

The Freedom to Withdraw from Political Party Membership in the Ethiopian Law: A Case Based Analysis

Leake Mekonen Tesfay*

LL.B, Hawassa University, 2009; LL.M, Comparative Public Law and Good Governance, Ethiopian Civil Service University, 2014; Judge, Federal First Instance Court; Former Senior Public Prosecutor, Ethiopian Revenues and Customs Authority

***Corresponding author**

Leake Mekonen Tesfay

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Abstract: One of the fundamental rights 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. However, the Cassation Bench of the Federal Supreme Court has decided in *Unity for Justice and Democracy Party v Blue Party* (File No.112091, decided on 06 May 2015 (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. The case comment analyses the constitutional and 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, the experience of the Israeli and Kenyan legal systems is examined. 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 rather by 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.

INTRODUCTION

In contrast to its political past [1], 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 [2]. This includes association for political purposes, which establishes 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, i.e. political parties [3]. 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 (HPR) [4].

Besides, the right to form and join a political party is an element of the freedom of association under

¹ Multiparty democracy was incepted only after the regime change in 1991 and was embodied in the Charter of the Transitional Government of Ethiopia (the Charter). See Kassahun Berhanu, *Party Politics and Political Culture in Ethiopia*, in M.A. Mohamed Salih (ed.), *African Political Parties: Evolution, Institutionalisation and Governance*, at 117 (2003). The Charter provides for the right to unrestricted political participation and to organize political parties. See Transitional Period of Ethiopia Charter No.1, Article 1 (a)(1). Following the Charter, a law was proclaimed to provide for the details, and it provided for the right to form or join to a political party and the right to withdraw from political party membership at any time. See Political Parties Registration Proclamation No. 43/1993, Neg. Gazeta, 52nd Year, No. 37, (now repealed) Article 4(1), 16 and 20.

² Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/1995, Fed. Neg. Gazeta, 1st Year, No. 1, Article 31.

³ Id., Article 38(2)-(4).

⁴ Id., Article 56 and 73(2).

the international human rights instruments which Ethiopia has ratified. The Universal Declaration of Human Rights (UDHR) provides that “Everyone has the right to freedom of ... association” [5] and “No one may be compelled to belong to an association” [6]. This shows the voluntary nature of membership to any association. Similarly, the International Covenant on Civil and Political Rights (ICCPR) [7] and the African Charter on Human and Peoples’ Rights (ACHPR) [8] 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 [9]. Accordingly, the HPR has proclaimed the Revised Political Parties Registration Proclamation (RPPRP), which, among other things, provides that every Ethiopian has the right to form or join a political party [10].

The freedom to establish or join a political party carries the other side of the coin – i.e. the right to leave membership. In this connection, referring to a decision by the European Court (Sigurjonsson v. Iceland, European Court, (1993) 16 EHRR 142), Nihal Jayawickrama wrote that “[t]he 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” [11]. In the same vein, as political parties are associations with political purposes, 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” [12]. It does not require any condition or formality.

On the other hand, the right to political party membership is not immune from limitations [13].

Limitations on human rights are, however, required to be prescribed by law and proportional, i.e., 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 [14]. Similarly, the ICCPR [15] and the ACHPR [16] 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 [17].

Thus, the right to freedom of political party membership can be limited by law only for the purpose of respecting the rights of others or public interest. Although what is necessary can be explained on a case-by-case basis, the quote “you must not use a steam hammer to crack a nut, if a nutcracker could do” [18] describes it well. In other words, the very essence of proportionality test is that legislatures should impose limitations only if respecting the right of others or public interest is impossible otherwise.

In Ethiopia, the Constitution does not provide for limitations on the right to freedom of association generally and the right to freedom of political party membership particularly [19]. What the Constitution

interest. See Jill Marshall, *Personal Freedom through Human Rights Law? Autonomy, Identity and Integrity under the European Convention on Human Rights*, International Studies in Human Rights Volume 98, at 38-39 (2009).

¹⁴ UDHR, Article 29(2). Particular to the right to freedom of political party membership the Vince 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 84th Plenary Session, (15-16 October 2010) at 9-10.

¹⁵ ICCPR, Article 22(2).

¹⁶ ACHPR, *supra* note 8 Article 10(2) and 29.

¹⁷ ICCPR, Article 22(2).

