



Strasbourg, 2 May 2019

CDL(2019)016 *

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

DRAFT COMPILATION
OF VENICE COMMISSION OPINIONS AND REPORTS
CONCERNING ELECTORAL SYSTEMS AND NATIONAL MINORITIES

* 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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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 national minorities. 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 compilations on electoral systems in general¹ and on the protection of national minorities.²

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

² See CDL-PI(2018)002, available at [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2018\)002-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2018)002-e).

II. Electoral systems and representation of national minorities

A. General effects of different electoral systems

1. General documents

42. Different arrangements of the electoral system may facilitate minority representation:

- in presence of minorities concentrated territorially single member districts may provide sufficient minority representation;
- proportional representation systems may assist in the representation of minorities;
- some forms of preference voting – single transferable vote (proportional system), alternative vote (majority system) – may facilitate minority representation in connection with ranking candidates in order of choice by voters;
- lower threshold (or exemption from the threshold) may enhance the integration of national minorities in governance (see the HCNM document, paragraph 7);
- delimitation of electoral districts should facilitate equitable representation (see the HCNM document, paragraph 15).

[...]

44. As stated by the HCNM (paragraph 7 of the document), there are a variety of mechanisms to implement the right to effective participation in public affairs. Participation of national minorities in public life, and more precisely their representation in elected bodies, can be ensured in certain cases by applying the general rules of electoral law with a view (or the effect) of ensuring proper minority representation; in other cases, States apply specific rules providing for representation of minorities or facilitating it.

45. For instance, the choice of the proportional electoral system may ensure an effective participation, even when no exception is introduced to the general electoral system. But obviously when a threshold is introduced, the provision for a lower threshold for the national minorities parties implies special exceptions to the general rules. On the other side, single member electoral districts in areas where territorially concentrated minorities are present, may imply an exception to the general rules on allocation of seats only if the number of electors assigned to the minority electoral districts are not complying with the criteria of the general distribution of voters in the electoral districts provided for by the general rules of electoral law. Reserved seats are a more obvious way of favouring minority representation.

[...]

65. Representation of minorities in elected bodies may be ensured either by the application of the general rules of electoral law or by specific rules. The situation depends on a number of variables, such as the nature of the electoral rules (e.g. proportional v. plurality/majority system), the repartition of the minorities (in particular, whether they are in a majority in any part of the territory) and the degree of integration, in practice, of minorities in the political system.

[CDL-AD\(2008\)013](#) - Report on Dual Voting for Persons belonging to National Minorities

More generally, see [CDL-AD\(2008\)013](#) 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.

[...]

182. Sometimes there also strong demands for a better representation of national minorities in Parliament. In such cases, the electoral systems may facilitate the minority representation, for example, by the use of proportional representation systems in nation-wide or in large multi-member constituencies (without a high threshold of representation). But also PR list systems in small multi-member districts or even plurality/majority systems in single-member constituencies may ensure minority representation if the minorities are territorially concentrated. Also, the candidacy and voting form, among other things, may have an influence on minority representation. In some countries (e.g. Poland and Germany), there are “threshold exemptions” for candidates lists or parties presenting national minorities (see [CDL-AD\(2005\)009](#), paras 35, 49).

CDL-AD(2006)018 - Report on electoral law and electoral administration in Europe

Conclusion

The wide variety of electoral systems have been grist to generations of legal specialists, political analysts and mathematicians and will continue to be so. It is true that they do not all without exception guarantee that national minorities are fairly represented, but the main conclusion which may be drawn from the foregoing analysis is that there is no absolute rule in this field. 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.

Nevertheless, the electoral system is not irrelevant to the participation of members of minorities in public life. On the one hand, certain states - but they are few in number - have specific rules designed to ensure such participation. On the other hand, it may be that neutral rules - for example, those relating to the drawing of constituency boundaries - are applied with the intention of making it easier for minorities to be represented. More often than not, however, the representation of minorities is not a deciding factor in the choices made when an electoral system is adopted or even put into practice. However, as regards the presence of members of minorities in elected bodies, the following general remarks may be made.

