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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT COMPILATION
OF VENICE COMMISSION OPINIONS AND REPORTS
CONCERNING ELECTORAL SYSTEMS AND GENDER
REPRESENTATION

* This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 118th Plenary Session (March 2019).

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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 and gender representation. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field. This document is to be seen as a complement to the separate compilation on electoral systems in general.¹

The present compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to electoral systems and gender representation, 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).

¹ See CDL-PI(2019)001, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2019\)001-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2019)001-e).

II. Electoral systems and gender representation

1. General effects of different electoral systems

27. As noted in the June 2017 opinion, “somewhat larger numbers of women tend to be elected under proportional systems than under “first-past-the-post” majority or plurality systems, or under mixed systems.” The revised Code maintains the provision that required either gender to be represented with a minimum of 40% of candidates on each list. However, the introduction of a mixed system reduces the applicability of this provision to those lists for the proportional component, and thus includes only half of the seats.

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

1. Article 90 of the draft law provides that the CEC determines the election results and the number of mandates won by a political party in each electoral constituency. As noted above, a political party receives mandates only if it received at least 5 per cent of the votes in the Kyrgyz Republic and 0.5 per cent of the votes in each electoral constituency. Article 90(3) then states:

“Distribution of deputies’ mandates among the candidates on political parties’ list of candidates in constituencies shall be carried out after specification of list of candidates by leading body of political party in case of delegating such powers by leading body.

In a priority order, a leader and two candidates are to be included into the candidates’ list of three constituencies, where political party received relative majority of votes, at the suggestion of the leading body of political party.

Further lining up of candidates in the list is being carried out taking into account voters’ opinion in regard of the sequence of candidates in the list and their rating.

Assigned candidates of every list of candidates, obtained more than 10 per cent of votes from total amount of votes cast for party list in electoral constituency, shall line up in a sequence of number of received votes. If two or more candidates obtain equal number of votes, then they shall line up in a sequence established by leading body of political party.

Following lining up of candidates in the list obtained less than 10 per cent of votes shall be established by leading body of political party taking into account requirements of part 3 article 86 of hereof present Constitutional Law.”

[...]

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

46. The submitted draft does not take into consideration provisions of ensuring women's representation under the proposed electoral system. The number of women MPs in the Moldovan Parliament is very low. In the parliamentary elections of 2010, only 19 women were elected out of the 101 mandates. Until now, Moldova has not followed the recommendations of the Parliamentary Assembly of the Council of Europe to increase women's representation in politics. The new electoral proposal does not improve gender equality, and could further limit women's representation in parliament. As the European Parliament stated more than fifteen years ago, the countries with majority or plurality electoral systems in one-member constituencies have the lowest level of female political representation. In single-member constituencies, political forces often prefer male candidates because, in such a way, they expect better electoral results than when selecting women.

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

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.

[...]

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

More generally, see [CDL-AD\(2009\)029](#) in its entirety.

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.

179. There is broad agreement that women's representation should be increased in democratic institutions. The electoral system may affect the structure of opportunities for women's representation. There is some empirical evidence, for example, that women are generally better represented under proportional representation list systems than, for example, in plurality or majority systems in single-member constituencies. Usually closed lists are preferable to open list voting systems. In the municipal elections in Bosnia and Herzegovina, for instance, preferential voting reduced the percentage of women elected (see CG/CP (11)

13). Depending on the political culture, however, the effects of such provisions can differ in individual cases.

[...]

181. However, it should be clear that the electoral system itself is neither a necessary nor a sufficient condition to ensure women's representation. Additional measures are needed to encourage the increase in women's representation. Some measures have been included in the Council of Europe Parliamentary Assembly recommendation 1676 (2004), adopted on 5 October 2004.

