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## THE FREEDOM TO WITHDRAW FROM POLITICAL PARTY MEMBERSHIP UNDER THE ETHIOPIAN LAW: A CASE COMMENT

*Leake Mekonen Tesfay\**

### Abstract

*One of the fundamental rights that the FDRE Constitution acknowledges is the freedom of political party membership. To this effect, the Revised Political Parties Registration Proclamation, which regulates the details of political party membership, allows a political party member to withdraw from membership at any time. It does not provide for any formality. Despite this, the Cassation Bench of the Federal Supreme Court has decided in *Unity for Justice and Democracy Party v. Blue Party* (File No.112091, Miyazia 28, 2007 E.C.) that a political party member cannot withdraw and be a member of another political party without notifying the former political party in writing. This case comment examines the appropriateness of this decision from the perspective of the right to political party membership. To this end, the case comment analyses the constitutional and other legal provisions pertinent to the right to political party membership in Ethiopia. Relevant provisions of international human rights instruments are also explored. To share a lesson from comparative experience, experiences from Israel, Papua New Guinea, Kenya and Cambodia are consulted. This author argues that the law does not require a written withdrawal notice. This enables a political party member to terminate his/her membership not only with written withdrawal notice, but also through all other possible ways including by taking new membership in another political party.*

**Keywords:** *Cassation decision, freedom of political party membership, freedom to withdraw, limitations on human rights, right to association.*

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\* LL.B (Hawassa University), LL.M in Comparative Public Law and Good Governance (Ethiopian Civil Service University), Judge at Federal First Instance Court, Former Public Prosecutor at Ethiopian Revenues and Customs Authority (25 Nov. 2009 – 22 June 2016). The author could be reached through [happyleake@gmail.com](mailto:happyleake@gmail.com). The author is indebted to the internal and external reviewers of *Haramaya Law Review* for their invaluable comments on the draft of this case comment. Any misconceptions or improper expressions are, however, the author's only liability.

## I. INTRODUCTION

In contrast to its political past,<sup>1</sup> Ethiopia is now a multiparty federation. The Federal Democratic Republic of Ethiopia (FDRE) Constitution recognizes the right to political party membership in many folds. Firstly, it guarantees the freedom of association for any lawful purposes.<sup>2</sup> This includes association for political purposes which would establish the foundation for the freedom to form or join a political party. Secondly, the Constitution provides that everyone has the right to be member to and be elected into a position in organizations including political organizations (political parties).<sup>3</sup> Thirdly, it provides that political power is assumed and government is led by a political party or coalition of political parties having the highest number of seats in the House of Peoples' Representatives.<sup>4</sup>

Besides, the right to form and join a political party is an element of the freedom of association under the international human rights instruments which Ethiopia has ratified. The Universal Declaration of Human Rights provides that "Everyone has the right to freedom of ... association"<sup>5</sup> and "No one may be compelled to belong to an association."<sup>6</sup> This shows the voluntary nature of membership to any association. Similarly, the International Covenant on Civil and Political Rights<sup>7</sup> and the African Charter on Human and Peoples' Rights<sup>8</sup> guarantee the freedom of association.

In Ethiopia, the power to legislate on issues relating to elections and political parties is given to the federal government.<sup>9</sup> Accordingly, the House of People's Representatives has proclaimed the Revised Political Parties Registration Proclamation which, among other things, provides that every Ethiopian has the right to form or join a political party.<sup>10</sup> The freedom to establish or join a political party carries the other side of the coin, i.e. the right to leave membership. In connection with this, referring to a decision by the European Court (*Sigurjonsson v. Iceland*, European

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<sup>1</sup> Multiparty democracy was incepted only after the regime change in 1991 and was embodied in the Charter of the Transitional Government of Ethiopia. See Kassahun Berhanu, Party Politics and Political Culture in Ethiopia, *in* AFRICAN POLITICAL PARTIES: EVOLUTION, INSTITUTIONALIZATION AND GOVERNANCE 115, 117 (M.A. Mohamed Salih ed., 2003). See Transitional Period of Ethiopia Charter, No.1, Art. 1 (a)(1) which guarantees the right to unrestricted political participation and to organize political parties. Following the Charter, a law was proclaimed to provide for the details, and it provided for the right to form or join a political party and the right to withdraw from political party membership at any time. See *Political Parties Registration Proclamation* No. 43/1993, FED. NEG. GAZETA, 52<sup>nd</sup> Year, No. 37 (now repealed) Art. 4(1), 16 and 20.

<sup>2</sup> CONSTITUTION, Proclamation No 1/1995, FED. NEGARIT GAZETA, 1<sup>st</sup> Year No.1, 1995 (here after FDRE CONSTITUTION), Art. 31.

<sup>3</sup> *Id.*, Art. 38(2)-(4).

<sup>4</sup> *Id.*, Art. 56 and 73(2).

<sup>5</sup> Universal Declaration of Human Rights, adopted on 10 December 1948 at New York, G.A. Res. 217A, U.N. GAOR, 3rd Sess, Pt. at 71, U.N. Doc. A/810 (1948) (hereinafter UDHR), Art. 20(1).

<sup>6</sup> *Id.*, Art. 20(2).

<sup>7</sup> International Covenant on Civil and Political Rights, adopted on 19 December 1966 at New York and entered into force on 23 March 1976.999 U.N.T.S. 171 (1966) (hereinafter ICCPR), Art. 22(1).

<sup>8</sup> African Charter on Human and Peoples' Rights, Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986) (hereinafter ACHPR), Article 10(1).

<sup>9</sup> FDRE CONSTITUTION, Art. 51(15) and 55(2)(d).

<sup>10</sup> *Revised Political Parties Registration Proclamation*. No. 573/2008, FED. NEG. GAZETA, 14<sup>th</sup> Year, No. 62 (hereinafter Revised Political Parties Registration Proclamation), Art. 4(1).

