, which is the consequence of the malfunctioning of political parties. In order to fight this ill, they promote multi-party systems that are not polarized or fragmented and that offer a real choice to the voters. They furthermore promote political party behavior that is inclusive, representative, transparent, accountable, and institutionalized. This regulatory outlook and the preference for smaller party-systems without parties that hold an extreme ideology makes that party aid providers are less concerned with the effective functioning of parties than organizations that highly value the maintenance of democratic pluralism.

The standard of the European Union seems to have been largely created by the transnational party federations. It has subsequently been upheld by the European Parliament and the European parties. The normative element holds that parties represent the political will of citizens of the Union. The regulatory element consists of a constant pressure for the creation of a party statute to create stronger parties towards the end of democratic development within the Union. The parties have succeeded in getting the Union to recognize that European parties exist and that they need to receive funding in order to effectively represent the European citizens. Further attempts at creating legislation related to political parties on issues such as internal organization or the creation of an individual membership base have not been successful. This suggests that other forces within the European Union do not share the view that more European party legislation is needed. Whether disagreement over the normative assumption that parties need to be strengthened to improve their role of expressing the political will of the citizens of the Union is the cause of this regulatory lethargy is not clear.

When confronted by the standards of the European institutions, the national institutions clearly incorporate the new norms in their domestic structures, i.e. national party law. The ECtHR's judgments have all led to countries taking general measures to prevent similar violations. Likewise, previous rounds of GRECO evaluations show that most countries are willing to adjust national law to implement GRECO recommendations. However, whether national authorities replace institutions by new, substantially different ones, depends on the embedded national preferences. Within the European Union, the transnational party federations' efforts led to the creation of a party statute. In a similar vein, GRECO's recommendations can become of a defining influence on national political parties when countries implement recommendations such as the one given to Belgium, where parties could lose their obligations to all forms of public assistance in the case of party failure regarding funding requirements. EU conditions for accession led to additions or changes of party financing regulation in all candidate countries except Hungary.

However, in some of the ECtHR cases individual measures are not implemented when national practices or law can prevent the effective remedy of the damage inflicted by the violation of Article 11. Likewise, not all GRECO member states have been able to effectively implement recommendations. Of all the European institutions targeting parties and party legislation, the party aid providers' work is an example of the most voluntary type of cooperation. In order for their work to be effective, they need to take into account the local context and constraints, they need to offer incentives to induce parties and governments to implement reforms, and they need to be flexible in order to be able to take advantage of openings for change whenever they present themselves. Party aid providers are thus most dependent on favorable domestic preferences for action.

This paper thus suggests that although European standards often matter for national party regulation, the extent to which they matter and thus affect national political party legislation and the parties themselves largely depends on the standard's conformity with embedded national preferences. Some problems are present within this argument. The difficulty in establishing the successful influence of the European institutions forms a first problem. In the end, all institutions aim to create a change within parties, be it by targeting national party legislation or political parties themselves. This raises the question whether international standards are influential when they are able to instigate a change within national party legislation, or whether their rate of success depends on the subsequent ability of party law to effectively regulate parties and their behavior. In terms of the concepts used in this paper, it seems unlikely that the European institutions merely aim at the absorption or accommodation of norms into national party legislation. The fact that the Venice Commission's Code of good practice does not address party legislation, but political parties themselves, underlines this point. However, in terms of Europeanization even the absorption or accommodation of norms would be indicative of an increasing level of European influence on the national policy making process.

A related problem comes in the form of the influence of national preferences. Although this paper suggests that national preferences are influential in determining the amount of change that European standards can create on a national level, it does not take these national preferences into account in a systematic manner. Further research could perhaps apply a bottom up perspective to better capture the interplay between European standards and national preferences. The forthcoming GRECO compliance reports will likely provide a starting point for such an approach by offering clear indicators of the areas in which countries are or are not willing to change or add party (finance) regulations.