- The impact of an electoral system on the representation of minorities is felt most clearly when national minorities have their own parties.
- It is uncommon for political parties representing national minorities to be prohibited by law and highly unusual for this in fact to happen. Only in very rare cases does this constitute a restriction upon the freedom of association, which nonetheless respects the principle of proportionality, and is consistent with the European constitutional heritage.

- Although parties representing national minorities are very widely permitted, their existence is neither the rule nor indispensable to the presence of persons belonging to minorities in elected bodies.

- The more an electoral system is proportional, the greater the chances dispersed minorities or those with few members have of being represented in the elected body. The number of seats per constituency is a decisive factor in the proportionality of the system.

- When lists are not closed, a voter's choice may take account of whether or not the candidates belong to national minorities. Whether or not such freedom of choice is favourable or unfavourable to minorities depends on many factors, including the numerical size of the minorities.

- Unequal representation may have an influence (positive or negative) on the representation of concentrated minorities, but the replies to the questionnaire do not indicate any concrete instances.

- When a territory where a minority is in the majority is recognised as a constituency, this helps the minority to be represented in the elected bodies, especially if a majority system is applied.

To sum up, the 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

More generally, see [CDL-INF\(2000\)004](#) in its entirety.

2. Country-specific opinions

48. National minority representation is a recurrent topic in OSCE/ODIHR and Venice Commission joint opinions on the electoral system of the Republic of Moldova. These joint opinions have stressed the importance of taking into account sizable national minorities living on the territory of the Republic of Moldova. The 2014 Joint Opinion pointed out:

36. The choice of the electoral system – proportional representation, majoritarian or a mixed system – is not what dictates or determines minority inclusion or exclusion. However, the choice of system is not irrelevant to the participation of members of minorities in the electoral process. It is often considered that ‘the more an electoral system is proportional, the greater the chances minorities have to be represented in the elected bodies and majoritarian systems are often seen as not appropriate. This is, however, only relative. Much depends on both the legal and the practical situation in a given state, nevertheless, the delimitation of electoral constituencies should facilitate equitable representation of the entire population and can be a tool to ensure the representation of national minorities.

[...]

51. Moreover, the representation that a sizable concentrated national minority may achieve in a single-member constituency may prove to be less than the representation that would be achieved under a proportional system, as majoritarian candidates may receive more votes than are necessary to win seats. This may also result in the compartmentalisation of national minorities or the emergence of tensions between communities. The Venice Commission and the

OSCE/ODIHR therefore recommend ensuring that no revision of the electoral legislation goes without proper consideration of national minorities' representation.

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)

18. [...] Moreover, the double threshold reduces considerably the chances of minorities to be represented in the parliament as it is quite difficult to suppose that they will be able to achieve not only the nationwide threshold of 5 per cent but also the second threshold of 0.5 per cent in every constituency. *The Venice Commission and the OSCE/ODIHR recommend that the 5 per cent nationwide threshold be removed from the law if mandates are to be distributed based on a regional proportional representation system using election results in nine separate geographical constituencies.*

[...]

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

36. The choice of the electoral system – proportional representation, majoritarian or a mixed system – is not what dictates or determines minority inclusion or exclusion. However, the choice of system is not irrelevant to the participation of members of minorities in the electoral process. It is often considered that “the more an electoral system is proportional, the greater the chances minorities have to be represented in the elected bodies and majoritarian systems are often seen as not appropriate.” This is, however, only relative. Much depends on both the legal and the practical situation in a given state, nevertheless, the delimitation of electoral constituencies should facilitate equitable representation of the entire population and can be a tool to ensure the representation of national minorities.