Court, (1993) 16 EHRR 142), Nihal Jayawickrama wrote that “the right to freedom of association encompasses not only a positive right to form or join an association, but also the negative aspect of that freedom, namely the right not to join or to withdraw from an association.”<sup>11</sup> In the same vein, as political parties are associations, this applies to the right to freedom of membership to a political party. Therefore, where unjustifiable withdrawal procedures, conditions or formalities are provided for, it cannot be said that freedom of political party membership is sufficiently guaranteed. In the Ethiopian case, the RPPRP provides that “A member of a political party may at any time withdraw from his membership.”<sup>12</sup> Apart from this, it does not require any condition or formality.

On the other hand, the right to political party membership is not immune from limitations.<sup>13</sup> Limitations on human rights are, however, required to be prescribed by law and to be proportional. This means the limitations shall be only to the extent necessary for the protection of others’ rights or public interest. In this regard, the UDHR provides that human rights and freedoms shall not be limited except as “determined by law” if necessary to respect the rights of others, public morality and democratic order.<sup>14</sup> Similarly, the ICCPR<sup>15</sup> and the ACHPR<sup>16</sup> provide that the right to association cannot be limited except as prescribed by law and where necessary to protect “the rights and freedoms of others”; public safety, order, health or morals; solidarity of the family and community; and national security, independence and territorial integrity. Due to the nature of their work, members of the armed forces and the police can be prohibited by law from membership to associations.<sup>17</sup>

Thus, the right to freedom of political party membership can be limited by law only when it is necessary to protect the rights of others or public interest. Although what is necessary can be explained on a case-by-case basis, Lord Diplock’s expression: “you must not use a steam hammer to crack a nut if a nutcracker could do”<sup>18</sup>, in a decision by the House of Lords in the United Kingdom, describes it well. In other words, the very essence of proportionality test is that

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<sup>11</sup> NIHAL JAYAWICKRAMA, *THE JUDICIAL APPLICATION OF HUMAN RIGHTS LAW: NATIONAL, REGIONAL AND INTERNATIONAL JURISPRUDENCE*, 752 (2002), (hereinafter NIHAL JAYAWICKRAMA).

<sup>12</sup> Revised Political Parties Registration Proclamation, *supra* note 10, Art. 31(3).

<sup>13</sup> While some rights are absolute, some rights can be limited to protect rights of others or public interest. See Jill Marshal, *Personal Freedom Through Human Rights Law? Autonomy, Identity and integrity under the European Convention on Human Rights*, 98 *INTERNATIONAL STUDIES IN HUMAN RIGHTS* 38, 38-39 (2009). (hereinafter JILL MARSHALL)

<sup>14</sup> UDHR, Art. 29(2). Particular to the right to freedom of political party membership, the Venice Commission said that restrictions should be prescribed by law and proportional with the specified purposes they are intended to achieve in the interest of a democratic society. See VENICE COMMISSION, *GUIDELINES ON POLITICAL PARTY REGULATION*, adopted by the Venice Commission at its 84<sup>th</sup> Plenary Session, (15-16 October 2010) at 9-10.

<sup>15</sup> ICCPR, Art. 22(2).

<sup>16</sup> ACHPR, *supra* note 8, Art. 10(2) and 29.

<sup>17</sup> ICCPR, Art. 22(2).

<sup>18</sup> *R v. Goidstein* [1983] 1WLR, 151, 155, cited in *The Focus*, The principle of proportionality and the concept of margin of appreciation in human rights law, 15 *BASIC LAW BULLETIN*, 2, 2 (December 2013). See also Margaret, Allars, *Proportionality, Tradition and Constitutional Framework: Borrowing Foreign Legal Notions in Australian Public Law*, in *LAW AND LEGAL CULTURE IN COMPARATIVE PERSPECTIVE* 287, 291 (Gunther Doeker-Mach and Klaus A. Ziegert eds., 2004); and M. B. Rodriguez, Ferrere, *Proportionality as a Distinct Head of Judicial Review in New Zealand* (Unpublished, LL.B Thesis, University of Otago, October 2007) at 9.

legislatures should impose limitations only if respecting the right of others or public interest is impossible otherwise.

In Ethiopia, the FDRE Constitution does not provide for limitations on the right to freedom of association in general and the right to freedom of political party membership in particular.<sup>19</sup> What the Constitution provides is that the objectives of associations, including political parties, should be legal<sup>20</sup> and associations can set requirements<sup>21</sup> according to which political parties can specify criteria for admission and interparty elections for their members. It is clear that international conventions ratified by Ethiopia are integral parts of the Ethiopian law.<sup>22</sup> Moreover, human rights provisions in the Constitution are required to be interpreted in line with the UDHR and other international human rights instruments ratified by Ethiopia.<sup>23</sup> Therefore, pursuant to the international human rights instruments discussed above, the right to freedom of political party membership can be limited by law to protect the rights of others and public interest.

The Revised Political Parties Registration Proclamation provides that judges, members of the Defense Force and members of the Police Force cannot be members of political party unless they leave their work. If they take political party membership, it should be assumed that they have left their job willfully.<sup>24</sup> This is justified by the need to ensure their nonpartisan service to the public.<sup>25</sup> However, other limitations not prescribed by law shall not be imposed on the right to political party membership.

Whether a political party member can withdraw from membership without a written notice, however, has been subject of controversy in the Ethiopian judicial discourse. Particularly, in *Unity for Justice and Democracy Party v. Blue Party*,<sup>26</sup> the Cassation Bench of the Federal Supreme Court has decided that a political party member cannot withdraw from political party membership and take new membership in and be registered as a candidate representing another political party without a written withdrawal notice to the political party of his/her former membership. This case comment examines the issue whether this decision is appropriate from the perspective of the right to freedom of political party membership. To address this, the relevant constitutional and legal provisions in Ethiopia are closely examined. Provisions of international human rights instruments pertinent to the right to freedom of political party membership are also explored. A comparative analysis is also made with the Israeli experience,

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<sup>19</sup> However, the Constitution does not provide for a general limitation clause or specific limitations does not necessarily mean all rights are absolute. See Tsegaye Regassa, *Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia*, 3 MIZAN LAW REVIEW 288, 315-316 (2009), (hereinafter Tsegaye), Abdi Jibril Ali, *Distinguishing Limitation on Constitutional Rights from their Suspension: A Comment on the CUD Case* IHARAMAYA LAW REVIEW 1, 7-9 (2013)

<sup>20</sup> FDRE CONSTITUTION, Art. 31.

