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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**DRAFT COMPILATION**

**OF VENICE COMMISSION OPINIONS AND REPORTS**

**CONCERNING ELECTORAL SYSTEMS**

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*\* This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 117<sup>th</sup> Plenary Session (December 2018).*

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**Draft - restricted**

## I. Introduction

This document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning electoral systems. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field. This document does not concern questions of seat allocation to constituencies, delimitation of constituencies and electoral thresholds, the latter being subject to a separate compilation.<sup>1</sup> Furthermore, possible effects of different electoral systems on the representation of national minorities and of women will be dealt with in specific compilations.

The present compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to electoral systems, researchers as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The present document merely provides a frame of reference.

This document is structured in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.

Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional context of that country. This is not to say that such recommendation cannot be of relevance for other systems as well.

The Venice Commission's reports and studies quoted in this Compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study. References should be made to the opinion or report/study and not to the compilation.

The Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission's position, it would be important to read the entire compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think that a quote is missing, superfluous or filed under an incorrect heading ([venice@coe.int](mailto:venice@coe.int)).

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<sup>1</sup> See CDL-PI(2018)004, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2018\)004-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)004-e).

## II. The choice or change of an electoral system

### 1. A sovereign decision of the state

25. The Venice Commission and the OSCE/ODIHR have consistently expressed the view that the choice of an electoral system is a sovereign decision of a state through its political system.<sup>13</sup> There are different electoral systems, and multiple options on how they are presented are found across the OSCE region and member states of the Venice Commission. States have wide discretion in designing electoral systems, provided that international conventions and standards, guaranteeing, in particular, universal, equal, free and secret suffrage, are respected. Different electoral systems have different advantages and shortcomings.

26. However, a state's electoral system cannot be viewed in isolation. It must be seen in the context of the constitutional, legal and political traditions of the state, the party system, and territorial structure. Therefore, when assessing an electoral system, or proposed changes, the Venice Commission and the OSCE/ODIHR place it within a specific context. The perception that the chosen system works well in one state does not necessarily mean that it can be successfully replicated in another. The manner in which power is spread across the three branches of government and the role of political parties makes such replication deceptive as the change of environment will give rise to unexpected consequences. There may be checks and balances, including unwritten ones, which allow a system to function well in one state, but those checks and balances may be impossible to transfer. Furthermore, the economic realities of party or campaign funding can distort an otherwise competitive electoral environment. Finally, the failure to respect the distinction between state and party can undermine an electoral system which may appear well designed in theory compared to the reality.

27. However, this does not mean that historical or foreign experience is irrelevant. The experience of states with a similar history and political culture and located in the same region may be pertinent. For example, the specific national context in Moldova in 2014, led the Venice Commission and the OSCE/ODIHR to be critical towards the proposed introduction of a mixed electoral system, which raised concerns about the excessive involvement of businesspeople in the electoral process. Similar objections in other countries have been expressed in other joint opinions by the Venice Commission and OSCE/ODIHR.

28. Any fundamental change of the electoral system should take into account the effects of such change. The debate on an electoral system should be broad and allow relevant stakeholders to bring forward positive and negative effects of this reform.

**CDL-AD(2017)012 Republic of Moldova – Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament) (para. 25 to 28)**

27. While any electoral system may be chosen as long as it is in conformity with the standards of the European electoral heritage and it guarantees and gives effect to the free expression of the will of the voters, it should be reminded that "[t]he choice of an electoral system as well as a method of seat allocation remain both a sensitive constitutional issue and have to be carefully considered, including their adoption by a large consensus among political parties. While it is a sovereign choice of any democracy to determine its appropriate electoral system, there is the assumption that the electoral system has to reflect the will of the people. In other words, people have to trust the chosen system and its implementation".

**CDL-AD(2016)019 Armenia – Joint Opinion on the draft electoral code as of 18 April 2016 (para. 27)**

21. According to the Code of Good Practice and its explanatory report, the stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. This also applies to the electoral system, due to its decisive role in the election results. Thus care must be taken to avoid not only manipulation to the advantage of the party in power but to avoid even the mere semblance of manipulation. Even when no manipulation is intended, changes will appear to be dictated by immediate party political interests. Additionally, rules that change frequently and that are complicated may confuse voters. The Code of Good Practice notes that the fundamental elements of electoral law, including the electoral system should not be open to amendment less than one year before an election.

25. [...] Each electoral system has both advantages and disadvantages. These depend on various factors, such as party system, tradition, and territorial structure. [...]

**CDL-AD(2014)003 Joint Opinion on the draft Law amending the electoral legislation of Moldova (para. 21 and 25)**

17. There is a wide variety of electoral systems with proportional representation in different States. The Venice Commission has no preference for any specific method or degree of proportionality regarding the distribution of seats. States enjoy a broad margin of appreciation as these choices are political decisions. There are two different interests at stake which have to be balanced: to honour as much as possible the representation principle (which is enshrined in the proportionality principle); or to favour the creation of majorities, letting the main political coalition govern. Both electoral principles, majoritarian and proportional, as well as their combination in a mixed system are legitimate choices and it is up to the Mexican political class to make its choice.

**CDL-AD(2013)021 - Opinion on the electoral legislation of Mexico (para. 17)**

21. The Venice Commission and the OSCE/ODIHR do not recommend any specific electoral system. [...] The States enjoy a broad margin of appreciation as these choices are political decisions.

**CDL-AD(2012)012 Joint Opinion on the Act on the Elections of Members of Parliament of Hungary (para. 21)**

22. The choice of an electoral system is the sovereign decision of a state, provided the system conforms with principles contained in OSCE commitments, the Venice Commission Code of Good Practice in Electoral Matters and other international norms, including requirements for transparency, universality and equality of suffrage of voters and nondiscrimination among candidates and political parties.

**CDL-AD(2011)043 - Joint opinion on the draft election code of Georgia (para. 22)**

22. The choice of an electoral system is the sovereign right of each state; however it should be decided and agreed upon through broad and open discussions in the parliament with the participation of all political forces. Since the draft law re-introduces the system used in the 1998 and 2002 parliamentary elections, it should take account of the shortcomings of the electoral process identified by the national and international experts and observers during those elections. The change of the system should not be understood in such a way as to undermine the confidence of the voters, political parties and civil society in the electoral process.

**CDL-AD(2011)037 - Venice Commission and OSCE/ODIHR Joint opinion on the draft law on election of people's deputies of Ukraine (para. 22)**

72. At all events, there is no point in seeking a uniform electoral system for all the countries of the Council of Europe. The answer may be to set limits, bearing in mind what has been said

earlier, and leave it to each country to decide what arrangements are best suited to its particular circumstances, having regard to its history and party system, and best able to strike a satisfactory balance between the two potentially conflicting requirements of representativeness and governability.

**CDL-AD(2010)007 - Report on Thresholds and other features of electoral systems which bar parties from access to Parliament (II), (para. 72)**

20. The wide margin of discretion in electoral matters granted to states by the Court applies in particular to the choice of the voting system.

21. The Court and the previous European Commission of Human Rights found the great majority of electoral systems to be compatible with the Convention:

- Proportional representation or majority voting;
- Simple (one round) or relative (two round) majority voting;
- Two stage or indirect voting (as in the case of French senatorial elections by an electoral college made up of elected members); The question arises as to whether the Court might find such a system of indirect suffrage, in which voting is restricted to certain "privileged" citizens, even if they are elected members, to be compatible with the Convention, since in practice it deprives the great majority of the population of the right to vote;
- Single transferable or alternative voting, in which citizens receive two or more votes, which promotes co-operation between communities.

22. In brief, the way how votes are translated into seats is compatible with Article 3 of the Additional Protocol to the Convention if it is in accordance with the equal suffrage principle; exceptions, restrictions and variations are accepted if their purpose is lawful and necessary and the method chosen is proportionate to the outcome sought. According to the Court, such alternatives permit different treatment of minorities to enable them to participate effectively in public life, if reasonable.

23. Recently (in *Yumak and Sadak v. Turkey*<sup>4</sup>), the Court stated that it would be desirable for the 10 % threshold applied to Turkish elections be lowered and/or for corrective counterbalances to be introduced to ensure optimal representation of the various political tendencies, but the Turkish authorities are in the position to conveniently assess the choice of an appropriate system. Therefore the states can pay due attention to the general exigencies of the national electoral policies in conformity with historical and political factors. Article 3 of the Protocol goes no further than prescribing "free" elections held at "reasonable intervals" "by secret ballot" and "under conditions which will ensure the free expression of the opinion of the people" in the choice of the legislature. It follows that Protocol 3 "does not create any obligation to introduce a specific system" of elections, but it applies in particular to the modalities of the elections.

[...]