¹⁸ *R v Goldstein* (1983) quoted in *The Focus*, The principle of proportionality and the concept of margin of appreciation in human rights law, 15 Basic Law Bulletin, at 1 (December 2013).

¹⁹ However, the Constitution does not provide for a general limitation clause or specific limitations does not necessarily mean all rights are absolute. See Tsegaye

⁵ UDHR, Article 20(1).

⁶ *Id.*, Article 20(2).

⁷ ICCPR, Article 22(1).

⁸ African Charter on Human and Peoples’ Rights, Article 10(1).

⁹ FDRE Constitution, Article 51(15) and 55(2)(d).

¹⁰ Revised Political Parties Registration Proc. No. 573/2008, Fed. Neg. Gazeta, 14th Year, No. 62, Article 4(1)

¹¹ See Nihal Jayawickrama, *The Judicial Application of Human Rights Law: National, Regional and International Jurisprudence*, at 752 (2002).

¹² *Id.*, RPPRP, *Supra* Note 10 Article 31(3).

¹³ While some rights are absolute, some rights can be limited to protect equivalent rights of others or public

provides is that the objectives of associations, including political parties, should be legal ^[20] and associations can set requirements ^[21], 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 ^[22]. Moreover, human rights provisions in the Constitution are required to be interpreted in line with the UDHR and other international human rights instruments to which Ethiopia is signatory ^[23]. 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 RPPRP 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 ^[24]. This is justified by the need to ensure their nonpartisan service to the public ^[25]. 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* ^[26], the Cassation Bench of the Federal Supreme Court has decided that a political party member cannot withdraw from his/her 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 issue, 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, 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 in the following way. Section II presents the summary of facts of the case. Section III is devoted to comment and analysis on the Court's decision. And, section IV goes for conclusion.

Summary of Facts of the Case

The litigation in the *Unity for Justice and Democracy Party v Blue Party* ^[27], case commenced in Amhara Region, Western Gojjam Zone, Daga Damot Wereda 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 5th 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 named individuals. The committee, while so ruling, reasoned that they cannot be registered as candidates for the election representing the respondent, because they are members of the petitioner, 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

Regassa, Making Legal Sense of Human Rights: The Judicial Role in Protecting Human Rights in Ethiopia 3 Mizan L. R., 288, at 315-316 (September 2009); Abdi Jibril Ali, Distinguishing Limitation on Constitutional Rights from their Suspension: A Comment on the *CUD* Case 1Haramaya L. R., 1, at 7-9 (Winter 2013).

²⁰ FDRE Constitution, Article 31.

²¹ Id., Article 38(2).

²² Id., Article 9(4).

²³ Id., Article 13(2).

²⁴ RPPRP, supra note 10, Article 58(1)-(2).

²⁵ See also FDRE Constitution, Article 87(5) and Amended Federal Judicial Administration Council Establishment Proclamation No. 684/2010, Fed. Neg. Gazeta, 16th Year, No. 41, Article 11(2).

²⁶ *Unity for Justice and Democracy Party v Blue Party* in Federal Supreme Court Cassation Decisions, Vol. 18, at 421-435, File No.112091, decided on 06 May 2015, Miyaziya 28, 2007 E.C.

²⁷ Ibid. For ease of access, the summary 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 was not possible to include the reasoning in the decisions of the committees, the reasoning in the decision of the Amhara National Regional Supreme Court and the Cassation Bench of the Amhara National Regional Supreme Court in detail. The author, however, is of opinion that this did not basically hinder readers from understanding well the nature of the case and the main concerns at issue.

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's by-laws [²⁸]. 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 [²⁹], and concluded, similar to the decisions of the committees, that the above named candidates are not the members of the respondent.

Still dissatisfied, the respondent petitioned the Cassation Bench of Amhara National Regional Supreme Court. By a majority vote [³⁰], 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

²⁸ 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.

²⁹ It is possible to understand from this that the respondent has provided in its by-laws that for individuals to become its members they are required to wait for six weeks check-time. 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 possible to understand in the case of our discussion, however, that it has accepted the above named candidates as its members without observing the six weeks check-time.

³⁰ 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 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 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.

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 [³¹].

Lastly, the petitioner argued before the Cassation Bench of the Federal Supreme Court (the Court) that a person cannot be registered as a member and be nominated as election candidate of another political party without a written withdrawal notice to the political party in which s/he was a member. It claimed that the respondent cannot accept these individuals as members and nominate them as candidates for the election 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 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. 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 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

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

political party 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 peaceable 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 to 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 equal 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.