<sup>21</sup> *Id.*, Art. 38(2).

<sup>22</sup> *Id.*, Art. 9(4).

<sup>23</sup> *Id.*, Art. 13(2).

<sup>24</sup> Revised Political Parties Registration Proclamation, *supra* note 10, Art. 58(1)-(2).

<sup>25</sup> See also FDRE CONSTITUTION, Art. 87(5) and *Amended Federal Judicial Administration Council Establishment Proclamation*, Proclamation No. 684/2010, FED. NEG. GAZETA, 16<sup>th</sup> Year, No. 41, Art. 11(2).

<sup>26</sup> *Unity for Justice and Democracy Party v. Blue Party*, Fed Supreme Court, Cassation Bench, File No.112091 (06 May 2015) (28 Miyaziya 2007 E.C) Vol. 18, at 421-435.

selected for the reason that a similar experience is mentioned in the Court's decision, and the Kenyan experience selected for its detailed provisions regarding the issue of withdrawal from political party membership.

The remaining parts of this case comment are organized as follows. Section II presents the summary of facts of the case. Section III is devoted to comment and analysis on the Court's decision. Finally, section IV provides concluding remarks.

## II. SUMMARY OF FACTS OF THE CASE

The litigation on the case between Unity for Justice and Democracy Party vs. Blue Party<sup>27</sup> commenced in Amhara Regional State, Western Gojjam Zone, Daga Damot District Constituency Grievance Hearing Committee. Unity for Justice and Democracy Party (the petitioner) petitioned that Ato Girma Bitew, Ato Meles Zeleke, W/ro Yirgedu Tadege and Ato Yihune Tilahun, whom the Blue Party (the respondent) nominated as candidates for the 5<sup>th</sup> National Election of 24 May 2015, had been its members until they were registered as candidates of the respondent and requested their disqualification from candidacy. The Committee rejected the candidature of the above individuals. While so ruling, the committee reasoned that they cannot be registered as candidates for the election representing the respondent because they are members of the petitioner, and not that of the respondent.

Blue Party (the respondent) appealed to the Grievance Hearing Committee in the Branch Office of the National Electoral Board of Ethiopia in Amhara Region which confirmed the decision of the lower committee. The respondent, still dissatisfied, appealed to the Supreme Court of Amhara Region which also confirmed the decisions of the Committees on two grounds. Firstly, the Supreme Court reasoned that the respondent did not present evidences to prove that the candidates it presented for the election have withdrawn from their previous membership in the petitioner upon written notice in accordance with the petitioner's by-laws.<sup>28</sup> Secondly, the Supreme Court reasoned that the respondent did not show that these candidates have become its members having passed through the six weeks time which they have to wait before they become its members according to its by-laws,<sup>29</sup> and concluded, similar to the decisions of the committees, that the above named candidates are not the members of the respondent.

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<sup>27</sup> *Id.* For ease of access, the summary of facts of the case presented in this section are taken as summarized and reported in the decision of the Cassation Bench of the Federal Supreme Court. Because of this, it is not possible to include the reasoning in the decisions of the committees, the Amhara National Regional State Supreme Court and the Cassation Bench of the Amhara National Regional State Supreme Court in detail. The author, however, is of opinion that this did not basically hinder readers from understanding the nature of the case and the main concerns at issue.

<sup>28</sup> To be understood from this is that the petitioner has a provision in its by-laws which requires its members to submit a written notice upon withdrawal. There is no indication in the decision of the Cassation Bench of the Federal Supreme Court as to whether or not the committees had raised the requirement of written withdrawal notice as an issue in their decisions. The Regional Supreme Court has, however, concluded that withdrawal from political party membership is possible only upon written notice pursuant to the petitioner's by-laws.

<sup>29</sup> It is possible to understand from this that the respondent has provided in its by-laws that for individuals to become its full members they are required to wait for a six weeks time of provisional membership. It seems that this is designed to help it make sure that the members it recruits are suitable to its policies and objectives. It is also

Still dissatisfied, the respondent petitioned to the Cassation Bench of Amhara National Regional State Supreme Court. By a majority vote,<sup>30</sup> the Bench decided for the respondent. It reasoned that the above named candidates have the right to withdraw from their membership at any time and be members and candidates of the respondent although they were the members of the petitioner. It also stated that upon their registration as members of the respondent, it should be assumed that they have resigned from their previous membership of the petitioner. The Cassation Bench also added that the respondent has included a provision in its by-laws enabling it to accept individuals as its members and nominate them as its candidates for an election without necessarily observing the six weeks check-time provided for membership in its by-laws.<sup>31</sup>

Lastly, the petitioner argued before the Cassation Bench of the Federal Supreme Court (the Court) a person cannot be registered as a member and be nominated as candidate of another political party without a written withdrawal notice to the political party in which he was a member. It claimed that the respondent cannot accept these individuals as members and nominate them as candidates without making sure that they have given notice of their resignation to the petitioner and the public. The respondent, on the other hand, argued that previous membership cannot be a bar against new membership in another party because withdrawal from membership is possible at any time and a political party cannot, in its by-law, limit that right. It added that individuals shall not be forced to remain members of a political party which they did not need to continue with under the pretext that they have not formally withdrawn.

The Court, reversing the Amhara National Regional State Supreme Court Cassation Bench's majority decision, held that a political party member cannot withdraw from membership and be a member and election candidate of another political party without a written withdrawal notice to the political party of his previous membership. Putting its conclusion in other words, the Court said that a political party cannot accept as members and nominate as election candidates former members of another political party without making sure that the individuals have withdrawn from their previous political party membership upon a written notice.

The Court, in so ruling, based its reasoning on two grounds. First, the Court said that allowing a political party member to withdraw from her/his membership and to take a new

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possible to understand in the case of our discussion, however, that it has accepted the above named candidates as its full members without observing the six weeks time of provisional membership.