50. States have a large scope of appreciation in the matter and many different solutions are possible. International practice does not oblige them to adopt any specific solution when ensuring the proportional representation of minorities in the public decision-making process(es). In doing so, they will take into account their constitutional principles in so far as these principles deal with the matter and provide specific guidelines for the solution of the problem, in conformity with applicable international standards. Therefore, the states may introduce special exceptions to these systems according to the principles of rationality and proportionality. Therefore, votes need not necessarily have equal weight as regards the outcome of the election.

**CDL-AD(2008)013 - Report on Dual Voting for Persons belonging to National Minorities (para. 20 to 23 and 50)**

52. [...] Whilst states have a wide margin of appreciation on the introduction of conditions to voting rights, these conditions must satisfy the following criteria: they do not curtail the rights in question to such an extent as to impair their very essence and deprive them of their effectiveness; they must pursue a legitimate aim and the means must be proportional.

**CDL-AD(2007)046 - Opinion on the Electoral Law of the United Kingdom (para. 52)**

177. The conversion of votes to political mandates depends largely upon the electoral system. The Code of Good Practice in Electoral Matters is quite indifferent about the electoral system, as long as these systems are democratic in nature. With respect to democratic principles, thus, any electoral system may be chosen, regardless if it is a plurality or majority system, a proportional system or a combined system. It should be underlined that there is no such thing as the “best” electoral system that could be exported to all countries in the world.

178. Apart from the fact that the effects of one particular electoral system can be different from country to country, we must appreciate that electoral systems can pursue different, sometimes even antagonistic, political aims. One electoral system might concentrate more on a fair representation of the parties in parliament, while another one might aim to avoid a fragmentation of the party system and encourage the formation of a governing majority of one party in Parliament. One electoral system encourages a close relationship between voters and “their” constituency representatives, while another makes it easy for the parties to specifically introduce women, minorities or specialists into parliament by way of closed party lists. In some countries, complicated electoral systems are accepted in order to combine several political aims. In other countries, it is seen as a priority that the electoral system be not too difficult for the electorate and the administration to understand and operate. The appropriateness of an electoral system is determined according to whether it will do justice, bearing in mind the local conditions and problems. In particular, transparency of the elaboration of the list should be ensured. Thus, the electoral system and proposals to reform should be assessed in each individual case.

**CDL-AD(2006)018 - Report on Electoral Law and Electoral Administration in Europe - Synthesis study on recurrent challenges and problematic issues (para. 177-178)**

1. The electoral system. The draft would change the electoral system more proportionally (amendment to Article 95). Such an amendment is not contrary to the European standards.

**CDL-AD(2005)008 - Preliminary Joint Opinion on the Revised Draft Amendments to the Electoral Code of Armenia by the Venice Commission and OSCE/ODIHR (para. 52)**

II. Conditions for implementing these principles

[...]

4. Electoral system

Within the respect of the above-mentioned principles, any electoral system may be chosen.



**CDL-AD(2002)023rev2-cor - Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, Guideline II.4.**

2. Comparative law arguments

30. The explanatory statement to the draft law No. 123 refers to the fact that mixed electoral systems exist in different countries, such as Germany, Hungary, Lithuania and Japan. While it is certainly true that experiences from other states can provide valuable insights when considering a reform of the electoral system, comparative law arguments should be used with caution. State institutions and legislative arrangements function within a specific legal, political and cultural context. The presumption that institutional and legislative arrangements can be easily transplanted between legal systems and produce comparable results has often proven false.

**CDL-AD(2017)012 Republic of Moldova Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament) (para. 30)**

27. The explanatory statement of the submitted draft proposal refers to the fact that mixed electoral systems exist in different countries, such as Ukraine, Romania or Germany. However, the practical consequences of similar electoral systems can vary, since party systems, institutional structures or social environment are always different. In other countries, the choice of a mixed system may be the result of a consensual sovereign decision, and the way in which it is implemented in other cases is key to building trust in the democratic process and to adjust and solve possible concerns accordingly. Germany is a recurrent example in comparative law of a mixed system, which has been able to build trust, but it is unlikely to be comparable with the Republic of Moldova. This is the case not only because of the specifics of the Federal State, the size or the different institutional structure, but also because it is a system of proportional representation, which also includes provisions for compensation through additional seat distribution to maintain the overall proportionality of the parliament with that of votes received by the political parties.

**CDL-AD(2014)003 Joint Opinion on the draft Law amending the electoral legislation of Moldova (para. 27)**

3. Other arguments

17. There is a wide variety of electoral systems with proportional representation in different States. The Venice Commission has no preference for any specific method or degree of proportionality regarding the distribution of seats. States enjoy a broad margin of appreciation as these choices are political decisions. There are two different interests at stake which have to be balanced: to honour as much as possible the representation principle (which is enshrined in the proportionality principle); or to favour the creation of majorities, letting the main political coalition govern. Both electoral principles, majoritarian and proportional, as well as their combination in a mixed system are legitimate choices and it is up to the Mexican political class to make its choice.

**CDL-AD(2013)021 - Opinion on the electoral legislation of Mexico (para. 17)**

70. Article 125 of the Electoral Code describes the distribution of seats among lists in the proportional part of the election. The method used is the largest remainder formula using Hare's quota. It should be reminded that this method could theoretically result in a party having fewer seats despite a higher total number of votes.



**CDL-AD(2011)032 - Joint final opinion on the electoral code of Armenia (para. 70)**

61. The Code should [...] cover the situation when a party wins more seats than it has candidates. If the distribution method (largest remainder) is retained, it may be done by awarding the seats to the party in question and then to distribute the rest of the seats among the remaining parties having reached the threshold. By the other main set of distribution methods based on divisions (such as Sainte-Laguë and d'Hondt) it is simply done by not calculating more quotients than there are candidates on a list.

**CDL-AD(2008)023 Joint Opinion on the Election Code of the Republic of Armenia (para. 61)**

45. Although the constitutional amendments changed the number of Parliamentary mandates, they did not change any of the text requiring the election of some mandates by “a proportional system” and some by “a majority system”. In light of the transitional nature of Georgia’s democracy and its recent electoral history, whereby the public had refused to accept elections that were not perceived to be in line with OSCE commitments and Council of Europe standards for democratic elections, **it is recommended** that the Parliament carefully consider the appropriateness of this electoral system at this stage of Georgia’s democratic development. In this regard, the Parliament should consider the work of the Venice Commission on selecting an appropriate electoral system for an emerging democracy.

46. The December 2005 amendments to the Election Code also removed the possibility for independent candidates to run. Even though the mixed proportional - multi-mandate system does not facilitate the participation of independent candidates, it does not *per se* require their exclusion, and it would be possible for an allocation formula to provide for independent candidates as well as political parties and blocs, both in the proportional and in the plurality contests. The law should allow an independent candidate to seek office in the national Parliament of the country. Paragraph 7.5 of the OSCE Copenhagen Document recognises the right of citizens to seek political office, individually or as representatives of political parties or organisations, without discrimination. The exclusion of independent candidates also appears to be at odds with provisions of the Constitution of Georgia (Article 50.1).

**CDL-AD(2006)037 – Joint Opinion on the Election Code of Georgia as amended through 24 July 2006 (para. 45 and 46)**

**See also CDL-AD(2006)023 - Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005 (para. 47-48)**

17. Regarding the electoral system, a municipal council election must offer two main advantages: ensure that the municipal council has real authority, and enable at the same time opposition to be represented in the Council. The redistribution of electoral seats in 10 majoritarian constituencies (with two or three elected representatives per constituency) seems to be in accordance with these principles.

18. A third requirement appears necessary at the municipal level but has repercussions at the national level: the necessary coalition of parties due to the relative majority system. 12 councillors are elected through the proportional system. This could also lead to coalitions.

**CDL-AD(2005)042 - Opinion on the Draft Organic Law on “making Amendments and Additions into the Organic Law - Election Code of Georgia” (para. 17-18)**

52. Thus, Article 64 of the Constitution of Albania establishes a type of mixed member proportional representation system that contemplates an overall proportional distribution of mandates.

53. In the 2001 Parliamentary elections, the allocation of mandates was extremely controversial and subject to legitimate criticism. One factor that contributed to this controversy is the complexity of the allocation formula stated in the Electoral Code.

54. The complexity of the allocation formula stated in Articles 65 to 68 of the Code has not been addressed in a positive manner by the 2003 amendments. In fact, the allocation formula has been made even more complex and difficult for a voter or observer to understand. The 2003 amendments have turned a complex system into a more complex one that uses “composed multi-name lists” and “joint multi-name lists” instead of a single list of candidates presented by a political party or coalition. **The OSCE/ODIHR and Venice Commission recommend** that the Electoral Code be amended in order to establish a less complex electoral system that is in conformity with all requirements of Article 64 of the Constitution, transparent, easily implemented, and clearly and completely understood by voters.