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

14. The amendments (Article 64) make a significant change in the election system for national minority candidates in local elections. Previously, the election system for local elections was a proportional representation system that required mandates to be allocated to candidates on lists in accordance with special rules to ensure that members of a national minority received

a number of mandates corresponding to census population strength. The amendments raise concerns about equal suffrage and non-discrimination as they create separate electoral systems on the same ballot. One system is a proportional representation system for the general population of election contestants and the second system is a plurality or “first-past-the postsystem” (FPTP) for national minority candidates. Under the proposed new Article 13.14 of the Election Law, a voter has one vote and chooses an election, either the PR election or FPTP election for national minorities, in which the voter will participate. The “weight” of vote and “equality” of suffrage depends on which election the voter opts for when the voter marks the ballot. This joint opinion does not provide a mathematical analysis of the potential consequences of the hybrid PR/FPTP two elections/one vote ballot system. However, in general, it can be seen that there may be some issues presented concerning equal suffrage and non-discrimination in the exercise of suffrage rights. It is *recommended* that there be careful consideration before this system is adopted and that potential adverse consequences, both mathematically and legally, are evaluated fully.

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

The electoral system and the single constituency

1. 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.

2. 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.”

[...]

3. The same Joint Opinion also states that:

“in the Moldovan context, where sizeable national minorities exist and some are regionally concentrated, an electoral system meeting the distinct objectives of ensuring further consolidation of the political system and permitting an adequate participation in public life of national minorities and mainstream interests at regional level could be considered, as previously recommended both by the OSCE/ODIHR and the Venice Commission.”

4. The Opinion suggested OSCE-ODIHR Guidelines to Assist National Minority Participation in the Electoral Process as a reference in this regard.

5. 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

17. 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 electoral

system itself. The Opinion on the Election Law quoted the Venice Commission stating that it is “necessary for States to take into account the presence of one or more minorities on their soil when dividing the territory into political or administrative subdivisions as well as into electoral constituencies” (Opinion on the interpretation of Article 11 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe, CDL-INF (96) 4).”

18. In the Moldovan context, where sizeable national minorities exist and some are regionally concentrated, an electoral system meeting the distinct objectives of ensuring further consolidation of the political system and permitting an adequate participation in public life of national minorities and mainstream interests at regional level could be considered, as previously recommended both by the OSCE/ODIHR and the Venice Commission.

CDL-AD(2006)001 - Joint Opinion on the Electoral Code of Moldova as amended on 22 July, 4 and 17 November 2005

15. The electoral system is laid down in Articles 9 and 11-24 of the Law. A system of proportional representation – which generally favours smaller groups and is therefore more advantageous to minorities – is provided for, with blocked lists in a single constituency at the level of each local and regional self-government unit. The number of seats in each unit is stipulated by the unit’s statute. A 5 % threshold is applied for all elections. [...]

16. The 5 % threshold is quite high and tends to favour larger groupings, to the detriment of small political parties. It should be noted also that the lower the number of seats in a unit – a matter not regulated by law but left for the statutes of each unit, as described above –, the lower the probability that the (proportional) representation of minorities will be achieved. For instance, in elections to small local councils with only seven to ten seats, minor parties will need to obtain between eight and twelve percent of valid votes in order to have a representative elected. The *de facto* threshold may therefore in fact be higher than that laid down by law. Again, this acts to the detriment of small (often minority) political parties.

[...]

23. The system of proportional representation is sometimes criticised, in general terms, for encouraging the creation of parties along national or ethnic lines. Article 61 of the Law appears to try to compensate for this effect, at least to some extent, [...]

CDL-AD(2002)003 - Consolidated Opinion on the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units of Croatia

B. Specific measures aimed at ensuring representation of national minorities

1. General documents

15. Electoral law can go further and enshrine special measures seeking to address traditionally existing imbalances in representation. In principle, such measures – which constitute affirmative action - do not go against the principle of equal suffrage.

16. International law does not prohibit such special measures, provided that there is an objective and reasonable justification for their application (proportionality principle) and that these measures are not contrary to other guaranteed human rights. Thus, special measures could be inadmissible if they themselves appear discriminatory but not if they are intended at ensuring effective equality and respect the principle of proportionality.

CDL-AD(2017)034 - Report on Constituency Delineation and Seat Allocation

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

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.

[...]

35. According to a principle laid down in the Code of Good Practice in Electoral Matters, and frequently stated by the Commission also in other documents, special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.