<sup>30</sup> Although the case comment is written in view of examining the decision of the Cassation Bench of the Federal Supreme Court, it would be better if the dissenting opinion in the decision of the Cassation Bench of the Amhara National Regional State Supreme Court was entertained in the case comment. This was impossible for the reason that the Cassation Bench of the Federal Supreme Court did not state the contents of this dissenting opinion in its decision. The author, however, is of opinion that the dissenting opinion in the Cassation Bench of the Amhara National Regional State Supreme Court may be similar with the decision of the Cassation Bench of the Federal Supreme Court. If this was not the case, the Court would, according to this author's view, not fail stating it in its decision.

<sup>31</sup> According to this, it is clear that the respondent has provided in its by-laws that it, in principle, accepts individuals as its full members after a six weeks time of provisional membership. It has also provided in its by-laws that it can accept individuals as its full members if it thinks fit, without necessarily observing the six weeks time of provisional membership, according to which it accepted the candidates in the case of our discussion.

membership in and to be registered as a candidate for an election representing another political party without written notice to the former political party does not enable the former to know which of its members have left from those who have continued their membership, and get ready for elections accordingly. Related to this, it added that this violates the peaceful relationship between political parties on the one hand and the required loyalty (genuine membership) of members on the other, creates distrust between political parties and their members, and lets the relationship between political parties be based on hatred and conspiracy. Although it did not state it explicitly, the Court, in its analysis with respect to the relationship between political parties and their members, seems to have concluded that withdrawing from membership and taking new membership in another political party without a written withdrawal notice to the former political party is equivalent with simultaneous political party membership. It said that an individual cannot be a member of two or more political parties simultaneously. Second, the Court, similarly, said that allowing a political party member to withdraw from her/his membership and to take a new membership in and to be registered as a candidate for an election representing another political party without written notice to the former political party contravenes the right of the electorate (public) to have informed choices. In finalizing its analysis, the Court has also mentioned similar experience from Israel.

### III. ANALYSIS AND COMMENT ON THE DECISION OF THE COURT

The issue that the Court was required to decide in this case was whether a political party member can withdraw from membership and take new membership in another political party without notifying the party of his/her previous membership in writing. The legal provision directly relevant for this provides that “*a member of a political party may at any time withdraw from his membership.*”<sup>32</sup>

The above provision does not require a written withdrawal notice. And there is a well-known maxim that where the law is clear courts cannot give it a meaning different from its words.<sup>33</sup> In this regard, a prominent judge and scholar notes that “Judges as interpreters are not authorized to write the statute anew.”<sup>34</sup> This means that a law shall not be given a meaning what the words used in it cannot say. Taking the words in the provision that “a member of a political party may at any time withdraw from his membership”, it is hardly possible to conclude that a political party member cannot withdraw from membership without a written notice. Had it been its desire to restrict withdrawal from political party membership to be only upon written notice, it would have been possible for the law to expressly provide it. The fact that the legislature did not provide for the requirement of written withdrawal notice cannot also be considered as lack of legislative foresight and legal lacuna which interpreters should bridge through interpretation. Rather, it is the conviction of this author that this provision is deliberately designed to enable political party members to liberally withdraw from their membership without any formality and

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<sup>32</sup> Revised Political Parties Registration Proclamation, *supra* note 10, Art. 31(3).

<sup>33</sup> Congressional Research Service, Statutory Interpretation: General Principles and Recent Trends, CRS Report, at 44-46 (September 24, 2014), John Burrows, *The Changing Approach to the Interpretation of Statutes*, 33 VUWLR, 995 (2002).

<sup>34</sup> AHARON, BARAK, PURPOSIVE INTERPRETATION IN LAW 20 (2005), (Translated from Hebrew by Sari Bashi).

restriction.<sup>35</sup> From this, therefore, this author contends that the provision clearly shows that the legislature did not have the intention to impose the requirement of written withdrawal notice.

Accordingly, a withdrawing member is not required to submit a written notice to the political party from which s/he withdraws. S/he is left free to express the fact that s/he does not want to continue membership not only with written notice, but also through all other possible ways. For example, this may be expressed by taking a new membership in another political party, to state the real case in our discussion. If withdrawal were provided to be only upon written notice, it would be exaggeration of formalism at the expense of the member's freedom to withdraw and take new membership in another party.

On another view, the FDRE Constitution provides that human rights embodied in the Constitution "shall be interpreted in a manner confirming" to the principles of the UDHR and other international human rights covenants to which Ethiopia is a party.<sup>36</sup> In this regard, the UDHR prohibits restrictive interpretation.<sup>37</sup> Accordingly, those who are responsible to give a practical meaning to human rights clauses, including courts, are required to interpret them liberally.<sup>38</sup> Therefore, the provision that "A member of a political party may at any time withdraw from his membership" should have been interpreted in a way enabling the political party members to effectively utilize their right to freedom of political party membership. Seen from this perspective, it does not mean a political party member cannot withdraw from membership except upon a written notice. The requirement of written withdrawal notice, on the other view, is a limitation<sup>39</sup> on the freedom to withdraw from membership. In the case of our discussion, the requirement of written withdrawal notice is not prescribed by the relevant law.

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<sup>35</sup> With respect to a political party nominee withdrawing from election, the legislature has provided in the Electoral Law that "a political party candidate who has withdrawn from the election ... shall notify his decision in writing to the political party that nominated him." See *Electoral Law of Ethiopia Amendment* Proc. No. 532/2007, FED. NEG. GAZETA, 13<sup>th</sup> Year, No. 54 (hereinafter Electoral Law), Art. 54(2). With respect to a political party member withdrawing from her/his membership, however, the legislature did not provide in the Revised Political Parties Registration Proclamation for the requirement of written withdrawal notice. As the time these laws were proclaimed was proximate, it is possible to understand that the legislature did not intend to limit withdrawal from political party membership to be only upon written withdrawal notice as opposed to the withdrawal of political party nominees withdrawing from an election. As it will be made clear below, there is a difference between a political party member withdrawing from membership and a political party nominee withdrawing from election.