**[CDL-AD\(2004\)017](#) - Joint Recommendations on the Electoral Law and the Electoral Administration in Albania of the European Commission for Democracy through Law (Venice Commission, Council of Europe) and the Office for Democratic Institutions and Human Rights (ODIHR) of the OSCE (para. 52-54)**

## CONCLUSION

2. The closing remark in the last section enables us to turn full circle from where we began in the general introduction to this report: despite the preference for proportional representation, often expressed by supporters of a “politically correct” view of the “democratic kit” or the equally peremptory assertion that outside a pure first-past-the-post system there can be no “governing democracy”, there is no electoral system which is good from every angle. Each has its advantages and its drawbacks, which vary in magnitude depending on what function fulfilled by the electoral system is considered.

3. The stakes are high since it is a question of identifying and implementing in practice the legitimacy of democratic power and ensuring that it is effective. Doubtless, this should bring forth some modesty on our part. It is not so much a question of choosing between ideal types as identifying – from minute examination of the socio-cultural realities, local legal traditions and the prevailing circumstances – what constitutes the best possible mix of conflicting solutions. There must be no hesitation in rectifying a system that is starting to produce perverse effects, since it is as easy to get into bad habits as good, and bad habits become difficult to eradicate when they turn into a cultural tradition. This is a sadly relativist conclusion for a lawyer who believes in the strength of principles. But, under cover of legal principles and mathematics, the question of electoral systems has to do with the art of politics, which, in order to reconcile conflicting interests peaceably, requires everyone to compromise without compromising themselves.

**[CDL-AD\(2004\)003](#) - Report on Electoral Systems - Overview of available solutions and selection criteria (para. 114-115)**

**More generally, see [CDL-AD\(2004\)003](#) in its entirety.**

### I. III. Possible effects of different electoral systems

21. [...] The 2017 Opinion recognised the sovereign decision of the Moldovan lawmakers with regard to the electoral system, but in the particular circumstances of Moldova, it recommended against the proposed change on the grounds that the election stakeholders in single-member constituencies could be vulnerable to undue influence and manipulation by well-resourced local businesspeople. More precisely, the 2017 Joint Opinion found that, “[i]n the present

Moldovan context, the proposed reform could potentially have a negative effect at the constituency level, where independent majoritarian candidates may develop links with or be influenced by businesspeople or other actors who follow their own separate interests”.<sup>13</sup> Concerns were also noted over the competent body and the criteria for the establishment of single-member constituencies, as well as the effect of thresholds on the representation of women. In light of these concerns, and in view of the lack of consensus on this polarising issue, the Joint Opinion concluded that the change of electoral system “is not advisable at this time”.

**CDL-AD(2018)008 Republic of Moldova - Venice Commission and OSCE/ODIHR  
Joint Opinion on the law for amending and completing certain legislative acts  
(para. 21)**

9. In this Opinion, the Venice Commission considered that the proposed reform deserves a positive assessment, as it completes the evolution of Georgia’s political system towards a parliamentary system and constitutes a positive step towards consolidating and improving the country’s constitutional order. In particular, it welcomed that draft Article 37(2) replaced the proportional/majoritarian mixed system in the current Constitution by a proportional election system as it considered that in Georgia, experience showed that the mixed electoral system tends to lead to an overwhelming majority of a single party, which is prejudicial to pluralism in Parliament.

10. The effect of this positive amendment was, however, limited by three major mechanisms: first, draft Article 37(6) maintained the 5% threshold rule in legislative elections provided in Article 50(2) of the Constitution in force. The second limitation concerned the distribution of unallocated mandates that have not cleared the 5% threshold, to the political party which has received the highest number of votes. The third mechanism concerned the prohibition of electoral coalitions (party blocks) that allow smaller parties to form electoral blocks, in order to be able to clear the 5% threshold. The Commission considered that, taken together, the three mechanisms limited the effect of the proportional system to the detriment of smaller parties, and pluralism. It therefore recommended that other options of allocating undistributed mandates than the one suggested by the draft amendments be taken into consideration, such as proportional allocation either to all political parties passing the 5% threshold; or setting up a ceiling for the number of wasted votes that are to be allocated to the winning party (premium); or the reduction of the threshold to 2% or 3%. A number of other recommendations were also made, in particular in the fields of fundamental rights and the judiciary. Moreover, after having observed the lack of consensus among stakeholders concerning the most crucial points of the constitutional reform, the Commission underlined that all stakeholders should seek to reach the widest possible consensus for this constitutional reform.

**CDL-AD(2018)005 Georgia – Constitutional amendments as adopted at the  
second and third hearings in December 2017 (para. 9 and 10)**

32. While majority or plurality systems in single-member constituencies may improve and further strengthen the link between citizens and their representatives, this is not always the case. In the 2014 Joint Opinion, the OSCE/ODIHR and the Venice Commission warned that such systems in specific political contexts may instead weaken or distort the link between the citizens and their representatives, and thus fail to achieve the declared objective of the draft. This would be the case if there is a strong influence of (local) businesspeople or other non-electoral stakeholders on their communities within a single-member constituency. Experiences from the 2012 parliamentary elections in Ukraine demonstrate that “the new mixed electoral system has changed the dynamic of these elections in comparison with the 2007 parliamentary elections, as party-nominated and independent candidates are competing strongly at the local level. A number of independent candidates are linked to wealthy businesspeople, some of whom are also supporting political parties financially.”

33. Concerning the introduction of a mixed electoral system and the specific political context in the Republic of Moldova, the 2014 Joint Opinion, based upon consultations with political parties, non-governmental organizations and experts, expressed concern over similar consequences. The OSCE/ODIHR and the Venice Commission concluded that adopting a mixed electoral system in the Republic of Moldova raised “serious concerns and could have important shortcomings”. There appears to be little ground to reconsider this assessment only three years later. During the visit to Chişinău, many stakeholders again voiced concerns that in the current political context in Moldova, any electoral system with a major majoritarian component would allow for undue influence by local businesspeople, or other actors who follow their own separate interests. Thus, in the current political context, the introduction of a mixed electoral system still raises serious concerns.

34. The OSCE/ODIHR and the Venice Commission acknowledge that bringing the elected representatives closer to their constituents is a legitimate aim for the reform of an electoral system. Majoritarian systems in single-member constituencies may indeed have such effects. Keeping in mind that the choice of electoral system is the sovereign decision of the people of the Republic of Moldova, the OSCE/ODIHR and the Venice Commission would nonetheless mention that the aims stated in the explanatory report to the draft law are achievable also through other options, for example, a proportional system with constituency or preference voting. Such measures can help bring voters closer to their representatives in the current proportional system, without risking the above-mentioned serious concerns that a mixed system raises in the current Moldovan political context, which far outweigh possible positive effects. The introduction of a proportional system with constituencies in the Republic of Moldova was suggested as a possible option by the Venice Commission as early as in 2003. Enabling voters to vote not only for party lists, but also for individual candidates (preference vote) could also be an option to enhance the link between the electorate and elected MPs.

**CDL-AD(2017)012 Republic of Moldova – Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament) (para. 32 to 34)**

25. [...] this distortion of proportionality in the electoral system may be thought to clash with principles of European electoral heritage when the election is for a directly elected part of the legislature, but the concepts of equality of ballot strength and proportionality do not necessarily apply to the special parts of the BiH legislature, which are designed to represent constituent peoples and others.

[...]

65. The Venice Commission considers that although this distortion of proportionality in the electoral system might not be consistent with principles of European electoral heritage if the election was for a directly elected part of the legislature, it can be justified that the concept of equal voting should not apply to the special parts of the BiH legislature, which are designed to ensure representation of constituent peoples and others.

**CDL-AD(2016)024 Bosnia and Herzegovina – Amicus Curiae Brief for the Constitutional Court of Bosnia and Herzegovina on the mode of elections in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina (para. 25 and 65)**

24. The National Assembly is elected by a complex system. In line with the Constitution, the electoral system in Armenia has changed from a mixed one to a mainly proportional one. There is a variable number of parliamentarians, which cannot be less than 101 (not including the minority representatives). The ballot paper includes one page with the national list and one page with the district candidates. The district candidates have to appear on the national list. The voter can, in addition to choosing a ballot with the list of the party, also give a preference



vote to a district candidate. The seats are distributed between the parties nationally; then, half of the seats allocated to each party are distributed proportionally to the 13 district lists. The district seats are then allocated to candidates according to the number of preferences expressed by voters. The other half of the seats is allocated to candidates from the national list, in the order of the list. Moreover, the draft code introduces many deviations from a purely proportional system, including the following:

- Political parties have to overcome a threshold of 5 per cent and alliances a threshold of 7 per cent;
- There is a second round between the two most voted political parties or alliances if no party or alliance obtained a majority of the seats, unless a coalition with a majority of the mandates is formed;
- In line with the Constitution, the elections have to produce a “stable parliamentary majority”. The Constitution does not define a “stable parliamentary majority.” The draft electoral code provides for giving extra seats to the winning party (or alliance or coalition) in order to provide a majority with a margin of at least 54 per cent of the mandates;
- The smaller parties will be given extra seats, if the winning party or alliance gets more than 2/3 of the total number of mandates;
- The system awards a total of four extra seats to certain national minorities.