Appendix 1: European Court of Human Rights judgments of merits in Article 11 cases involving political parties⁷

Case and date of judgment	Issue	Violation of Article 11
<i>Vogt v. Germany</i> (26/09/1995)	Dismissal of teacher because of refusal to dissociate from the communist DKP	Yes
<i>United Communist party v. Turkey</i> (30/1/1998)	Dissolution of the TBKP because of communist and Kurdish minority issues	Yes
<i>Socialist party v. Turkey</i> (25/05/1998)	Dissolution of the SP because of socialist and Kurdish minority issues	Yes
<i>Freedom & democracy party (ÖZDEP) v. Turkey</i> (08/12/1999)	Dissolution of the ÖZDEP because of Kurdish minority issues	Yes
<i>Refah Partisi (Welfare party) v. Turkey</i> (31/07/2001)	Dissolution of Refah Partisi on grounds of Sharia & violent means	No
<i>Yazar v. Turkey</i> (09/04/2002)	Dissolution of the HEP because of Kurdish minority issues	Yes
<i>Dicle for the Democratic party v. Turkey</i> (10/12/2002)	Dissolution of the EP because of Kurdish minority issues	Yes
<i>Refah Partisi (Welfare party) v. Turkey</i> (13/02/2003)	Dissolution of Refah Partisi on grounds of Sharia & violent means	No
<i>Socialist party of Turkey (STP) v. Turkey</i> (12/11/2003)	Dissolution of STP because of Kurdish minority issues	Yes
<i>Presidential party Mordovia v. Russia</i> (05/10/2004)	Refusal to renew registration of Mordovia party on territorial grounds	Yes
<i>Partidul Comunistilor (Nepeceristi) v. Romania</i> (03/02/2005)	Refusal to register the PCN because of its communist political program	Yes
<i>Democracy & change party v. Turkey</i> (26/04/2005)	Dissolution of DDP because of Kurdish minority issues	Yes
<i>Emek Partisi & Senol v. Turkey</i> (31/05/2005)	Dissolution of the EP because of Kurdish minority issues	Yes
<i>Guner v. Turkey</i> (12/07/2005)	Members of the DBP were prohibited from holding a meeting – Kurdish issue	Yes
<i>UMO Ilinden-Pirin v. Bulgaria</i> (20/10/2005)	Dissolution of the Macedonian minority party UMO Ilinden-PIRIN	Yes
<i>Ouranio Toxo v. Greece</i> (20/10/2005)	Authorities stood aside during violent attack on Macedonian party headquarter	Yes
<i>Christian Democratic People's party v. Moldova</i> (14/02/2006)	Ban on party's activities because of protests against Russian lessons in school	Yes
<i>Segerstedt-Wiberg v. Sweden</i> (06/06/2006)	Storage of information about party leaders and members on secret register	Yes
<i>Linkov v. Czech Republic</i> (07/12/2006)	Refusal to register the Liberal Party (PL) because of its stance on totalitarianism	Yes
<i>Parti Nationaliste Basque v. France</i> (07/06/2007)	Rejection of approval for party funding association with foreign financial ties	No
<i>Herri Batasuna & Batasuna v. Spain</i> (30/06/2009)	Dissolution of Herri Batasuna because of ties to terrorist organization ETA	No

⁷All judgments available in HUDOC case law database at: <http://cmiskp.echr.coe.int/tkp197/search.asp?skin=hudoc-en>. This table only includes judgments of merits of cases involving political parties.