<sup>36</sup> FDRE CONSTITUTION, Art. 13(2).

<sup>37</sup> It states: "Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein." UDHR, Art. 30.

<sup>38</sup> Tsegaye Regassa, *supra* note 19, at 318-319 & 328, NIHAL JAYAWICKRAMA, *supra* note 11, at 164.

<sup>39</sup> The requirement of written withdrawal notice may seem a "mere" procedural requirement and "too simple" to consider it a limitation. Moreover, it may not seem prohibiting a member from withdrawing or forcing him to remain member unwillingly. However, as one noted, "... Definition of the limits of the rights is calculated on the basis of the concrete situation and the values at stake." See JILL MARSHALL, *supra* note 13, at 40. Limitations, therefore, are imposed as policy makers and legislatures may envision as necessary to achieve specified purposes to balance between competing rights. Accordingly, limitations on some rights may be stringent conditions while limitations on other rights may be simple procedural requirements or formalities. In our case, especially, what makes the requirement of written notice a limitation on the right to freedom of political party membership is because the nonobservance of it has resulted a far-reaching effect - i.e., dismemberment from other political parties and disqualification from candidature in election. This does not have a lesser effect than prohibiting a member from withdrawing or forcing him/her to remain member unwillingly. Nothing beyond this can be termed a limitation.



Therefore, it does not seem proper for the Court to impose the requirement of written withdrawal notice which the law does not require. Be this as it may, let us examine if the requirement of written withdrawal notice has purposes to serve vis-à-vis the Court's reasoning.

The first reason of the Court is related to the interest of the political party from which the members withdraw. Undoubtedly, political parties have an interest in distinguishing their active members from those who have left. This enables them to know their members, to have an updated register thereof, and to mobilize their members.<sup>40</sup> In the present case, however, the petitioner had already known that its former members have taken new membership in the respondent by the simple fact that they were registered as election candidates of the latter. This is sufficient notice for the petitioner to know that they did not want to continue with it. This makes the requirement of a written withdrawal notice of no purpose.

A related issue the Court raised is the enhancement of smooth interparty relation and the loyalty of their members. It is true that peaceful interparty relation is required for the development of a democratic political culture. To this end, political parties are required to make all possible efforts to have continuous communication with other parties.<sup>41</sup> To peacefully resolve possible controversies between political parties, Joint Political Parties' Council is also established.<sup>42</sup> Similarly, election campaigns are required to be conducted in accordance with the Constitution and other laws, and respecting the rights of other parties.<sup>43</sup> Similarly, the basic rights and duties of political party members are provided by law. Accordingly, political party members have the right to democratic participation in the decision making and to be elected into positions in the political party of their membership.<sup>44</sup> They have also the duty to pay membership fees and observe party by-laws to mention some.<sup>45</sup>

A question relevant here is whether the petitioner (or another political party) can provide in its by-laws for the requirement of a written withdrawal notice without which withdrawal is impossible. A political party is free to regulate its internal affairs in its by-laws, including the details of membership rights and duties.<sup>46</sup> Party by-laws, however, are required to be consistent with the rights and duties of political party members provided in law and cannot have the effect of abridging the rights of a member guaranteed to him as a citizen.<sup>47</sup> One of the legal rights of a political party member is the right to withdraw at any time, which, as already argued earlier, enables to leave membership even without a written withdrawal notice. In this view, the Court should not have given legal effect to the provision in the petitioner's by-laws for the requirement of written withdrawal notice.

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<sup>40</sup> MICHAEL CHEGE, POLITICAL PARTIES IN EAST AFRICA: DIVERSITY IN POLITICAL PARTY SYSTEMS 47 (2007).

<sup>41</sup> *Electoral Code of Conduct of Political Parties Proclamation*, No. 662/2009, FED. NEG. GAZETA, 15<sup>th</sup> Year, No. 8 (hereinafter *Electoral Code of Conduct*), Art. 16.

<sup>42</sup> *Id.*, Art. 20-22.

<sup>43</sup> *Id.*, Art. 11. See also *Electoral Law*, *supra* note 35, Art. 58.

<sup>44</sup> *Revised Political Parties Registration Proclamation*, *supra* note 10, Art. 28 and FDRE Constitution, Art. 38(2).

<sup>45</sup> *Id.*, *Revised Political Parties Registration Proclamation*, *supra* note 10, generally see Arts. 29 and 15.

<sup>46</sup> *Id.*, Art. 15(1) & 16.

<sup>47</sup> *Id.*, Art. 15(2) & (3) and 31(4).

Therefore, the withdrawal of the members of the petitioner without giving a written notice and the fact that the respondent accepted them as its members cannot be considered a violation of the duty to have peaceful interparty relationship by the respondent and a violation of party by-laws by the withdrawing party members. However, if the act of the respondent admitting former members of the petitioner can be considered a violation of the duty to have peaceful interparty relation, whether the members withdraw with or without a written notice should not make a difference. From its very inception, there is no reason for the political parties to create enmity between themselves due to this for it is the freedom of the individuals to choose the political party of their membership. Hence, the problem in this context lies not on the fact that former members of the petitioner have taken new membership in the respondent without regard to the requirement of written withdrawal notice provided for in the petitioner's by-laws. It, rather, lies on the misreading of the petitioner, or other political parties which have similar view, that its members should not be able to freely leave their membership and/or take new membership in another political party at any time. As all other political parties with such misconception may do, the petitioner may therefore fall in to hatred with other political parties which accepted its former members as their new members. However, such a problem is to be rectified not by restricting withdrawal from political party membership to be only upon written notice. Rather, it can be rectified by developing adherence to the freedom of the political party members to withdraw from their membership and take new membership in another political party at any time, even without written withdrawal notice.

The other related point that the Court raised leads to issues related to candidature in election. For political party nominees to be registered as candidates, their nomination evidence including evidence of their consent for the nomination "along with details of candidature" is required to be presented to the Electoral Board.<sup>48</sup> The phrase "details of candidature" talks about the manner in which political party candidates are elected. This requires evidences to be presented to show that the candidates are elected in a democratic manner in which political party members duly participated as provided in the Constitution and in the Political Parties' Proclamation.<sup>49</sup> As to this author's understanding, this is meant to develop intraparty democracy in candidate election. The Court has, however, misinterpreted this provision as if it requires a political party that accepts previous members of other political parties as its members and nominates them as its candidates for an election to present evidences to show that these members have withdrawn from their previous membership with a written withdrawal notice.