[...]

26. The Venice Commission and OSCE/ODIHR recall that proportional systems are intended to create a representative parliament and any modifications to this goal should be implemented with care and out of clear needs. The combined deviations listed above create an unusual system, whose effects represent a significant modification of the proportional system. A proportional system assuring a majority bonus has recently been adopted in Italy. However, as stated in the first opinion on the Constitution of Armenia, “[T]his system has been adopted after a rather long period of instability and with the aim of finding a better balance between governability and representation. This system is the fruit of a long experience. It is not necessarily transferrable to a country which is making the choice of a parliamentary system and will experiment it for the first time.”

[...]

106. Political diversity is important at both the local and national levels and it is difficult to justify higher thresholds at the local level than at the national level. The introduction of a majority bonus in local elections, together with the higher thresholds and the current impossibility to establish parties at the local level, may further reduce political diversity and negatively impact the formation of coalitions. *It is therefore recommended to reduce the thresholds at the local level and to introduce the possibility of forming coalitions instead of establishing a majority bonus to a single party, like for parliamentary elections.* It is unclear why the system for those three cities should have closed lists or why the party or alliance which gets over 40 per cent (but not an overall majority) should be given an artificial ‘absolute majority’. It is constitutionally mandated at the national level to give a stable parliamentary majority, but the same logic does not apply at the local level. A better correlation between the voters’ will and the actual results of the elections could reinforce the voters’ trust at the local level, improving accountability.

**CDL-AD(2016)019 Armenia – Joint Opinion on the Electoral Code as of 18 April 2016 (para. 24, 26 and 106)**

28. Majority or plurality systems in single-member constituencies can improve and further strengthen the link between citizens and their representatives; however, this is not always the case. If there is an influence of local businesspeople or other non-electoral stakeholders on their

communities, this could potentially serve to negatively develop the links with or have an influence on independent majoritarian candidates more than between the local MPs and the citizens. This was, for example, the case of Ukraine. According to the first Interim Report No. 1 of the OSCE/ODIHR EOM on the 2012 parliamentary elections in Ukraine, “the new mixed electoral system has changed the dynamic of these elections in comparison with the 2007 parliamentary elections, as party-nominated and independent candidates are competing strongly at the local level. A number of independent candidates are linked to wealthy businesspeople, some of whom are also supporting political parties financially.”

29. Some of the political parties, NGOs and experts consulted during the working visit expressed their concern about similar consequences occurring in Moldova if the proposal for electoral system reform were to be approved. In this context, alternative solutions could be considered to enhance the fairness and transparency of elections and increase accountability. These include the supervision of the voter registry, auditing electoral and campaign financing, and the adoption of measures to further improve internal accountability and democracy within political parties. These types of measures could work within a proportional or a mixed electoral system, and specific recommendations have already been presented in the Venice Commission and OSCE/ODIHR Joint Opinion adopted in March 2013 (CDL-AD(2013)002). Therefore, any electoral system chosen, in particular one that contains single-member constituencies implies the need for clear campaign finance regulation and oversight that guarantee a level playing field for all electoral contestants. Moldova already uses both proportional and majoritarian components to elect representatives in local elections. However, as the last OSCE/ODIHR EOM report to the 2011 local elections in Moldova stated, “Campaign finance oversight mechanisms are insufficiently developed, lacking precision and enforcement. None of the relevant bodies actively undertook measures to address breaches of campaign financing regulations.”

**CDL-AD(2014)003 Joint Opinion on the draft Law amending the electoral legislation of Moldova (para. 28 and 29)**

15. Article 70 of the Constitution establishes the number of parliamentary seats at 120. Members of parliament are elected for a five-year term through a proportional party list system. The same article also provides that “as a result of elections a political party may not be granted more than 65 deputy mandates in the Parliament.” This provision was adopted in June 2010. The Venice Commission and the OSCE/ODIHR have previously noted that such a provision should be transitory, as it does not respect the principle of equality of votes. The limitation on the number of mandates a party is allocated should be based on the will of the voters expressed through voting and the actual election results. The acceptability of Article 70 diminishes with the passage of time.

**CDL-AD(2014)019 Joint Opinion on the draft Election Law of the Kyrgyz Republic (para. 15)**

38. The deputies will be elected for five years on the basis of the proportional system. Concerning the electoral system in Kyrgyzstan, several experimental approaches have already been tried out: elections had been held on the basis of a mixed system and on the basis of a majoritarian system. The problem is the lack of a stable party system in which the parties are rooted in certain traditions and world views as it has grown in democracies such as the British or the French system. The decision to introduce a proportional system might help to strengthen the representation of a plurality of political views in Parliament.

[...]

40. The prohibition of a single party from having more than 65 out of 120 deputies should avoid the domination of one political party. Such a restriction on the size of the majority seems to be new. The problem is that it might violate the principle of the equality of votes. The votes



for a party, which has already reached the relevant quota, can be lost. But, these restrictions might be justified as measures necessary to build a pluralistic party system. Specific legislation should explain how the remaining votes are distributed.

**CDL-AD(2010)015 – Opinion on the Draft Constitution of the Kyrgyz Republic (version published on 21 May 2010) (para. 38 and 40)**

**See also CDL-AD(2011)025 - Joint opinion on the draft law on presidential and parliamentary elections, the draft law on elections to local governments and the draft law on the formation of election commissions of the Kyrgyz Republic (para. 17)**

60. The Draft Law does in fact proclaim a clear departure from this previous system, by introducing an election framework based on a certain combination of elements from the traditional proportional and majoritarian election system. The local self-government unit (municipality) will form a single constituency for the parties or groups competing in the election by electoral lists, in the sense that the performance of their listed candidates in the global community will govern the allocation of mandates or council seats between the respective groups or list nominators, calculated according to the proportionate share won by all candidates on their list out of the total of votes cast in the community (using d'Hondt's rule). At the same time, the municipality is divided into "electoral units", equal in number to the number of councillors to be elected, and having approximately the same number of registered voters within their area. The candidates advanced by the list nominators are to be presented by reference to the electoral units, with one person entitled to be a candidate on one electoral list and in one electoral unit only (Art. 20). The voting in the election will proceed by the electoral units, with each voter voting for one candidate only. The allocation of the mandates won by each group list among its candidates will then be made on the basis of their individual performance in the respective electoral unit.

61. More specifically, under the proposed system of mandate distribution, the process will be that the voters in each electoral unit vote for a *single candidate* chosen from one of the electoral lists on the ballot (Article 36), whether submitted by a political party, coalition, or nominating group of citizens. Mandates for nominators are allocated based on *the sum total of votes won by all candidates on a nominator's electoral list from each electoral unit in the local self-government unit* (Arts. 42 and 43). All electoral lists whose total votes exceed five percent (5 per cent) of the total votes from the local-self government unit (as well as parties of national minorities who do not reach this 5 per cent threshold but reach the mathematical threshold), are awarded mandates proportional to their total number of votes won in the local self-government unit (Arts. 42, 43). Within each electoral list which has won mandates, such mandates are distributed "to the candidates from that list in accordance with the percentage of votes the candidates have won relative to the total number of voters registered in the electoral units they were nominated at" (Art. 44.1).

62. This hybrid distribution system represents an example of so-called matrix apportionments, and appears to constitute an interesting election arrangement. It represents at the same time a form of preference voting, in the sense that it favours a geographical distribution of the mandates contended for and serves to enable the voters to cast their ballot on the basis of personalized choice among candidates. It also has the advantage of eliminating the possibility of allocating mandates of electoral lists on a basis other than the immediate results of the vote. The system is not unique, in that similar systems are known in several countries and applied there to greater or lesser extent and purposes (e.g. in the Nordic countries, such as Denmark and Norway), in national and/or municipal elections.

**CDL-AD(2009)039 - Joint Opinion on Draft Laws on Electoral Legislation of Serbia (para. 60 to 62)**

30. The political system in Ukraine is based on a very marked division concerning political preferences between Western Ukraine on the one hand and Eastern and Southern Ukraine on the other hand. If one party has to win the absolute majority on the basis of the electoral system, a balanced representation of the different regions cannot be achieved. Therefore such a system cannot be seen adequate to strengthen the unity of the country.