[CDL-AD\(2006\)018](#) - Report on Electoral Law and Electoral Administration in Europe, Synthesis study on recurrent challenges and problematic issues

25. [...] In a fixed party list system, parity is imposed if the number of men and women who are eligible is the same. However, if preferential voting or cross-voting is possible, voters will not necessarily choose candidates from both sexes, and this may result in an unbalanced composition of the elected body, chosen by voters.

[CDL-AD\(2002\)023rev2-cor](#) – Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (para. 24-25 of the Explanatory Report)

2. Specific measures aimed at gender balanced representation

28. The June 2017 opinion also recommended special measures to be taken to encourage gender-balanced representation in single-member constituencies. The adopted law introduces two such measures, which are a welcome step forward. For single-member constituencies, Article 80(1) provides special and lower signature requirements for female candidates (250 signatures instead of 500 for male candidates). Article 41(2) introduces financial incentives for political parties nominating at least 40% female candidates in single member constituencies by increasing the budgetary support with at least 10% of the amount allocated for the budgetary year to the respective party and a multiplication coefficient for every women elected in each single-member constituency, according to the legislation on political parties. The effect of these measures on women's representation remains to be seen. *The Venice Commission and ODIHR reiterate their recommendation to consider additional measures and that the multiplication coefficient for women elected (Article 41(22) of the EC) be included in the law.*

[CDL-AD\(2018\)008](#) - Venice Commission and OSCE/ODIHR Republic of Moldova - Joint Opinion on the law for amending and completing certain legislative acts

55. The draft maintains the provision of the current Electoral Code, which requires that each gender be represented with a minimum of 40% of candidates on candidate lists. It also stipulates that modifications to candidate lists shall be carried out by observing the provisions of the Law on Ensuring Equal Chances for Women and Men. However, given that these measures will apply only to half of the seats in the Parliament (those elected from the proportional contest), the provisions would not serve to improve the low representation of women, on the contrary. It is recommended that this issue be given further consideration, including additional temporary special measures to encourage political parties to present a gender-balanced representation of candidates across constituencies, or imposing that a representative number of women be placed in winnable positions in candidate lists in the proportional component.

[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)

118. The draft code increases the previously used gender quota. While the former system provided for a 20 per cent quota within brackets, but starting from bracket 2-6, the new one introduces a 25 per cent quota, starting from bracket 1-4. However, it might have limited impact. Indeed, it is only imposed on the first part of the national electoral lists for the National Assembly, which are closed lists, starting from the top of the list (Article 83.4). For the district lists, the requirement is that not more than 75 per cent of the total number of candidates can be of the same gender (Article 83.10), but there is no requirement concerning the placement on the list since the lists are open. As such, it is likely that every party passing the threshold will have at least one woman elected from the national list, but there is no such guarantee concerning district lists. In a positive step, Article 100.3 assures that, when filling vacancies in the first part of the national list, the underrepresented gender should get the seat if the gender in that party would otherwise be less than 20 per cent.

119. Article 130.2 has the same requirement for gender balance for the councils of elders of Yerevan, Gyumri and Vanadzor as there is for the National Assembly. In addition, Article 141.5 guarantees that every party will not have all its seats filled by candidates of the same gender. Since the rule is applied to all the seats in the council, the balance may be better than in the parliament. It is again positive that Article 141.7 assures that when filling vacancies, the underrepresented gender should get the seat if the share of the gender of that party would otherwise be less than 20 per cent.

120. For candidates to council of elders, other than Yerevan, Gyumri and Vanadzor there are no gender requirements.

121. The Venice Commission and the OSCE/ODIHR have stated, on several occasions, that “the small number of women in politics remains a critical issue which undermines the full functioning of democratic processes”. In line with the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW),⁵⁰ the Report on the Method of Nomination of Candidates within Political Parties, electoral quotas are regarded as temporary special measures that can act as an “appropriate and legitimate measure to increase women’s parliamentary representation. It is for each country to decide how to improve gender equality. However, the Venice Commission considers that, if legislative quotas are imposed, they “should provide for at least 30 per cent of women on party lists, while 40 or 50 is preferable”, in order to be effective.