The Electoral Law on the other hand, provides that "A political party candidate who has withdrawn from the election ... shall notify his decision in writing to the political party that nominated him."<sup>50</sup> The Court has made a passing reference to this provision to support its reasoning. However, the provision has a purpose different from what the Court sees. It is possible to understand that the purpose of the Electoral Law here is to enable the political party

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<sup>48</sup> Electoral Law, *supra* note 35, Art. 46(2) & (3).

<sup>49</sup> FDRE Constitution, Art. 38(3); Revised Political Parties Registration Proclamation, *supra* note 10, Art. 28, 15(1)(b), (d), (e) & (i).

<sup>50</sup> Electoral Law, *supra* note 35, Art. 54(2).

to nominate a substitute candidate for the election.<sup>51</sup> In the case of a party member withdrawing from membership, however, there is no such an interest of nominating a substitute. The Court has analogized two contrary things and applied this provision for a purpose it is not intended for.

The second reason the court raised is the interest of the electorate (public) to have informed choices. It is true that the need to multiparty election is to enable citizens to choose their representatives freely and based on informed decisions.<sup>52</sup> For this to be achieved, political parties and candidates competing in an election should be able to sufficiently communicate with the electorate to introduce their objectives equally.<sup>53</sup> In this regard, the Electoral Law provides that every candidate can conduct election campaigns “up till two days before” the polling date.<sup>54</sup> To this effect, candidates, political organizations and their supporters are entitled to equal access to the state owned mass media including free access to airtime.<sup>55</sup> For these rights to materialize, government organs have the obligation of creating conducive conditions.<sup>56</sup> Similarly, to enable the public distinguish between symbols, designations, emblems and flags which political parties and candidates use, political parties and candidates in an election campaign are required to use distinctive symbols.<sup>57</sup> Political parties are also prohibited from imitating, stealing, disfiguring or destroying the symbols of other political parties.<sup>58</sup> Moreover, it is provided that the designation, emblem and flag of a political party shall not be similar or confusing with that of other political parties or commercial, social or international organizations.<sup>59</sup>

Provided that all of these legal requirements are duly observed, contesting political parties and candidates can be able to sufficiently communicate with the electorate. Particularly, it is expected that political party nominees during election campaigns will express which party they represent together with their policy alternatives to the public. Based on this, the electorate can be able to have sufficient information enabling it to decide whom to vote for without any confusion. In this perspective, whether the political party members withdraw from their previous membership upon written notice cannot be the concern of the electorate. Hence, the requirement of written withdrawal notice does not have a public purpose to serve.

The last point to be raised is the Court’s reference to “similar” experience from Israel while that is not the case. The relevant provision reads:

A Knesset member seceding from his faction and failing to tender his resignation as a Knesset member in close proximity to his secession, shall not be included, in the election for the next Knesset, in the list of candidates submitted by a party that was represented by

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<sup>51</sup> *Id.*, Art. 54(2) cum 54(4).

<sup>52</sup> *Id.*, fourth paragraph of the preamble and Art. 5(3).

<sup>53</sup> *Id.*, fourth paragraph of the preamble and Art. 5(2).

<sup>54</sup> *Id.*, Art. 58(1)-(5).

<sup>55</sup> *Id.*, Art. 59(1) & (2).

<sup>56</sup> *Id.*, Art. 60.

<sup>57</sup> *Id.*, Art. 52.

<sup>58</sup> Electoral Code of Conduct, *supra* note 41, Art. 12.

<sup>59</sup> Revised Political Parties Registration Proclamation, *supra* note 10, Art. 27(1) & (2).

a faction of the outgoing Knesset; This provision does not apply to the splitting of a faction under the conditions prescribed by law.<sup>60</sup>

According to this, a Knesset member who resigns from her/his faction without documenting resignation to the Knesset<sup>61</sup> cannot be nominated as candidate in the coming election by a political party having a seat in the outgoing Knesset unless his/her resignation was caused by legally recognized party splitting.<sup>62</sup> This means that Knesset members who defect from their membership in one political party to another due to a promise for a safe seat in the next Knesset will be forced to resign from their membership in the Knesset.<sup>63</sup> The purpose of this anti-defection provision is to avoid government failure in the Knesset. This can be understood from the provision that secession from membership includes voting against one's faction in the Knesset with respect to the vote of confidence or no confidence.<sup>64</sup> This does not indicate the intention of requiring a withdrawing member to present a written notice to the political party from which s/he withdraws.

In addition, although different jurisdictions may enact anti-defection legislations, they are not always accepted. An example for this can be the experience of Papua New Guinea. It was provided in Papua New Guinea's Organic Law on the Integrity of Political Parties and Candidates that a parliament member (MP) can resign from her/his membership in a political party only upon accepted grounds with written notice to the president of the political party specifying the reasons for his/her resignation.<sup>65</sup> Resignation without accepted grounds was also provided as an offence against official duty.<sup>66</sup> Procedurally, upon receipt of the resignation notice, the president of the political party sends such a resignation notice to the registrar of political parties, which in turn sends it to the Ombudsman for investigation and decision as to whether there are accepted grounds for resignation or the member is guilty of resignation without accepted grounds.<sup>67</sup> Pending the investigation, the MP was required to remain member of the political party from which s/he intends to resign.<sup>68</sup> Moreover, it was provided that an MP's vote against the resolution of the political party of her/his membership in parliamentary votes,

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<sup>60</sup> Israel's Constitution of 1958 (with Amendments through 2013), available at [http://www.constituteproject.org/constitution/Israel\\_2013.pdf](http://www.constituteproject.org/constitution/Israel_2013.pdf), (Accessed on 31<sup>st</sup> of July 2017) (hereinafter Israeli Constitution), Article 6A(a).