Analysis and Comment on the Court decision

The Court was asked to decide on the issue 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” [32].

This provision does not require a written withdrawal notice. Where the law is clear courts cannot give it a meaning different from its words [33]. In this regard a prominent judge and scholar notes that “Judges as interpreters are not authorized to write the statute anew” [34]. 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” in the case of discussion, 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 be possible to expressly provide it in that way. The fact that the legislature did not provide for the requirement of written withdrawal notice cannot 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 restriction [35]. From this, therefore, this author submits 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 rather by 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 have been 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 [36]. In this regard the UDHR prohibits

³⁵ 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, 13th Year, No. 54 (Electoral Law), Article 54(2). With respect to a political party member withdrawing from her/his membership, however, the legislature did not provide in the RPPRP 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 on the one hand and a political party nominee withdrawing from election on the other.

³⁶ FDRE Constitution, Article 13(2).

³² RPPRP, supra note 10, Article 31(3).

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

³⁴ Aharon, Barak, Purposive Interpretation in Law (Translated from Hebrew by Sari Bashi), at 20 (2005).

restrictive interpretation [³⁷]. Accordingly, those who are responsible to giving a practical meaning to human rights clauses, including courts, are required to interpret them liberally [³⁸]. 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 [³⁹] 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. 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 now 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 with the interest of the political party from which the members

withdraw (the petitioner). 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 accordingly [⁴⁰].

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 [⁴¹]. To peaceably resolve possible controversies between political parties, Joint Political Parties’ Council is also established [⁴²]. Similarly, election campaigns are required to be conducted in accordance with the Constitution and other laws, and respecting the rights of other parties [⁴³].

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 [⁴⁴]. They have also the duty to pay membership fees and observe party by-laws to mention some [⁴⁵].

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 to be considered impossible. A political party is free to regulate its internal affairs in its by-laws, including the details of

³⁷ 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, Article 30.

³⁸ Tsegaye Regassa, *supra* note 19, at 318-319 & 328; Nihal Jayawickrama, *supra* note 11, at 164.

³⁹ The requirement of written withdrawal notice, seen apparently, 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/her to remain member unwillingly. However, as one noted, “... [D]efinition of the limits of the rights are 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 in the interest of balancing 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.

⁴⁰ See Michael Chege, *Political Parties in East Africa: Diversity in Political Party Systems*, at 47 (2007).

⁴¹ Electoral Code of Conduct of Political Parties Proc. No. 662/2009, Fed. Neg. Gazeta, 15th Year, No. 8 (Electoral Code of Conduct), Article 16.

⁴² *Id.*, Article 20-22.

⁴³ *Id.*, Article 11; see also Electoral Law, *supra* note 35, Article 58.

⁴⁴ RPPRP, *supra* note 10, Article 28 and FDRE Constitution, Article 38(2).

⁴⁵ RPPRP, *supra* note 10, generally see Article 29 and 15.

membership rights and duties [⁴⁶]. 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 her/him as a citizen [⁴⁷]. 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.

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 will not make a difference. Because, there is no reason for the political parties to create enmity between themselves because of this, for it is the freedom of the individuals to choose the political party of their membership. The problem, in this context, lies not on the issue of the requirement of written withdrawal notice, rather, on the misreading of the petitioner, or other political parties which have similar view, that its members should not freely leave their membership and/or take new membership in another political party at any time. The petitioner, as all other political parties with this misconception may do, may, therefore, fall in to hatred with other political parties who accepted its former members as their new members. Such a problem is to be rectified not by restricting withdrawal from political party membership to be only upon written notice. Rather, 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.

The other related point 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 [⁴⁸]. 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 [⁴⁹]. 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" [⁵⁰]. 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 to nominate a substitute candidate for the election [⁵¹]. 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 [⁵²]. 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 [⁵³].

In this regard, the Electoral Law provides that every candidate can conduct election campaigns "up till two days before" the polling date [⁵⁴]. 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 [⁵⁵]. For these rights to materialize, Government organs have the obligation of creating conducive conditions [⁵⁶].

⁴⁶ Id., Article 15(1) & 16.

⁴⁷ Id., Article 15(2) & (3) and 31(4)

⁴⁸ Electoral Law, supra note 35, Article 46(2) & (3).

⁴⁹ FDRE Constitution, Article 38(3); RPPRP, supra note 10, Article 28, 15(1)(b), (d), (e) & (i).