122. It is therefore recommended that the draft code provide a more effective quota for women’s representation on candidate lists, such as placing women among every two or three candidates. The draft code should also ensure that the chosen quota is effective not only for the registration of the candidate list, but also when distributing mandates.

[CDL-AD\(2016\)019](#) - Armenia – Joint Opinion on the draft electoral code as of 18 April 2016

79. Among those countries that have regulated these issues, there are two main elements of “substantive” intra-party democracy, which can be identified:

- There is a growing number of countries that have included gender quotas in their legislation. Quotas within candidates’ lists are preferred, as opposed to reserved seats in constituencies.
- As to the rules on the representation of minorities, ethnic and vulnerable groups, there seems to be an opposite trend: there are reserved seats or special constituencies, resulting in “guaranteed mandates” as a way of ensuring such groups’ representation.

80. Many European countries have taken steps in recent times, often through legislation, to ensure the participation of women and minorities, ethnic and vulnerable groups. In Latin America, such rules have existed since the 1990s. Although the so called “legislated quotas”, which mainly concern the representation of women, have been preferred in recent laws, many countries place

trust in the so-called “voluntary quotas” stated by political parties in their statutes. The practice in the field of gender quotas differs from country to country: the required minimum percentage of each sex among the candidatures is different, the use of ranking orders, the sanction system, etc. Furthermore, the variations in interplay between the quota regulation and other features of the electoral system, as well as the relevance for women’s representation of these other features as such, has a key impact on the outcome.

81. The possibility of adopting legal measures to foster respect for democratic principles in the selection of candidates is consistent with international standards and principles stated by the Venice Commission. However, legal intervention in the selection of candidates is not always required or suitable. On the one hand, long-established democracies with deep-rooted political parties favour associational freedom, since internal democracy is guaranteed by the political parties themselves. On the other hand, state interference in the selection of candidates in new or transitional democracies might jeopardise political pluralism. There is an increased risk where legal intervention constitutes an imposition of the majority over the minority.

82. It is for each country to choose between a liberal view, which favours the freedom of political parties and the absence of legislation concerning their internal affairs (including the nomination of their candidates), and the view which seeks to strengthen internal democracy in the selection of candidates through legislation. Many states have also elements of both models. Other factors will influence the outcome, mainly the democratic tradition and the electoral system.

83. Nevertheless, the European and Latin American experiences show that, if legislative intervention is deemed necessary, some conditions should be taken into account:

- a) The requirements imposed on political parties for selecting candidates must be coherent with the electoral system.
- b) The fulfilment of the exigencies imposed by law must be effectively supervised by independent bodies, such as courts or electoral commissions, ensuring the existence of effective remedies available to protect the freedom of association of political parties and political rights of individuals.
- c) The law must respect the proportionality principle, establishing means that are necessary to increase democracy and the least burdensome to political parties’ freedom.
- d) The legal requirements concerning the selection of candidates can affect the core of political parties in one of their most relevant decisions. For this reason, it is important that there should be a consensus on their necessity and content.

CDL-AD(2015)020 - Report on the method of nomination of candidates within political parties

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

54. There is a discussion underway concerning the introduction of gender quotas on political party leaders (Article 38.s of the COFIPE), in order to ensure a higher proportion of women among the higher positions inside political parties. There are no international standards that establish an obligation in this respect; however, it would be a positive further step to consolidate an already progressive legislation in this field.

CDL-AD(2013)021 - Opinion on the electoral legislation of Mexico

17. The draft electoral law does not contain any affirmative measures to increase the participation of women in elections. In its final report on the 2012 parliamentary elections, the OSCE/ODIHR recommended to consider the introduction of a gender requirement for nomination of party lists as a temporary measure to increase the participation of women in elections. This recommendation is consistent with the provisions of Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women, which has been ratified by Ukraine, and the principles of the Council of Europe. The Venice Commission and the OSCE/ODIHR recommend that consideration be given to adding appropriate text in the draft electoral law for mandatory gender quotas for party lists presenting candidates for the proportional representation component of the parliamentary elections.