<sup>61</sup> The Israeli legislative council is called Knesset.

<sup>62</sup> For splitting to be legally recognized, at least 7 Knesset members should split from the political party having a seat in the Knesset. See Zvi Ofer and Brenda Malkiel, *Reforming Israel's Political System: Recommendations and Action* (hereinafter *Reforming Israel's Political System*), at 20 (October 2011).

<sup>63</sup> For the development of such anti-defection law, see Csaba Nikoleyini and Shaul Shenhav, In Search of Party Cohesion: The Emergence of Anti-Defection Legislation in Israel and India (paper prepared for delivery at the Annual Meeting of the American Political Science Association, Toronto, Canada, 3-6 September 2009).

<sup>64</sup> Israeli Constitution, *supra note* 60, Art. 6(A)(b).

<sup>65</sup> Organic Law on the Integrity of Political Parties and candidates 2003, available at, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/88056/100575/F2099356900/PNG88056.pdf>, (Accessed on 31<sup>st</sup> of July 2018) (hereinafter OLIPPC) Section 57, 58 and 65. The accepted grounds for resignation were 1) if the party or its executive officer committed serious breach against the party constitution and 2) if the party is declared insolvent according to relevant law. *Id.*, Section 57(2).

<sup>66</sup> *Id.*, Section 57(3) and 68.

<sup>67</sup> *Id.*, Section 59 and 60.

<sup>68</sup> *Id.*, Section 61.

including in vote of confidence or no-confidence is not counted.<sup>69</sup> Independent MPs, who initially support the election of a prime minister were also required to vote in support of her/him if a vote on confidence or no-confidence motion is held during his/her term, in votes for constitutional amendment and votes for national budget.<sup>70</sup>

These provisions were developed to remedy repeated government failure due to defection by MPs and “vote of no confidence” against government.<sup>71</sup> This is because volatility of party alliances and vote of no confidence leading to loss of government have long been the features of Papua New Guinea’s political system since its independence from Australian administration under United Nations trusteeship in 1975.<sup>72</sup> These provisions, however, have been declared unconstitutional.<sup>73</sup> Papua New Guinea’s Supreme Court has invalidated these provisions in its decision on 7<sup>th</sup> of July 2010 on the reason that they are unreasonable restrictions on constitutional democratic freedoms.<sup>74</sup> Particularly, the Supreme Court stated that these provisions contravene the constitutionally guaranteed right to association and political party membership, right to hold public office and exercise public functions, and “powers, privileges and immunities of Members of Parliament.”<sup>75</sup> Therefore, while the issue whether anti-defection legislations (provisions) are required in Ethiopia is not the main subject of this case comment,<sup>76</sup> the Court’s reliance on the Israeli anti-defection experience in our case seems also defective even if viewed from the perspective of the validity of anti-defection laws.

Although the Court’s reference to other jurisdictions’ experience is commendable, a reference should have been made to jurisdictions having sufficient provisions on similar subject matter. For example, the Kenyan Political Parties Act provides that a withdrawing political party member is required to give prior written notice to the political party or to the House of Parliament or county assembly of his/her membership as the case may be.<sup>77</sup> On the other hand, it has provided for other facts by which voluntary resignation is to be presumed. It provides that a political party member who forms or joins another party, or in any way publicly advocates the

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<sup>69</sup> *Id.*, Section 65(1)(c) and 66.

<sup>70</sup> *Id.*, Section 70, 71, 71, 72 and 73.

<sup>71</sup> Henry Tadao Okole, A Critical Review of Papua New Guinea’s Organic Law on the Integrity of Political Parties and Candidates: 2001-2010 (Australian National University, SSGM Discussion Paper 2012/5), available at [http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/2012\\_5\\_0.pdf](http://ssgm.bellschool.anu.edu.au/sites/default/files/publications/attachments/2015-12/2012_5_0.pdf), (Accessed on 18<sup>th</sup> September 2018) (hereinafter Okole) at 1-2.

<sup>72</sup> See United Nations, Division for Public Administration and Department of Management (DPADM) Department of Economic and Social Affairs (DESA), Independent State of Papua New Guinea: Public Administration Country Profile (Unpublished, March 2004), at 2.

<sup>73</sup> Okole, *supra* note 71, at 2.

<sup>74</sup> *Id.*, at 2-4.

<sup>75</sup> Peter, Donigi, OLIPPAC and the Supreme Court ruling (July 8, 2010), available at <https://www.thenational.com.pg/olippac-and-the-supreme-court-ruling/>, (Accessed on 19<sup>th</sup> of September 2018).

<sup>76</sup> Article 54(4) of the FDRE Constitution provides that members of the House of People’s Representatives are governed by the Constitution, “the will of the people” and their conscience. This author is of the view that this constitutional provision enables MPs to vote for what they believe is constitutional and serves public interest irrespective of issues related to party discipline and party cohesion, hence precludes the enactment of anti-defection legislations (provisions).

<sup>77</sup> Political Parties Act, in National Council for Law Reporting, Republic of Kenya, Laws of Kenya (Rev. Ed.), Section 14(1) (a)-(c) (2012) (hereinafter Kenyan Political Parties Act).

formation of another party or the ideologies, interests or policies of another party “shall be deemed to have resigned from the previous political party.”<sup>78</sup>

In cases when a political party member is found to have joined another political party without written notice to the political party of his/her previous membership, controversy could be created whether the law allows this. The Kenyan Political Parties’ Act has, however, validly avoided the potential confusion and controversy by clearly providing for other grounds to presume withdrawal from membership other than a written withdrawal notice. Particularly, if it is known that a member has taken new membership in another party, the presumption is that s/he has willfully resigned from his/her previous political party membership.

Cambodia’s Law on Political Parties has also provided for a different approach which supports the freedom to withdraw from political party membership. It provides that a political party member can withdraw from membership as of right.<sup>79</sup> Moreover, it provides that, if an individual joined many political parties, the membership to the last political party is considered valid.<sup>80</sup> It is clear from this that the new membership in the last political party is given validity based on a presumption that upon new membership in another political party, the membership in the former political party is terminated. Therefore, a political party member cannot be prohibited from taking new membership on the ground that s/he has not withdrawn formally upon written withdrawal notice. In consideration of these experiences, therefore, the Court’s comparison with the Israeli system in our case seems to suffer from the problem of bad example.