36. But neither candidates nor voters must find themselves obliged to reveal their membership to a national minority.

[...]

45. For instance, the choice of the proportional electoral system may ensure an effective participation, even when no exception is introduced to the general electoral system. But obviously when a threshold is introduced, the provision for a lower threshold for the national minorities parties implies special exceptions to the general rules. On the other side, single member electoral districts in areas where territorially concentrated minorities are present, may imply an exception to the general rules on allocation of seats only if the number of electors assigned to the minority electoral districts are not complying with the criteria of the general distribution of voters in the electoral districts provided for by the general rules of electoral law. Reserved seats are a more obvious way of favouring minority representation.

46. Specific rules on representation of minorities in elected bodies may affect two aspects of equal voting rights, as defined in the Code of Good Practice in Electoral Matters: equal voting rights and equal voting power.

47. The case-law of the Court recognises the lawfulness of “preferential treatment” measures to assist national minorities if these serve a lawful purpose and if the means used are not disproportionate to the objective sought. Whether such measures are legitimate is a matter for states' discretion. Differences of treatment would probably only be disproportionate where the voting inequalities were significant.

48. Special provisions on minorities' voting rights do not necessarily conflict with the principle of equality but every adaptation of voting results is an example of reverse discrimination. Therefore they have to be justified according to the principle of proportionality, which means that they do not violate the principle of equality if and as far as they are necessary to cover the gaps and difficulties which hamper the participation of minorities in public life.

49. States may deviate from the principle of equal suffrage by adapting their electoral systems in the narrow sense (way or translating votes into seats) in a legitimate fashion and adopting special systems in respect of minorities if their purpose is lawful and necessary, and the method chosen is proportionate to the outcome sought.

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).

[...]

65. Representation of minorities in elected bodies may be ensured either by the application of the general rules of electoral law or by specific rules. The situation depends on a number of variables, such as the nature of the electoral rules (e.g. proportional v. plurality/majority system), the repartition of the minorities (in particular, whether they are in a majority in any

part of the territory) and the degree of integration, in practice, of minorities in the political system.

66. The long-term interests of minorities and of societies as a whole are in principle better served by representation under the “ordinary electoral system” which guarantees equal rights to citizens, irrespective of the group to which they are initially affiliated. However, this does not exclude specific measures of a transitional nature when needed in order to ensure proper representation of minorities. These solutions include *inter alia* exceptions to rules on the threshold, reserved seats and overrepresentation of districts in which the minority is in a majority.

[...]

71. On the basis of the previous developments, the Commission concludes that dual voting is an exceptional measure, which has to be within the framework of the Constitution, and may be admitted if it respects the principle of proportionality under its various aspects. This implies that it can only be justified if:

- it is impossible to reach the aim pursued through other less restrictive measures which do not infringe upon equal voting rights;
- it has a transitional character;
- it concerns only a small minority.

[CDL-AD\(2008\)013](#) - Report on Dual Voting for Persons belonging to National Minorities

More generally, see [CDL-AD\(2008\)013](#) in its entirety.

183. Alternatively, or additionally, there are sometimes provisions for reserved seats that are separately allocated to national minorities (e.g. in Albania, Bosnia and Herzegovina, Croatia, Kosovo, Montenegro, Slovenia, Romania). However, the notion of setting aside seats reserved for minorities is debatable (CG/BUR (11) 74). While reserved seats might be a short-term mechanism to secure the representation of minorities in a transitional period, in the long term the interest of the minorities and the country itself might be better served by representation through the “ordinary” electoral system (see for discussion the Parliamentary Assembly’s report on the 2002 parliamentary elections in Montenegro; Doc 9621 Addendum IV). Furthermore, with reserved seats, there is always the problem of deciding which minorities should be entitled to have such seats and who legitimately represents the respective minority in national or local parliaments (see for example [CDL-AD\(2004\)040](#)).

[CDL-AD\(2006\)018](#) - Report on electoral law and electoral administration in Europe

56. Article 15 of the Council of Europe’s Framework Convention for Protection of National Minorities states that “parties shall create the conditions necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them.