18. Consideration should also be given to encouraging political parties to promote women's participation in elections through legal provisions for campaign and political party finance. Allocation of public funds for campaigns based on party support for women candidates is an appropriate mechanism for encouraging political parties to nominate more women candidates in light of the requirement for special measures as stated in Article 4 of the Convention on the Elimination of All Forms of Discrimination against Women.

CDL-AD(2013)016 - Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine

34. [...] Although neither the Council of Europe nor OSCE require gender quotas, both recognise that legislative measures are effective mechanisms for promoting women's participation in political and public life. [...]

35. There are several areas where the draft Code could be improved to facilitate the participation of women in public life and the elimination of discrimination against women. The Venice Commission and OSCE/ODIHR make the following recommendations in this regard:

- The electoral system could be revised, either through the use of quotas or other recognised methods for facilitating the election of women candidates, so that current percentages of women who are elected is increased substantially;
- [...]
- Some portion of public funding for political parties could be linked to the proportion of women nominated as candidates by political parties and/or included on party lists.

CDL-AD(2011)043 – Joint Opinion on the draft election code of Georgia

123. Based on the above text in Article 30, it would appear that each voter receives a “female ballot”, “male ballot”, and “male and female (mixed group ballot)”. Article 65 provides that “the candidate is considered as elected (in accordance with the number of mandates), receiving the greatest number of votes”. However, as Article 60(1) states that the “number of multi-member constituencies and the number of mandates in each of them determined by the relevant election commissions in accordance with requirements provided for in legislation”, and no other article describes how mandates are to be allocated, it is impossible to assess how Article 65 is applied to a real election. Are there three separate allocations (female, male, and male/female) in each multi-member constituency, or are there female multi-mandate constituencies, male multi-mandate constituencies, and male/female multi-mandate constituencies? Can one “relevant election commission” choose the former while another commission chooses the latter? Thus, it is impossible to assess the electoral system and the merits of the “female ballot”, “male ballot”, and “male and female (mixed group ballot)”. **The Venice Commission and OSCE/ODIHR recommend** that the draft law be revised to provide an electoral system for local elections that can be reviewed and assessed on the written text and to clarify how the winners (female, male, male/female) are determined in local elections. In addition, the draft local elections law should be revised to ensure representation of women and men in local governments.

[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

37. Article 108(2) of the draft Electoral Code requires the representation of women in candidates lists for the National Assembly. This article states:

One woman shall be included among the first ten candidates of the electoral list of a political party for the elections to the National Assembly under the proportional electoral system, whereas starting from the eleventh number of the list, women shall make up at least 20% of each integer group of five candidates (11-15, 11-20, 21-25 and subsequently till the end of the list).

38. Twelve women were elected to the National Assembly in 2007. The above provision may marginally increase the number of women elected, but such an increase is far from ensured as the 20 per cent requirement does not apply until the 11th candidate on the candidate list and thus would affect only the two or three largest parties. The same remarks are valid for the elections to the Yerevan Council of Elders, where women shall make at least ten per cent of the list (Article 156.2). More could be done to further improve the representation of women on candidate lists. The Venice Commission and OSCE/ODIHR recommend that additional measures be implemented by the authorities in Armenia to facilitate the representation of women in political life.

[CDL-AD\(2011\)021](#) - Joint interim opinion on the new draft electoral code of Armenia

21. Article 31 of the draft law provides that, for the purpose of exercising the gender equality principle, there shall be no less than 20 per cent of candidates of the less represented gender on the candidate list. This is a positive measure. However, in order to be effective, this provision should require that candidates of each gender be ranked high enough on the list to have a realistic opportunity for being allocated a mandate. For example, the law could stipulate that every fifth candidate on the list of candidates should be of different gender.