**CDL-AD(2009)019 - Opinion on the Draft Law amending the Law on election of People's Deputies of Ukraine presented by People's Deputies Lavrynovych and Portnov (para. 30)**

17. The number of mandates to be allocated in each electoral zone will be based on the population. According to Annex I of the Electoral Code, the estimated voting populations of the twelve electoral zones range from 78,770 to 748,322, with an average of 264,396. Depending on the population of a region, the number of seats to be distributed could generate a natural threshold, understood as the percentage of votes needed to get one seat, as high as – or higher than – the legal thresholds of three percent (3%) and five percent (5%) imposed by Article 162 of the Electoral Code for political parties and coalitions. While this phenomenon is not unusual for this type of electoral system, it must be noted that the combined effect of the natural and legal thresholds may reduce the number of mandates won in the Assembly by smaller political parties and candidates supported by groups of voters (“independent candidates”). Regardless of this potential effect, departure from the previous electoral system, which was subject to much abuse, is a positive development.

**CDL-AD(2009)005 - Joint Opinion on the Electoral Code of the Republic of Albania (para. 17)**

5. The natural starting point of any analysis of electoral systems' effect on inclusion/exclusion of parties from access to parliament is the “Duverger's law”. It states that majority/plurality system “tends to party dualism” while “proportional representation tend to multipartyism”. The law is not without exceptions and can be understood only as a probabilistic generalization. Sometimes significant disparities exist within one and the same system-family. Nonetheless, the choice of a type of electoral system (majority/plurality, combined, proportional) is an important general threshold; it is itself a mechanism with an important general impact on minor party exclusion/inclusion and, consequently, party fragmentation. Party systems will be more competitive and fragmented in proportional systems (PS), whereas majority/plurality systems (MS) will usually restrict opportunities for minor parties. Thus, a study of electoral systems worldwide found that “the mean number of parliamentary parties (based on the simplest definition of parties holding at least one seat) was 5.22 in the countries using majority/plurality systems, 8.85 in combined (or mixed) systems, and 9.25 in societies with proportional representational electoral systems.” Similarly, “the mean number of *relevant* parties [] (holding over 3% of parliamentary seats) was 3.33 in all majority/plurality systems, 4.52 for combined systems, and 4.74 for all proportional systems”.

**CDL-AD(2008)037 Comparative report on thresholds and other features of electoral systems which bar parties from access to Parliament, (para. 5)**

**The electoral system and the single constituency**

4. The system of representation for the parliament is a closed list proportional one, applied in one single constituency covering the whole country. This or similar systems are used in a number of countries and normally produces a representative parliament across the political dimension.

5. In the Joint Opinion on the Electoral Code of Moldova ([CDL-AD\(2006\)001](#), para.17) OSCE/ODIHR and the Venice Commission underlined that:

*“the Electoral Code maintains an electoral system with one single constituency covering the whole country, with a proportional distribution of seats. The possibility for national minorities to be represented in the Parliament is closely related to the matter of the electoral system itself.”*

6. It would therefore be advisable to review the current situation whereby the whole of Moldova constitutes a single constituency, so as to ensure a closer link between voters and Members of Parliament, and to guarantee a better regional spread of Members of Parliament between the different parts of the country. In doing so, the need to find a suitable solution for the Transnistria issue in this context will need to be taken into consideration.

**CDL-AD(2007)040 - Joint Opinion on the Electoral Code of Moldova as of March 27, 2007 (para. 10, 11, 15)**

10. Another important aspect of political parties' participation in elections is that of the influence exercised by the electoral system itself on party internal structure. For example, a candidate-based first past the post electoral systems hardly requires any party involvement in other issues than candidate's political backing and contribution to the campaign financing. On the contrary, in proportional systems with closed party lists a party has very important prerogatives in defining, among other issues, the place of each given candidate in the list.

**CDL-AD(2006)025 - Report on the Participation of Political Parties in Elections**

14. [...] Under the Constitution, a candidate is elected to the Presidency if s/he obtains an absolute majority of the votes of all registered voters, provided that at least 50%+1 of the registered votes cast a ballot. If not, a second round is held between the two leading candidates and the one who gets more votes is elected President but the above-mentioned turnout requirement remains for the election to be valid. If less than 50%+1 of the registered voters cast a ballot, the election has to be repeated from the outset. Thus, the law provides for the potential of an endless cycle of failed elections.

**CDL-AD(2006)008 - Joint Opinion on the Draft Electoral Code of “the Former Yugoslav Republic of Macedonia” (para. 14)**

7. Against this background, an entirely Proportional Representation system favours the formation of solid political parties or electoral blocs, depriving incentives to isolated and purely local or individual candidatures. Proportional systems do frequently produce highly fragmented parliaments, but in this case the high threshold makes it more difficult. In fact, and looking at the 2002 results, the difference between the 4% threshold in force, and the 5% proposed by the draft, would have been none: the sixth party got 6.27%, and the seventh, 3.22%.

8. From a purely technical point of view, the suppression of majoritarian, single-mandate constituencies could produce a clearer system. Every voter has just one ballot (and not one for the national, and a second for the single-mandate constituencies). The total distribution of seats among parties follows proportional criteria, so that a majority of votes result in a majority of seats. The whole legal framework becomes simpler. The draft is in fact much shorter than the existing Law.

9. In the Ukrainian political and institutional context, these changes could have positive results by making parliamentary majorities and governments more solid.

10. On the other hand, the majoritarian component could be important in terms of approaching the voters and their elected representatives. The draft also seems to consider this aspect, when organising the distribution of Deputy mandates. In effect, once the total number of 450

seats has been proportionally distributed among the parties exceeding the 5% electoral threshold, the list of elected Deputies *shall be made based on the results of elections in (every one of the 450 territorial) constituencies*. More precisely, the list of elected candidates of a party will be made out considering *the largest percentage of the votes* cast for that party in the different territorial constituencies, so that candidates *shall be placed on the list in the order of diminishing percentage of votes cast for the party (election bloc) in constituencies* (Article 56.5).

11. This system is complex, and therefore may find practical difficulties; for example, given that the constituencies are formed with an *approximately equal number of voters*, there may be candidates not elected with more ballots than others with fewer ballots, but higher percentage. Nevertheless, this could maintain a closer link between voters and Deputies, which may be important for the legitimacy of the whole system. In quantitative terms, 450 constituencies, and consequently Deputies, for a country with over 37,000,000 registered electors means each constituency would have about 80-85,000 voters.

**CDL-AD(2004)002 - Opinion on the Draft Law on Election of People's Deputies of Ukraine (Draft introduced by people's deputies S. Havrish, Y. Ioffe and H. Dashutin) (para. 16-20)**

12. There may be many reasons for changing the system. The mixed system used today may be a compromise between a majority and a PR system, and the results may be seen as slightly arbitrary. The following analysis is based on the fact that the drafters clearly wish to introduce a system producing more proportional representation as a result.

13. This goal may be achieved under a number of systems. A PR system in one single constituency is not common. Those countries, which have such a system, are often small in geographical area, such as the Netherlands, Moldova and Israel. Most other countries with PR systems would have some kind of geographical divisions in constituencies.

14. The current system has the advantage of local representation. This may reduce the distance between voters and the elected and thus promote accountability. With the PR system in one constituency, it is up to the parties to cover the geographical dimension. In a country of Ukraine's size one may suppose that dimension be an important feature of an electoral system. We will in the following present two systems, which would combine a geographical representation with a proportional result. The first system is a PR system in several multi-member constituencies (MMCs) with national compensation, and the second is the mixed member proportional system (MMP).

15. Under the PR system in MMCs the country is divided into a number of constituencies. From each of these 10-25 members of the parliament are elected. Approximately 70-80% of the total number of members of the Parliament should be elected from the MMCs, leaving the rest as compensatory seats. In the case of Ukraine, the 24 oblasts would form a natural set of MMCs. With an average of 15 members from each oblast, 360 members would be elected from constituencies and 90 members would be filled as compensatory seats. The number of seats from each oblast should be proportional to the number of voters in each one of them.

16. The parties and blocs will nominate a list of candidates for each constituency. The voters will vote for one of the lists put forward in their own constituency. During the count, the seats are divided between the lists of the constituency in proportion to the number of votes cast in that constituency. The sum of the seats won in the constituencies will not necessarily be proportional even though it is in each constituency.

17. The compensatory seats are being used to compensate for any disproportional representation adding up from the constituencies. The total number of votes for each party



and bloc is added up across all constituencies. Then *all* the 450 seats of the parliament are distributed according to the nationwide result. This will give a proportional representation of the seats of parliament. From the number of seats each party won, one would subtract the number of seats already won in the constituencies. This will give the number of compensatory seats won for that party. The parties competing for compensatory seats would be those which gained more than the threshold (e.g. 4%) of the votes nationwide.

18. The compensatory seats won by a party should be filled from constituency lists from the same party. Several rules can be applied to determine from which list constituency they should be taken. One should also be aware that a rule should be defined if the subtraction of the previous paragraph should be negative, which could happen in rare cases. The system may also allow for independent candidates to run and for an open list system where voters select individual candidates within the party/bloc list.