Appendix 2: European Court of Human Rights case law involving political parties

Limited margin of appreciation

1. United Communist Party of Turkey v. Turkey, judgment of 30 January, 1998, §46.
2. Socialist Party and Others v. Turkey, judgment of 25 May 1998, §50
3. Freedom and Democracy Party (ÖZDEP) v. Turkey, judgment of 8 December 1999, §44
4. Yazar and Others v. Turkey, judgment of 9 April 2002, §58
5. Refah Partisi and Others v. Turkey, judgment of 13 February 2003, §100
6. Socialist Party of Turkey (STP) and Others v. Turkey, judgment of 12 November 2003, §44
7. The United Macedonian Organisation Ilinden – Pirin and Others v. Bulgaria, judgment of 20 October 2005, §56
8. Linkov v. The Czech Republic, judgment of 7 December 2006, §35
9. Parti Nationaliste Basque – Organisation Régionale D'Iparralde v. France, judgment of 7 June 2007, §46
10. Christian Democratic People's Party v. Moldova, judgment of 14 February 2006, §68).

The limits within which political groups may conduct their activities while enjoying the protection of the Convention's provisions.

11. United Communist Party of Turkey v. Turkey, judgment of 30 January, 1998, §57.
Socialist Party and Others v. Turkey, judgment of 25 May 1998, §45
Freedom and Democracy Party (ÖZDEP) v. Turkey, judgment of 8 December 1999, §44
Refah Partisi and Others v. Turkey, judgment of 31 July 2001, §46
Yazar and Others v. Turkey, judgment of 9 April 2002, §48
Dicle for the Democratic Party (DEP of Turkey v. Turkey, judgment of 10 December 2002, §45
Refah Partisi and Others v. Turkey, judgment of 13 February 2003, §101
Guner v. Turkey, judgment of 12 July 2005, §76
Partidul Comunistilor (Nepeceristi) and Ungureanu v. Romania, judgment of 3 February 2005, §55

The conditions under which a political party may campaign for political programs that challenge the basic ideology and constitutional structure of the state

- Socialist Party and Others v. Turkey, judgment of 25 May 1998, §46-47.
Refah Partisi and Others v. Turkey, judgment of 31 July 2001, §47.
Yazar and Others v. Turkey, judgment of 9 April 2002, §49

Necessary in a democratic society

Socialist Party and Others v. Turkey, judgment of 25 May 1998, §49.
Freedom and Democracy Party (Özdep) v. Turkey, judgment of 8 December, 1999, §43.
Refah Partisi (Prosperity Party and Others) v. Turkey, judgment of July 31, 2001, §64.
Yazar and Others v. Turkey, judgment of April 9, 2002, §52.
Dicle for the Democratic Party (DEP) of Turkey v. Turkey, judgment of December 10, 2002, §48.
Refah Partisi (Welfare Party) and Others v. Turkey, judgment of February 13, 2003, §104.
Socialist Party of Turkey (STP) and Others v. Turkey, judgment of November 12, 2003, §39.
Democracy and Change Party and Others v Turkey, judgment of April 26, 2005, §26.
Emek Partisi and Senol v Turkey, judgment of May 31, 2005, §29.
Guner v Turkey, judgment of July 12, 2005, §80.
Stankov and the United Macedonian Organisation Ilinden v Bulgaria, judgment of October 2, 2001, §87.
The United Macedonian Organisation Ilinden – Pirin and Others v Bulgaria, judgment of October 20, 2005, §62.
Linkov v The Czech Republic, December 7, 2006, §37.
Parti Nationaliste Basque – Organisation Régionale D’Iparralde v France, judgment of June 7, 2007, §52.
Christian Democratic People’s Party v Moldova, judgment of February 14, 2006, §76.
Association of Citizens Radko & Paunkovski v the Former Yugoslav Republic of Macedonia, judgment of January 15, 2009, §66.
Partidul Comunistilor (Nepeceristi) and Ungureanu v Romania, judgment of February 3, 2005, §48.
Herri Batasuna and Batasuna v Spain, judgment of June 30, 2009, 83.