[CDL-AD\(2011\)011](#) - Joint opinion on the draft law on amendments to the law on election of councillors and members of Parliament of Montenegro

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

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

More generally, see [CDL-AD\(2009\)029](#) in its entirety.

20. Under Articles 4 and 7 of the Convention for the Elimination of Discrimination Against Women, a state has a positive obligation to take special, temporary measures to ensure the *de facto* equality of men and women, including in political and public life. In addition, the Albanian Parliament adopted in July 2008 a Law on Gender Equality, which aims at establishing equal women representation in State institutions. The Code attempts to take effective measures for women. Article 67(5) requires that in Assembly elections, for each electoral zone, “at least thirty percent of the multi-name list and/or one of the first three names in the multi-name list should be from each sex”. However, this provision might be subject to different interpretations.

Arguably, this provision gives the list presenter one of two options: (1) one woman in the top three candidates or (2) thirty percent (30%) of the candidates must be women, who can appear anywhere on the list, including being placed as the very last names on the bottom of the list.

Thus, as written, this article might not be equivalent to an “effective measure” promoting the representation of women in the Assembly. ***The Venice Commission and the OSCE/ODIHR***

recommend that the “and/or” text in Article 67 be changed to “and”. It is further recommended that Article 67 be reviewed to provide more efficient mechanisms to promote women representation in parliament.

21. For local government elections, Article 67 states that “one in every three names on the list should be from each sex”. Although this appears to be a stronger requirement than is required for Assembly elections, Article 67(6) allows a political party to purchase an exemption for the requirement by paying a fine to the CEC. **The Venice Commission and the OSCE/ODIHR recommend** that Article 67(6) be amended so that a political party cannot purchase an exemption from the law. A political party list of candidates that does not meet legal requirements should not be registered.

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

16. Article 4.19 of the Election Law requires that every list of candidates shall contain a certain number of minority gender candidates. Article 4.19 is intended to increase the number of women candidates at the top of every candidates list and, thereby, increase the number of women elected. Reaching this goal, however, is made difficult by the present system of open list voting (Articles 9.9, 10.7, 11.7, and 13.5), which allows voters to ignore the order of candidates on the list. This fact was specifically observed in the 2006 elections, where more than 30 women lost seats to men who had been placed lower on the lists of candidates. As none of the amendments address this issue, it is *recommended* that consideration be given to introducing a system ensuring a minimal percentage of each gender in the elected body to achieve the goal of Article 4.19.

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

121. [...] Article 64 (5) regarding lists for the parliament and councils states that “in every three places at least one will be reserved for the less represented gender”. This is at least unambiguous and if the rule is taken literally it would not promote a best possible representation of the underrepresented gender.

[...]

123. In many countries this issue has been solved by formulating the following rule: “There shall be at least one candidate of each gender among the first three on the list, two of each gender among the first six on the list, three of each gender among the first nine on the list etc.” This would make alternative 2 legal and the rule would not work against prominent positions of the less represented gender.

CDL-AD(2006)022 - Joint Opinion on the Electoral Code of “the former Yugoslav Republic of Macedonia”

180. Furthermore, there might be gender quotas for the composition of or the candidacies for Parliament. According to the Code of Good Practice in Electoral Matters, legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage (CDL-AD(2002)023rev, I.2.5). In a number of Council of Europe member states, such a minimum percentage of women in the list of candidates is required by law. In the 2004 municipal elections in Kosovo, for example, a third of the candidates had to be women, otherwise political entities would have been disqualified (see CG/BUR (11) 74). In Armenia, the required minimum percentage of women in a list of candidates has recently been increased from 5% to 15% (CDLAD(2005)027, para. 16). In addition a minimum gender balance, the election law may also stipulate a detailed order

to ensure balance throughout the list (as for Bosnia and Herzegovina, see CG/CP (11) 13). A composition of the candidates' lists with alternating men and women might be considered. Even with elections in single-member constituencies, a minimal percentage of members of each gender among candidates might be possible (see CDL-EL(2005)031).