19. The other alternative of combining PR with local representation would be the mixed member proportional system (MMP). From the voter's point of view this will be similar to the current system. The country is divided into 225 constituencies SMCs each electing one representative by FPTP (or by other majority based rules). The voter would select a candidate of his or her choice. In addition the voters vote for a party or bloc. However, as opposed to the current system, the results of the SMCs are taken into account when distributing the party seats. Thus the party list mandates work as a type of compensatory seats similar to those in the MMP system.

20. The actual calculation is done by first adding up all the party/bloc votes across constituencies. *All* 450 mandates are then distributed in proportion to the countrywide support of the party/bloc. The number of seats won for that party in the SMCs is subtracted from this number resulting in the number of seats for that particular party from the PR lists. The threshold may again apply to the PR lists.

21. Again a rule for handling negative number of PR seats needs to be in place. There is also a possibility that parties will take advantage of not proposing SMC candidates under their own name but as independents in order to tactically gain more compensatory seats. This can be avoided only by counting individual votes for a party list if the voter has voted for an individual candidate in the SMC race who is promoted by a party who has won SMC seats in the assembly. Thus running as independent, when in reality being a party candidate, will not give benefits. This requires both races to be running on the same ballot. The MMP system is from the voter point of view slightly more complicated than the PR system in MMCs since he or she needs to vote in two races (as today) and two races have to be counted.

22. The two systems have other features as well, but the most important is that both of them retain a strong geographical element and combines it with a PR system. If this is regarded to be important one of the two systems may be considered.

**CDL-AD(2004)001 - Opinion on the Draft Law on Election of People's Deputies of Ukraine (Draft introduced by people's deputies M. Rudkowsky and V. Melnychuk) (para. 5-15)**

## **Local government (Chapter XV)**

90. Article 109 Multi-mandate districts elected by plurality votes (majority is an incorrect translation) can cause electoral confusion and encourage many abuses, as Japanese politics has shown. They can also produce very disproportional results. On the other hand, in local government party lists may not be appropriate. Therefore, the Irish STV (Single Transferable Vote) form of proportional representation, in which voters state their preferences for individuals in rank order 1,2,3,... could be recommended. This allows individuals to stand as

independents. It also introduces a significant degree of proportionality. The introduction of such a change should however be preferably considered after a detailed analysis of the results of the previous elections.

91. (And Article 115) In smaller towns and villages, a single multi-member constituency with up to 7 members would be appropriate. In large towns and cities where the council has, say, 10 or 12 members, then consideration should be given to having two districts to avoid voters having to rank up to a dozen candidates. At any rate, when the election is uninominal, there should be only one election district (cf. Article 115.2).

**CDL-AD(2002)009 - Opinion on the Unified Election Code of Georgia (para. 90-91)**

44. As time goes on, the electoral system will have an effect on the party system, so it is useful to examine the system with some attention. The mixed system adopted is in conformity with the norms and tendencies of evolving democracies. [...]

47. Concerning the reduction of the number of single-member constituencies in favour of members of parliament elected on a proportional list basis, we have to face the fact that changes such as these can bring unexpected and unwanted effects that can jeopardise the whole democratic process.

48. Drafters of electoral laws take into account the experience of other democracies but while doing so should bear in mind that conditions in the established democracies are quite different from in evolving democracies. This can lead to substantial differences in party systems that result from the introduction of similar institutions or electoral systems.

49. Established democracies have strong association movements such as trade unions that tend to influence greatly the way over half of their members vote. This leads in some democracies that use proportional representation to situations where the parties that control the trade union movement also have a dominant position, on an almost permanent basis. Citizens of evolving democracies that ten years ago lived in soviet regimes, where membership of associations was compulsory, are not prone to join associations. They consider themselves free and in their minds associations are associated with the constraints of the past. Considered from this point of view Armenia should be compared to the many established democracies with proportional representation that have weak party systems, which lead to government instability. Government instability is dangerous in countries such as Armenia that are in a difficult transitional economic, social and political situation.

50. It was also argued that single-member plurality constituencies can introduce into the assembly a person whose honesty is doubtful, but this is not a good argument. Party lists are just as prone to include candidates who in the long run are not above-board. On the other hand, voters can decide on their own who is honest when they have to choose a candidate in a single-member constituency more easily than when they have to choose an unknown list of names for proportional representation.

51. It is therefore suggested that if there is a consensus to reduce the number of members of Parliament, the ratio of plurality and proportional seats applied to the previous elections should be kept.

**CDL-AD(2002)007 - Opinion on the Draft Amendments and Additions to the Electoral Code of the Republic of Armenia (para. 44, 47-51)**

[...] As already stated, systems that attenuate fragmentation, particularly majority systems, are conducive to one party's gaining the absolute majority of seats. They are thus regarded



as ensuring the existence of a stable parliamentary majority and a stable government. But that is only true subject to certain conditions: first, that a party or a firm coalition has in fact gained the absolute majority of seats (in India for example, where this was the rule, it has no longer been so for several years); second, that there is proper party discipline, and third – often associated with the foregoing – that the government is accountable to parliament. The last two conditions, which impinge on the nature of the political system, are not, however, fulfilled in Switzerland. It is therefore very difficult to apply in Switzerland what may otherwise appear to be a general maxim. [...]

As is very correctly pointed out in a recent publication, it must be realised that the *question of the electoral system* (for the election of the legislative body) has a far less technical than *philosophical import*. A majority system – or a proportional system with a strong reductive effect on fragmentation – is associated with the attainment of a ruling majority (governed democracy) whereas a system more akin to complete proportional representation seeks consensus to secure social cohesion (representative democracy). On that basis, there is not only the question of the electoral system's influence on the political system, but *the reverse question of how the political system influences the electoral system*. [...]

[...] The options for achieving the objectives discussed are at once multiple and limited. Indeed, the electoral systems allowing personalised choice are many, and constitute the rule in Switzerland where the idea of the closed party list is virtually non-existent. There are numerous openings for the adoption of a majority system, a mixed system or a system reducing proportionality, both for State Council and for Grand Council elections.

This variety of conceivable changes should not disguise the fact that it is extremely difficult to predict how a change in the election method would affect the political system. The interactions between the electoral system and the political system are hard to pin down and unlikely to be monodirectional. The electoral system is but one element of politics, and the effects of a reform cannot be registered until it has operated for some time. Furthermore, the impact of a change in the electoral system at cantonal level alone is inevitably limited, and changeovers in power would presuppose a break with a tradition now well-established in Switzerland.

Even if the effects of a change in the election method are to be seen in relative terms, it is nonetheless true that the further a system departs from fully proportional representation the more it favours the constitution of a clear majority, hence changeovers in power. Majority bonuses awarded to the majority coalitions are the simplest way to move in this direction.

**[CDL-INF\(2001\)016](#) - *Opinion on the Electoral Law of the Canton of Ticino* (pages 5, 6, 21)**

**See also:**

- **[CDL-STD\(1998\)025](#) - *New trends in electoral law in a pan-European context - Science and technique of democracy No. 25 (1998)* (see in particular pages 36ff.)**

- **[CDL\(1992\)001](#) - *Electoral law: general principles and regulatory levels* (pages 5-8)**

**See also:**

The more proportional an electoral system, the more it allows minorities, even dispersed ones, to be represented in the elected body.

[...]

Indeed, the electoral system is but one of the factors conditioning the presence of members of minorities in an elected body. Other elements also have a bearing, such as the choice of candidates by the political parties and, obviously, voters' choices, which are only partly dependent on the electoral system. The concentrated or dispersed nature of the minority may also have a part to play, as may the extent to which it is integrated into society, and, above all, its numerical size.

[...]

[T]he participation of members of national minorities in public life through elected office results not so much from the application of rules peculiar to the minorities, as from the implementation of general rules of electoral law, adjusted, if need be, to increase the chances of success of the candidates from such minorities.

**CDL-INF(2000)004 - Electoral law and national minorities, III.B.1. and Conclusion**

**See also:**

43. One of the most well-established findings is that countries applying proportional representation systems have a higher proportion of women in their parliaments than those with majority or plurality systems. Research and statistics have shown that where proportional representation systems are used, it has often been easier for women to get access to parliament. [...]

44. In Europe, the vast majority of states apply a PR system for national elections to parliament, a fact which can be regarded as rather favourable for women's representation.

45. Both the British First-Past-the-Post system and the French Two-Round system tend to work against women. Consequently, the electoral system has been considered to be partly responsible for low levels of women's representation there. In both countries, the figures for national parliaments contrast with higher levels of female representatives for European Parliament elections which are held under a PR system.

68. [...] the larger the districts and party magnitudes, the greater the likelihood of women being nominated and elected. Thus, medium-sized, large or nation-wide districts within PR systems appear to be more advantageous for women than small constituencies or even single-member districts.