Appendix 3: Council of Europe documents regarding political parties

Text	Subject	Year
<i>Political parties and the freedom of association</i>		
VC Guidelines	Prohibition and dissolution of political parties	1999
VC Guidelines and explanatory report	Legislation on political parties: some specific issues	2004
<i>Extremist parties and movements</i>		
PACE Recommendation 1438	Threat to democracy by extremist parties and movements in Europe	2000
PACE Resolution 1308	Restrictions on political parties in the Council of Europe member states	2002
PACE Resolution 1344	Threat posed to democracy by extremist parties and movements in Europe	2003
<i>Political party financing</i>		
VC Guidelines and report	Financing of political parties	2001
PACE Recommendation 1516	Financing of political parties	2001
CM Recommendation 2003(4)	Common rules against corruption in the funding of political parties and electoral campaigns	2003
VC Opinion	The prohibition of financial contributions to political parties from foreign sources	2006
<i>Good practice</i>		
PACE Resolution 1407	New concepts to evaluate the state of democratic development	2004
PACE Recommendation 1680	New concepts to evaluate the state of democratic development	2004
PACE Resolution 1546	Code of good practice for political parties	2007
VC Code of good practice	Political parties	2008

VC = Venice Commission

PACE = Council of Europe Parliamentary Assembly

CM = Council of Europe Committee of Ministers

Appendix 4: Europe Union documents regarding political parties

Text	Subject	Body	Year
Maastricht Treaty	First mention of parties	EU Council	1992
Charter of Fundamental Rights	Freedom of assembly and of association: paragraph on parties	EU Council, Parliament, Commission	2000
Nice Treaty	Party funding	EU Council	2000
Regulation (EC 2004/2003)	Legal regulation party funding	Co-decision	2003
Regulation 1605/2002	Financial regulation party funding (grants)	EU Council	2002
Regulation 2003/2205 (REG)	Procedural regulation party funding	EU Parliament	2003
Decision 2004/C 155/01	Procedural regulation party funding	EU Bureau	2004
Treaty establishing a Constitution for Europe	Amendment of first paragraph party article + split of article	EU Council	2004
Resolution 2005/2224 (INI)	Proposal to amend legal regulation party funding + Proposal to develop party statute	EU Parliament	2006
Regulation (EC) 1524/2007	Amendment legal regulation party funding	Co-decision	2007
Regulation (EC) 1525/2007	Amendment financial regulation party funding	EU Council	2007
Feasibility Study	Party statute	AFCO	2007
Treaty of Lisbon	Replication of amendments in European Constitution + Charter of Fundamental Rights	EU Council	2009

AFCO = Constitutional Affairs Committee of the European Parliament

Appendix 5: EU Recommendations and party financing regulation

Country	EU Documents	Legislation Changed/Added	Accession
Slovakia	<i>EC Regular Report</i>	The 2005 Act on Financing of Political Parties and Electoral Campaigns replaced the original 1991 Act	2004
Poland	European Parliament Resolution and <i>EC Regular Report</i>	The Law on Political Parties – amended in 2001-2005	2004
Latvia	European Parliament Resolution	The Law on Financing of Political Organisations (Parties) – amended in 2002-2005	2004
Lithuania	European Parliament Resolution	The 2004 Law on Financing and Financial Control of Political Parties and Political Campaigns	2004
Hungary	European Parliament Resolution and <i>EC Regular Report</i>	-	2004
Bulgaria	<i>EC Regular Reports</i>	The 2005 Law on Political Parties	2007
Romania	<i>EC Regular Reports</i>	The 2006 Law on Financing of Political Parties and Electoral Campaigns	2007
Croatia	<i>EC Regular Reports</i>	The 2004 Act on Financing the Presidential Elections Campaign and the 2006 Bill on Financing of Political Parties	Candidate
FYR of Macedonia	<i>EC Regular Reports</i>	The 2004 Law on Financing of Political Parties	Candidate
Serbia & Montenegro	<i>EC Regular Report</i>	The 2003 Law on Financing of Political Parties	Candidate
Turkey	<i>EC Regular Reports</i>	The Law amended in 2005	Candidate

Source: Walecki (2007)

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