181. However, it should be clear that the electoral system itself is neither a necessary nor a sufficient condition to ensure women's representation. Additional measures are needed to encourage the increase in women's representation. Some measures have been included in the Council of Europe Parliamentary Assembly recommendation 1676 (2004), adopted on 5 October 2004.

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

42. Article 40a of the law provides that "for every four candidates on the electoral list (first group of four places, second group of four places and so on until the end of the list) there shall be one candidate of the gender less represented on the list, and the number of candidates of the gender less represented on the list shall be at least 30 per cent of the total number." If an electoral list does not meet this requirement, then it is deemed incomplete and the submitter is given the opportunity to remedy the deficiencies of the list within 48 hours after the list is returned to the submitter. If the submitter does not remedy the deficiencies, then the list is rejected. Article 40 "a" is a positive provision in the law that should facilitate the participation of women in the National Assembly and elections. However, there appears to be a translation error in the text as one of every four candidates would be 25 per cent instead of 30 per cent. The text "and so on until the end of the list" means that the 25 per cent would apply "until the end of the list", which means that the text "at least 30 per cent of the total number" would appear to create an inconsistency. ***The OSCE/ODIHR and the Venice Commission recommend that the original language text be checked and that it is verified that the two principles stated in Article 40 "a" are mathematically consistent.***

[...]

84. As noted earlier, Article 40a of the Law on Parliamentary Elections requires that a certain percentage of the candidates on an electoral list be of the gender less represented on the list. Article 42 of the Law on Local Elections has a similar, but not identical provision. Article 42 requires that "every fourth seat shall be allocated to a person of less represented sex in the list" from "the remaining two-thirds of seats". The gender requirement of Article 42 is less significant than the gender requirement of Article 40a of the Law on Parliamentary Elections. ***The OSCE/ODIHR and the Venice Commission recommend that consideration be given to harmonizing these two articles so that the gender requirements for electoral lists are consistent with each other.***

CDL-AD(2006)013 - Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia

11. Candidate Gender

117. In Article 63-5 and its alternative a gender quota is provided. The provision continues the requirement that a list of candidates for parliament or municipal councils (and the City Council of Skopje) must contain at least 30% from each gender.

118. This provision also adds a requirement that this percentage applies to both the "lower and upper part" of such lists. An alternative approach could be to require that out of every three candidates in order on a list, each gender should be represented by at least one.

119. Nevertheless, as there is not a clear provision concerning the length of the list in the draft code, Article 63-5 might not be effective if the list is extremely long (containing more candidates than seats are available in the elections).

[CDL-AD\(2006\)008](#) - *Joint Opinion on the Draft Electoral Code of “the Former Yugoslav Republic of Macedonia”*

2. The required minimum percentage of names of women on a candidate list is increased from 5% to 15% (amendment to Article 100(2)). This is a positive amendment. The amendments also foresee that “at least each 10th part of the candidate list shall be comprised of women.” It should be once more noted that a real increase in the political representation of women cannot be achieved only through mechanical electoral rules. Thus, this initiative should be supplemented by additional, both legislative as well as non-legislative measures encouraging the increase in women’s representation. Examples of such measures have been included in the Council of Europe Parliamentary Assembly Recommendation 1676 (2004), adopted on 5 October 2004.

[CDL-AD\(2005\)027](#) - *Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR*

See also:

[CDL-AD\(2005\)019](#) - *Interim Joint Opinion on the Draft Amendments to the Electoral Code of Armenia version of 19 April 2005 by the Venice Commission and OSCE/ODIHR (para. 19)*

[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. 53)*

I.2.5. Equality and parity of the sexes

Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis.

[...]