111. Combined electoral systems, particularly Mixed Member Proportional Systems, appear to be more conducive to women's parliamentary representation than plurality or majority systems, but less favourable than PR systems which are applied exclusively in multi-member districts in one tier or at different levels.

112. In general, the vast majority of PR systems that are used in Europe do not disfavor women. Among them, those with high district magnitudes and electoral thresholds theoretically tend to do a better job since they ensure large party magnitudes, making ticket-balancing more likely. However, comparative research has to confirm this assessment empirically.

113. In order to increase the district magnitude in PR systems, different options can be explored: Increasing the total number of members of parliament (while maintaining the number

of districts), or reducing the numbers of electoral districts (while maintaining the number of representatives). Alternatively, a PR system with one national electoral district can be chosen.

114. While it is difficult to make general recommendations on list forms, closed lists seem to make women's representation easier, especially if gender quotas are used.

117. In order to be effective, gender quotas should provide for at least 30% of women on party lists, while 40% or 50% is preferable.

120. Reserved seats for women are not considered as a viable and legitimate option in Europe.

121. Instead, the following combination, theoretically, appears to be favourable: PR list systems in large constituencies and/or a nation-wide district, with legal threshold, closed lists and a mandatory quota which provides not only for a high portion of female candidates, but also for strict rank-order rules, e.g. a zipper-system, and effective sanctions for non-compliance.

122. Also other combinations may fit with the aim to increase women's parliamentary representation. There are many possible and existing variations of PR systems, and legal gender quotas can effectively be substituted or supplemented by voluntary party quotas. Both electoral systems and gender quotas can thus be modified and adapted to suit the particular conditions of each country.

**CDL-AD(2009)029 - Report on the Impact of Electoral Systems on Women's Representation in Politics (para. 43 to 45, 68, 111 to 114, 117, 120-122)**

**Possible effects of different electoral systems on the representation of national minorities and of women has been dealt with in a number of opinions and studies. This will be documented in specific compilations.**

#### **IV. Allocation of mandates to candidates**

19. The above clauses are being highlighted to indicate very clearly that the law is constructed in a way that it allows changes to take place in the party list prior to the elections but that from election day onwards the situation is fixed so as to enable the voters to have their true say, subsequent to which the sovereign will of the people needs to be respected. The newly adopted amendments therefore seem to be in conflict with other provisions of the Law on Election of People's Deputies of Ukraine on party candidates.

20. Clearly, while changes are allowed prior to the submission of names to the voter to express his or her views, there is a cut-off point where the proposal to the voter is settled and fixed: and that is when there is a final registration of candidates and of parties' lists. That is the goal post which faces the electorate.

21. Once the goal posts facing the electorate have been set and the voters have expressed themselves, there should be no moving of that goal posts in relation to both those who are deemed elected and those who are "deemed unelected".

22. This is exactly what the new amendments do: they move the goalposts after the voters have expressed themselves and place the right of might in the hands of the supreme organ of the political party in relation to the candidates on the list who are “deemed unelected”, albeit it gives this power to the party for a specific period of time, that is, until the Central electoral commission declares those candidates as having been elected.

23. The result is that the party becomes more powerful than the will of the electorate. This power is exercisable without any specific limitation or criterion. The Guidelines on political party regulation by OSCE/ODIHR and the Venice Commission clearly provide that parties should be “prohibited from changing the order of candidates within an electoral list after voting has commenced”.

24. While Article 81 was criticised by the Venice Commission in its 2005 opinion on the constitution, the law goes far beyond what Article 81 allows. A party can even remove from its lists candidates who want to remain in the party. While note should be taken of the Venice Commission’s report on the nomination of candidates where it stated that “political parties should be free to establish their own organisation and the rules for selecting party leaders and candidates, since this is regarded as integral to the concept of associational autonomy”, this Law introduces a type of imperative mandate for potential members of parliament which is unacceptable in a modern democracy.

**CDL-AD(2016)018 *Ukraine - Opinion on the Amendments to the Law on elections regarding the exclusion of candidates from party lists (para. 19 to 24)***

70. It has to be noted that in some systems the presence of thresholds or conditions may limit the extent of the influence which preferences will ultimately have on the distribution of seats within a list. Although the voters can indicate their preferences, a number of conditions have to be fulfilled before they can be taken into account, such as thresholds or allocation of votes for lists with no preference to candidates at the top of the list. This generally results in a *de facto* closed-list situation, in addition to other obstacles to the effectiveness of preference voting (nomination districts, quotas for gender balance).

**CDL-AD(2015)001 *Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists) (para. 70)***

***More generally, see CDL-AD(2015)001 in its entirety.***

21. The above text establishes several rules for distribution of mandates to candidates. These rules are problematic and will be discussed in below paragraphs on the rules for distribution.

22. First, Article 90(3) provides that a political party leader and two candidates, based on the Article 86 requirement that each list of candidates contain the names of the leader of the political party and “two candidates especially singled out by a superior body” of the political party, must be distributed mandates in the three constituencies where the political party “received relative majority of votes”. This means that, regardless of voters’ preferences expressed in open list voting, three handpicked persons of the political party are guaranteed a mandate even though they “are not indicated in the sequence of candidates’ list” (see Article 86(3) on nomination of candidates). This special treatment for these three candidates is problematic and violates the fundamental principle of equality and of non-discrimination. Additionally, it is possible under these allocation rules to circumvent the will of voters in an electoral constituency by giving a mandate to a person who did not receive a single open list preference vote over a candidate who received preference votes in the open list voting. If open list voting is to be allowed, then it should apply to all candidates on the list without giving special treatment to three candidates. The Venice Commission and OSCE/ODIHR recommend that Articles 86 and 90 be amended to delete the special treatment given to these three candidates if open list preference voting is to be used.

[...]

26. A problem with the mandate allocation rules is that the measures to facilitate the representation of women and persons belonging to national minorities are secondary and may never be implemented. It is possible that, after the three special mandates (leader and two favoured candidates) and open list mandates are allocated, there may be few mandates remaining to allocate to women and persons belonging to national minorities. The distribution of mandates to parties in the 2010 parliamentary elections was 28, 26, 25, 23, and 18. Thus, it is a possible scenario for a political party to win 20 mandates overall. After allocation of the three special mandates, there would be no mandates remaining for women, persons belonging to national minorities, and youth if two candidates in each electoral constituency crossed the 10 per cent open list threshold, as the remaining 17 mandates would be distributed under the open list preference voting rules. Open list preference voting, combined with the use of nine separate electoral constituencies, will not enhance the election of persons belonging to national minorities and is not an effective measure for enhancing the participation of women. The goals stated in Article 86, regulating registration of candidate lists, is hindered by reserving three special mandates for the political party apparatus and possibly open list voting. The Venice Commission and OSCE/ODIHR recommend that Articles 56, 60, 86, and 90 be revised as the parliamentary electoral system established by these articles violates the principle of equal suffrage by giving special treatment to three chosen members of a political party and the system does not facilitate the representation of women and persons belonging to national minorities.

**CDL-AD(2014)019 Joint Opinion on the draft Election Law of the Kyrgyz Republic (para. 21, 22 and 26)**

27. In 2014, the Bulgarian delegation to the European Parliament will have 17 members. Members of the European Parliament are elected by a proportional system from a nationwide constituency with a possibility of a preference vote for one candidate on a candidate list (open list voting). The distribution formula is using largest remainders with Hare-Niemeyer's quota. A candidate can benefit from the preference system if he/she obtains at least seven per cent of the votes cast. This is an acceptable method of proportional representation for the distribution of mandates.

**CDL-AD(2014)001 Joint Opinion on the draft Election Code of Bulgaria (para. 27)**

23. The first amendment concerns Article 84 of the Law and relates to the designation by the parties (or by other organizations which may submit lists of candidates) of persons qualified to sit in parliament, once the results of elections is known.

24. The original text gives total freedom for parties to nominate MPs from their lists, which they transmit to the Electoral Commission of the Republic.

25. The electoral system in Serbia is a purely proportional system, practiced in a single constituency with 250 seats. The parties are awarded seats according to the D'Hondt method. After the election parties distribute mandates between the candidates without being bound by any order of presentation of the list. There is no possibility of preferential voting.