This, however, is not to disregard the Court’s concern regarding the possible challenge of simultaneous political party membership. Indeed, the fact that political party members are left free to withdraw from their membership and take new membership in another political party without any formality may, unless remedied, be an incentive for a potential challenge in this regard. Hence, the Court’s stance that a person cannot simultaneously be member of two or more political parties is acceptable. Other jurisdictions have also outlawed simultaneous membership. For example, in the Israeli system, simultaneous membership is a crime.<sup>81</sup> Similarly, the Kenyan Political Parties Act and Cambodia’s Law on Political Parties clearly prohibit simultaneous party membership.<sup>82</sup> In addition, the Kenyan law provides that political parties are required to keep register of their members.<sup>83</sup> The Kenyan Registrar of Political Parties is also empowered to take reports thereof and publicize the verified list of all political party members.<sup>84</sup> This enables

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<sup>78</sup> *Id.*, Section 14(5). It provides “... notwithstanding the provisions of subsection (1) or the provisions of any other written law ...” This, however, does not apply to advocating the formation of a coalition or promoting the common objectives of a coalition. See *Id.*, Section 14(6); see also OFFICE OF THE REGISTRAR OF POLITICAL PARTIES, GUIDE TO POLITICAL PARTY MEMBERSHIP, 5-6 (2014).

<sup>79</sup> Law on Political Parties, 1997, Royal Kram (Law) No. 1197/07, available at <http://www.parliament.am/library/Political%20parties/cambodjia.pdf>, (Accessed on 25<sup>th</sup> of July 2018) (hereinafter Cambodia’s Law on Political Parties), Article 13.

<sup>80</sup> *Id.*, Article 15.

<sup>81</sup> Reforming Israel’s Political System, *supra* note 62, at 18.

<sup>82</sup> Kenyan Political Parties Act, *supra* note 77, Section 14(4) and Cambodia’s Law on Political Parties, *supra* note 79, Article 15.

<sup>83</sup> Kenyan Political Parties Act, *supra* note 77, Section 17(1)(a).

<sup>84</sup> *Id.*, Section 18(1) & (2) and Section 34(d).

political parties know who of their members have taken new membership in another political party and update the register of their members accordingly.

These or other similar mechanisms can be recommended to be adapted to the Ethiopian system to control simultaneous political party membership. However, it would have been possible to say that the individuals in our case were simultaneous members of both parties<sup>85</sup> if evidences were presented to show that they had been participating in the intraparty affairs of both parties “equally”<sup>86</sup> or, more strongly, if they were found to have accepted simultaneous nomination by both parties for the election,<sup>87</sup> obviously, without the knowledge of the parties. If that was the case, it would be impossible to say they have terminated their former membership in the petitioner so that it might be possible to conclude that they have taken simultaneous membership in both parties. The mere fact that they withdrew from the petitioner without a written withdrawal notice and joined the respondent does not mean, however, that they have taken simultaneous membership.

In a nutshell, the Court’s ruling that a political party member cannot withdraw from membership without a written resignation notice and take new membership in another political party is unjustifiable limitation on the right to freedom of political party membership generally and on the freedom to withdraw from political party membership particularly. Once it is known that the members of the petitioner have taken new membership in the respondent, it should be assumed that, as stated by the majority decision of the Amhara National Regional State Supreme Court Cassation Bench, they have terminated their former membership upon their will without necessarily resorting to a written withdrawal notice.

#### IV. CONCLUSION

The FDRE Constitution guarantees the right to freedom of political party membership. Similarly, the Political Parties Proclamation provides that every Ethiopian, except acting judges, members of the Police Force and Defence Force, has the right to form or join a political party. The proclamation also allows a political party member to withdraw from membership at any time without providing for any formality upon withdrawal. The Cassation Bench of the Federal

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<sup>85</sup> Although it did not clearly state it, it is possible to understand the Court’s view is that withdrawing from previous membership without a written notice and taking new membership in another party amounts to simultaneous membership.

<sup>86</sup> To conclude that the individuals participated in the intraparty affairs of both parties equally, the petitioner should have argued and presented evidences to show that they acted as its members (by partaking in intraparty meetings, decision-making, paying membership dues etc...) even after they were registered as members of the respondent.

<sup>87</sup> Express prohibition that an individual cannot accept nomination by more than one political party may be important. For example Papua New Guinea’s OLIPP has expressly provided that a person cannot run for an election both as an independent candidate and as a political party nominee and that a candidate cannot accept nomination by more than one political party for an election. See OLIPP, *supra* note 65, Section 54(1) and 56(1) (c). Moreover, if a candidate who accepts endorsement by more than one political party wins an election, it provides that her/his election is void. See *Id.*, Section 56(5)(b). In the Ethiopian case, there is no clear prohibition of simultaneous nomination in the Electoral Law. However, a political party can nominate “only one candidate for a single council seat in a constituency.” Similarly, a person can run as a candidate only in one constituency. See Electoral Law, *supra* note 35, Art. 46(4) and 56(1). From these provisions, it is possible to conclude that simultaneous nomination is not allowed.

Supreme Court, however, has decided in *Unity for Justice and Democracy Party vs. Blue Party* that a political party member cannot withdraw from membership and be a member and election candidate of another political party without submitting a written notice of withdrawal to the political party of his previous membership. According to this author's view, this is an undue limitation on the right to freedom of political party membership in general and right to withdraw from political party membership in particular. This is neither prescribed by the relevant law nor justifiable in the interest of the political party from which the member withdraws or the public. Nor can this be learned from the experience of other jurisdictions as the Court alleged. The fact that former members of the petitioner have taken new membership in the respondent should have been sufficient to presume that they have terminated their membership with the petitioner upon their will without necessarily resorting to written withdrawal notice. Therefore, the Amhara National Regional State Supreme Court Cassation Bench's majority decision should have been confirmed.

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