24. If there is a specific constitutional basis, rules could be adopted guaranteeing some degree of balance between the two sexes in elected bodies, or even parity. In the absence of such a constitutional basis, such provisions could be considered contrary to the principle of equality and freedom of association.

25. Moreover, the scope of these rules depends on the electoral system. In a fixed party list system, parity is imposed if the number of men and women who are eligible is the same. However, if preferential voting or cross-voting is possible, voters will not necessarily choose candidates from both sexes, and this may result in an unbalanced composition of the elected body, chosen by voters.

[CDL-AD\(2002\)023rev2-cor](#) – *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (Guideline I.2.5 and para. 24-25 of the Explanatory Report)*

In this connection, see also [CDL-AD\(2006\)020](#) - *Declaration on Women's Participation in Elections:*

Item I.2.5 of the Code of the Code of Good Practice in Electoral Matters provides as follows:

« Legal rules requiring a minimum percentage of persons of each gender among candidates should not be considered as contrary to the principle of equal suffrage if they have a constitutional basis ».

The following completes this principle :

“a. Implementation of the parity principle may lead to admit:

1. Elections by a list system - The obligation to ensure a composition of the candidates' lists alternating men and women - The refusal to register lists which do not respect such an alternating composition

2. Elections in single-member constituencies - The obligation to ensure a balanced percentage of women and men amongst candidates of the same party - Dissuasive sanctions in case of non-respect of this obligation

[...]

III. Reference documents

[CDL-AD\(2018\)008](#) - Republic of Moldova - Joint opinion on the law for amending and completing certain legislative acts (Electoral system for the election of Parliament), adopted by the Council for Democratic Elections at its 61st meeting, Venice, 15 March 2018 and the Venice Commission Plenary at its 114th meeting, Venice, 16-17 March 2018

[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), adopted by the Council for Democratic Elections at its 59th meeting (Venice, 15 June 2017) and by the Venice Commission at its 111th Plenary Session (Venice, 16-17 June 2017)

[CDL-AD\(2016\)019](#) - Armenia - Joint Opinion on the draft electoral code as of 18 April 2016, endorsed by the Council of Democratic Elections at its 55th meeting (Venice, 9 June 2016) and by the Venice Commission at its 107th Plenary session (Venice, 10-11 June 2016)

[CDL-AD\(2015\)020](#) - Report on the method of nomination of candidates within political parties, adopted by the Council for Democratic Elections at its 51th meeting (Venice, 18 June 2015) and by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015)

[CDL-AD\(2014\)019](#) - Joint Opinion the Venice Commission and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) on the draft Election Law of the Kyrgyz Republic, adopted by the Council for Democratic Elections at its 48th meeting (Venice, 12 June 2014) and by the Venice Commission at its 99th plenary session (Venice, 13-14 June 2014)

[CDL-AD\(2014\)003](#) - Joint Opinion on the draft Law amending the electoral legislation of Moldova, adopted by the Council for Democratic Elections at its 47th meeting (Venice, 20 March 2014) and by the Venice Commission at its 98th plenary session (Venice, 21-22 March 2014)

[CDL-AD\(2013\)021](#) - Opinion on the electoral legislation of Mexico, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)

[CDL-AD\(2013\)016](#) - Joint Opinion on the Draft Amendments to the Laws on election of people's deputies and on the Central Election Commission and on the Draft Law on repeat elections of Ukraine, adopted by the Council for Democratic Elections at its 45th meeting (Venice, 13 June 2013) and by the Venice Commission at its 95th Plenary Session (Venice, 14-15 June 2013)

[CDL-AD\(2011\)043](#) - Joint opinion on the draft election code of Georgia, adopted by the Council for Democratic Elections at its 39th meeting (Venice, 15 December 2011) and by the Venice Commission at its 89th plenary session (Venice, 16-17 December 2011)

[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, adopted by the Council for Democratic Elections at its 37th meeting (Venice, 16 June 2011) and by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011)