10. This unusual system has already been severely criticised by the Venice Commission. Thus, in its opinion on the Constitution of the Republic of Serbia adopted at its 70th plenary meeting, the Commission issued the following opinion:

*“Under Section 1 of this Article, the Deputies of the National Assembly are directly elected by the people. The Venice Commission understands this provision as requiring that the voters determine the composition of the National Assembly and outlawing the present practice that*



*political parties may designate after the elections the persons to be considered elected on their lists. This practice is not in line with European standards” (CDL-AD (2007) 004, § 51).*

11. Similarly, the Venice Commission and OSCE / ODIHR concluded in their joint report on the Law on the elections of MPs (Joint Recommendations on the laws on elections, presidential and local election administration in the Republic of Serbia, CDL-AD (2006) 013, § 43):

*“Article 84 of the law allows a party to arbitrarily choose which candidates from its list become members of parliament, after the elections, instead of determining the order of candidates beforehand. This limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis the candidates. Under proportional representation systems, the order on the list usually determines the allocation of mandates; otherwise, mandates are allocated on the basis of preferential votes for candidates. The current system results in voters not knowing which candidates are likely to be seated as a result of their support for a particular party. The OSCE/ODIHR and the Venice Commission recommend that the law should be amended to oblige political parties and coalitions to determine and announce the order of candidates on their list before the elections, rather than allowing them to choose after election day which candidates will be awarded mandates.”*

12. It is also questionable whether this legislation is not contrary to Article 2 of the Constitution of Serbia on the exercise of sovereignty and its Article 5, last paragraph that provides that: "Political parties may not directly exercise power or submit it to their control."

13. This system also seems difficult to reconcile with the spirit of the Constitutional Court decision of May 27, 2007 (I U-197/02) which, deciding on the legal provision on the loss of the parliamentary mandate by a MP in case of change of party, stressed that the parliamentary seats belonged to elected MPs and not to their parties.

14. The system appears contrary to OSCE commitments, including paragraphs 5.1, 6, and 7.9 of the 1990 Copenhagen Document, Article 25 of the International Covenant on Civil and Political Rights (ICCPR), and other international good practices.

15. It is also questionable whether the procedure for appointing elected MPs is compatible with Article 3 of the first additional protocol to the ECHR ("free expression of popular opinion on the choice of the legislature"). Voters who have relied on the order of the list may indeed see their expectations completely deceived.

16. The system of appointment of elected officials is tempered by the amendment to Article 84. This amendment requires that at least half of the seats won by a political party will be allocated to candidates according to the order of the list, while the remainder of seats will be allocated through the previous system of discretionary designation by the parties (new § 1).

17. Although a step forward, the amendments to Article 84 do not substantially improve the legal framework.

18. The explanatory memorandum to the Draft law justifies this approach by the proximity of elections and the lack of political consensus among different political forces for a comprehensive reform. This same memorandum denounces the well known shortcomings of a system of proportional representation operating in a large single country wide constituency.

19. These arguments do not seem sufficient to maintain, even partially, an appointment system of elected candidates which is ostensibly contrary to the European and international standards.



20. Other European countries such as the Netherlands, also have a proportional electoral system with a whole country being a single constituency, and never deviate from the basic principles of democracy.

21. For example, if regional representation is taken as an argument by the explanatory memorandum, it could be achieved through the very establishment of the list with a certain number of eligible positions reserved for different regions.

22. The proposed amendments to the Election law do not seem to make the procedure more transparent, since "at least" half of the elected officials will be designated in the order of the list by the party. With the system of closed lists which is applied in Serbia such designation may result in all elected candidates being selected solely by the party – a procedure not clear for the voters when they cast their votes.

23. Similarly, the bill gives some kind of guidance to parties who need to take into account the exceptional performance of the candidates and their regional roots. The guidelines are blurred and add ambiguity to the allocation of mandates. In addition, it does not appear possible to take into account the exceptional performance of the candidates, in the absence of preference voting and of constituencies.

24. The draft amendments state that a "submitter of the electoral list shall see that 25% of the seats won are allocated to the representatives of the under-represented sex on the list."

25. Thus, it would appear that the draft amendment will increase the number of women MPs. However, the draft amendments would benefit from a provision establishing that at least 25% of the under represented sex is allocated seats in the system of closed lists.

**CDL-AD(2011)005 - Joint Opinion on the Draft Law on "altering and amending the Law on election of Members of Parliament" of the Republic of Serbia (para. 7-25)**

62. This hybrid distribution system represents an example of so-called matrix apportionments, and appears to constitute an interesting election arrangement. It represents at the same time a form of preference voting, in the sense that it favours a geographical distribution of the mandates contended for and serves to enable the voters to cast their ballot on the basis of personalized choice among candidates. It also has the advantage of eliminating the possibility of allocating mandates of electoral lists on a basis other than the immediate results of the vote. The system is not unique, in that similar systems are known in several countries and applied there to greater or lesser extent and purposes (e.g. in the Nordic countries, such as Denmark and Norway), in national and/or municipal elections.

63. Beside its substantial advantages, however, such distribution system, being based on voter registration in the respective electoral unit, but linked to overall vote totals in the local self-government unit, can result in various anomalies, depending both on voter turnout and the vote margin between the two candidates who receive the most votes in an electoral unit. [...]

**CDL-AD(2009)039 - Joint Opinion on Draft Laws on Electoral Legislation of Serbia (para. 62-63)**

23. The system for allocation of the mandates favours the first five names at the national level by concentrating mandates on them irrespective of the number of personal votes obtained by each of these. Two opposing principles act here: first, the individual candidates as the accumulator of votes at the territorial level. Second, candidates must unavoidably belong to a certain party or electoral list. The allocation system resolves this privileging what could be called "party designated candidates" (i.e. the first five candidates which, reasonably, will

coincide with top leadership) of the national lists over eventually most voted local candidates. The system is certainly a peculiar one but cannot be considered an illegitimate one. Article 53.7 establishes that:

All parliamentary candidates included on the party's election lists in the territorial election districts are included on the party's election list of parliamentary candidates in the national election district. Persons not included on the party's election lists in the territorial election districts are not included on the party's election list of parliamentary candidates in the national election district.

24. However the proposed electoral system gives preferential rights to the top 5 candidates of each political party. If mandate allocation is to be based on the individual performance of candidates in obtaining votes then this rule should apply equally to all candidates. The proposed special treatment of the top 5 candidates on the list violates the fundamental principle of non-discrimination and equal treatment before the law.

**CDL-AD(2009)028 - Joint Opinion on the Draft Law No. 3366 about Elections to the Parliament of Ukraine (para. 23-24)**

24. [...] It is recommended that the law should contain some mechanism for filling a vacancy in the mandate held by an independent candidate if the next regularly scheduled general elections are to be conducted later than 12 months of the date of the vacancy. [...]

**CDL-AD(2008)012 - Joint opinion on amendments to the Election Law of Bosnia and Herzegovina (para. 24)**

51. Under Section 1 of this Article, the Deputies of the National Assembly are directly elected by the people. The Venice Commission understands this provision as requiring that the voters determine the composition of the National Assembly and outlawing the present practice that political parties may designate after the elections the persons to be considered elected on their lists. This practice is not in line with European standards.

**CDL-AD(2007)004 - Opinion on the Constitution of Serbia (para. 51)**

186. A quite specific problem was observed in the 2003 parliamentary elections in Serbia. The electoral legislation did not oblige political parties and electoral alliances to determine the order of candidates on their lists beforehand. Instead, parties and electoral alliances were allowed to arbitrarily choose which candidates from their lists become members of parliament after election day, thus limiting the transparency of the vote. It should be clear that under PR list systems, the order on the list usually determines the allocation of mandates if voters are obliged to vote for the party list and not, by preferential votes, for individual candidates on the list.

**CDL-AD(2006)018 - Report on Electoral Law and Electoral Administration in Europe -Synthesis study on recurrent challenges and problematic issues (para. 186)**

43. Article 84 of the law allows a party to arbitrarily choose which candidates from its list become members of parliament, after the elections, instead of determining the order of candidates beforehand. This limits the transparency of the system and gives political parties a disproportionately strong position vis-à-vis the candidates. Under proportional representation systems, the order on the list usually determines the allocation of mandates; otherwise, mandates are allocated on the basis of preferential votes for candidates. The current system results in voters not knowing which candidates are likely to be seated as a result of their support for a particular party. **The OSCE/ODIHR and the Venice Commission**

***recommend that the law should be amended to oblige political parties and coalitions to determine and announce the order of candidates on their list before the elections, rather than allowing them to choose after election day which candidates will be awarded mandates.***

[...]

83. As noted earlier, Article 84 of the Law on Parliamentary Elections allows a party to arbitrarily choose which candidates from its list become members of parliament, *after the elections*, instead of determining the order of candidates beforehand. Article 42 of the Law on Local Elections has a similar, but not identical provision. Article 42 of the Law on Local Elections provides that one-third of the seats are allocated to the candidates according to their sequence on the list and two-thirds of the seats as determined by the political party or coalition. ***The OSCE/ODIHR and the Venice Commission recommend that Article 42 of the Law on Local Elections be amended to oblige political parties and coalitions to determine and announce the order of all candidates on their list before the elections, rather than allowing them to choose after election day which candidates will be awarded mandates.***

***[CDL-AD\(2006\)013](#) - Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia (para. 43 and 83)***

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