⁵⁰ Electoral Law, supra note 35, Article 54(2).

⁵¹ Id., Article 54(2) cum 54(4).

⁵² Id., see the fourth paragraph of the preamble and Article 5(3).

⁵³ Id., see the fourth paragraph of the preamble and Article 5(2).

⁵⁴ Id., Article 58(1)-(5).

⁵⁵ Id., Article 59(1) & (2).

⁵⁶ Id., Article 60.

Similarly, in order 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 [57]. Political parties are also prohibited from imitating, stealing, disfiguring or destroying the symbols of other political parties [58]. 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 [59].

Provided that all of these legal requirements are duly observed, contesting political parties and candidates will 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 will 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 a faction of the outgoing Knesset; This provision does not apply to the splitting of a faction under the conditions prescribed by law [60].

According to this, a Knesset member who resigns from her/his faction without documenting resignation to the Knesset [61], 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 [62]. 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 [63]. The purpose of this 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 [64]. 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.

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 [65]. 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 formation of another party or the ideologies, interests or policies of another party "shall be deemed to have resigned from the previous political party" [66].

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

⁵⁷ Id., Article 52.

⁵⁸ Electoral Code of Conduct, *supra* note 41, Article 12.

⁵⁹ RPPRP, *supra* note 10, Article 27 (1) & (2).

⁶⁰ Israel's Constitution of 1958 (with Amendments through 2013) available at http://www.constituteproject.org/constitution/Israel_2013.pdf (hereinafter called Israeli Constitution) Article 6A(a).

⁶¹ The Israeli legislative council is called Knesset.

⁶² For splitting to be legally recognized at least seven 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, at 20 (October 2011) (Reforming Israel's Political System).

⁶³ For the development of such anti-defection law, see Csaba Nikoleyni 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.

⁶⁴ Israeli Constitution, *supra* note 60, Article 6(A)(b).

⁶⁵ Political Parties Act, in National Council for Law Reporting, Republic of Kenya, Laws of Kenya (Rev. Ed.), Section 14(1) (a)-(c) (2012) (Kenyan Political Parties Act).

⁶⁶ Id., Section 14(5). It provides "... notwithstanding the provisions of subsection (1) or the provisions of any other written law ..."

controversy by clearly providing for other grounds for presuming 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. 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. 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 [67]. Similarly, the Kenyan Political Parties Act clearly prohibits simultaneous party membership [68]. In addition, the Kenyan law provides that political parties are required to keep register of their members [69]. The Kenyan Registrar of Political Parties is also empowered to take reports thereof and publicize the verified list of all political party members [70]. This enables political parties know who of their members have taken new membership in another political party and update the register of their members accordingly.

These 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 the individuals in our case were simultaneous members of both parties [71] if evidences were presented to show that they had been participating in the intraparty affairs of both parties "equally" [72] or, more strongly, if they were found to have accepted simultaneous nomination by both parties for the

election [73], obviously, without the political parties knowing that. If that was the case it would be impossible to say they have terminated their former membership in the petitioner, hence, 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 both parties.

In a nutshell, once it is known that the members of the petitioner have taken new membership in the respondent, it should be assumed, as stated by the majority decision of the Amhara National Regional State Supreme Court Cassation Bench that they have terminated their former membership upon their will without necessarily resorting to a written withdrawal notice.

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. It does not provide for any formality upon withdrawal. The Cassation Bench of the Federal Supreme Court, however, has decided in *Unity for Justice and Democracy Party v Blue Party* that a political party member cannot withdraw from membership and be a member and election candidate of another political party without a written notice 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 generally and right to withdraw from political party membership particularly. This is neither prescribed by the relevant law nor justifiable in the interest of the political party from which the member withdraws or 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.

⁶⁷ Reforming Israel's Political System, *supra* note 62, p. 18.

⁶⁸ Kenyan Political Parties Act, *supra* note 65, Section 14(4).

⁶⁹ *Id.*, Section 17(1)(a).

⁷⁰ *Id.*, Section 18(1) & (2) and Section 34(d)

⁷¹ Although it did not state it clearly, 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.

⁷² 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.

⁷³ 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, Article 46(4) and 56(1). From these provisions, it is possible to conclude that simultaneous nomination is not allowed.

Therefore, the Amhara National Regional State Supreme Court Cassation Bench's majority decision should have been confirmed.