[CDL-AD\(2011\)021](#) - Joint interim opinion on the new draft electoral code of Armenia, endorsed by the Council for Democratic Elections at its 37th meeting (Venice, 16 June 2011) and by the Venice Commission at its 87th Plenary Session (Venice, 17-18 June 2011)

[CDL-AD\(2011\)011](#) - Joint opinion on the draft law on amendments to the law on election of councillors and members of Parliament of Montenegro, endorsed by the Council for Democratic Elections at its 37th meeting (Venice, 16 June 2011) and by the Venice Commission at its 87th plenary session (Venice, 17-18 June 2011)

[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, adopted by the Council for Democratic Elections at its 36th meeting (Venice, 24 March 2011) and by the Venice Commission at its 86th Plenary Session (Venice, 25-26 March 2011)

[CDL-AD\(2009\)029](#) - Report on the Impact of Electoral Systems on Women's Representation in Politics, adopted by the Council for Democratic Elections at its 28th meeting (Venice, 14 March 2009) and the Venice Commission at its 79th plenary session (Venice, 12-13 June 2009)

[CDL-AD\(2009\)005](#) - Joint Opinion on the Electoral Code of the Republic of Albania, adopted by the Venice Commission at its 78th plenary session (Venice, 13-14 March 2009)

[CDL-AD\(2008\)012](#) - Joint opinion on amendments to the Election Law of Bosnia and Herzegovina by the Venice Commission and OSCE/ODIHR, adopted by the Council for Democratic Elections at its 24th Meeting (Venice, 15 March 2008) and by the Venice Commission at its 75th Plenary Session (Venice, 13-14 June 2008)

[CDL-AD\(2006\)022](#) - Joint Opinion on the Electoral Code of "the former Yugoslav Republic of Macedonia" by the Venice Commission and OSCE/ODIHR, adopted by the Council for Democratic Elections at its 17th meeting (Venice, 8-9 June 2006) and the Venice Commission at its 67th Plenary Session (Venice, 9-10 June 2006)

[CDL-AD\(2006\)020](#) - Declaration on Women's Participation in Elections adopted by the Venice Commission at its 67th plenary session (Venice, 9-10 June 2006)

[CDL-AD\(2006\)018](#) - Report on Electoral Law and Electoral Administration in Europe -Synthesis study on recurrent challenges and problematic issues, adopted by the Council for Democratic Elections at its 17th meeting (Venice, 8-9 June 2006) and the Venice Commission at its 67th plenary session (Venice, 9-10 June 2006)

[CDL-AD\(2006\)013](#) - Joint Recommendations on the Laws on Parliamentary, Presidential and Local Elections, and Electoral Administration in the Republic of Serbia by the Venice Commission and OSCE/ODIHR, adopted by the Venice Commission at its 66th Plenary Session (Venice, 17-18 March 2006)

[CDL-AD\(2006\)008](#) - Joint Opinion on the Draft Electoral Code of "the Former Yugoslav Republic of Macedonia" by the Venice Commission and OSCE/ODIHR, adopted by the Venice Commission at its 66th plenary session, Venice 2006)

[CDL-AD\(2005\)027](#) - Final Opinion on the Amendments to the Electoral Code of the Republic of Armenia by the Venice Commission and OSCE/ODIHR, adopted by the Council for Democratic Elections At its 14th meeting (Venice, 20 October 2005) and the Venice Commission at its 64th plenary session (Venice, 21-22 October 2005)

[CDL-AD\(2005\)019](#) - Interim Joint Opinion on the Draft Amendments to the Electoral Code of Armenia version of 19 April 2005 by the Venice Commission and OSCE/ODIHR, adopted by the Council for Democratic Elections at its 13th meeting (Venice, 9 June 2005) and the Venice Commission at its 63rd plenary session (Venice, 10-11 June 2005)

[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, adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62nd plenary session (Venice, 11-12 March 2005)

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Draft - restricted