57. The affirmative action in the sphere of electoral rules is one of the ways to establish effective participation of persons belonging to national minorities. The Venice Commission Code of Good Practice in Electoral Matters provides some basic principles for developing electoral affirmative action rules in accordance with European electoral heritage, such as: Parties representing national minorities, guaranteed reserved seats for members of national minorities, electoral thresholds should not affect the chances of national minorities to be represented, electoral districts (their number, the size and form, the magnitude) may be designed with the purpose to enhance the minorities’ participation in the decision-making processes.

58. Also, the possession of dual or multiple nationality should be no obstacle for exercising voting rights in both countries. This approach is completely consistent with Article 17, para. 1 of the European Convention on Nationality, which stipulates that those citizens enjoy the same rights and duties on the territory of the country where they live as the other citizens in that country.

CDL-AD(2005)011 - Report on the abolition of restrictions on the right to vote in general elections

6. The affirmative action in the sphere of electoral rules opens other relevant legal issues. This again proves the controversial nature of affirmative action in general. Yet, its rationale is strong and on the basis of it countries will develop a wide diversity of mechanisms in accordance with their historical and legal traditions, and the political system. In that direction the Venice Commissions' Code of good practice in electoral matters provides some of the basic principles for developing electoral affirmative action rules in accordance with the Europe's electoral heritage. Among them we will emphasise here the following principles:

- a. Parties representing national minorities must be permitted. Yet the participation of national minorities in political parties is not and shall not be restricted to the so-called ethnic based parties.
- b. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.
- c. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.
- d. Electoral thresholds should not affect the chances of national minorities to be represented.
- e. Electoral districts (their number, the size and form, the magnitude) may be designed with the purpose to enhance the minorities' participation in the decision-making processes.

7. Affirmative action electoral rules, as the experience of the OSCE High Commissioner on National Minorities shows, are particularly productive when applied in local elections. Furthermore, in territories where national minorities represent a substantial part of the population, the delimitation of territorial entities (constituencies, municipalities), in such a way as to prevent dispersal of the members of a national minority, may favour the representation of minorities in the elected bodies, as underlined by Recommendation 43, on Territorial Autonomy and National Minorities, of the Congress of Local and Regional Authorities of the Council of Europe.

CDL-AD(2005)009 - Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries

I.2.4 Equality and national minorities

- a. Parties representing national minorities must be permitted.
- b. Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage.
- c. Neither candidates nor voters must find themselves obliged to reveal their membership of a national minority.

[...]

22. In accordance with the principles of international law, the electoral law must guarantee equality for persons belonging to national minorities, which includes prohibiting any discrimination

against them. In particular, the national minorities must be allowed to set up political parties. Constituency delimitations and quorum regulations must not be such as to form an obstacle to the presence of persons belonging to minorities in the elected body.

23. Certain measures taken to ensure minimum representation for minorities either by reserving seats for them or by providing for exceptions to the normal rules on seat distribution, eg by waiving the quorum for the national minorities' parties do not infringe the principle of equality. It may also be foreseen that people belonging to national minorities have the right to vote for both general and national minority lists. However, neither candidates nor electors must be required to indicate their affiliation with any national minority.

[CDL-AD\(2002\)023rev2-cor](#) – Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (Guideline I.2.4 and para. 22 and 23 of the Explanatory Report)

Conclusion

[...]

Nevertheless, the electoral system is not irrelevant to the participation of members of minorities in public life. On the one hand, certain states - but they are few in number - have specific rules designed to ensure such participation.

[...]

To sum up, the 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

More generally, see [CDL-INF\(2000\)004](#) in its entirety.

See also [CDL-INF\(2000\)004](#) - Electoral law and national minorities

2. Country-specific opinions

40. The draft introduces, for the first time in Armenia, the possibility for political parties to compete for minority seats. According to the latest census, in 2011, the four largest minority groups constituted between 0.1 per cent and 1.2 per cent of the population, or between 2,000 and 35,000 people. Each of the four groups is allocated one extra seat in the National Assembly. Including measures to promote representation of national minorities is in line with the Guidelines on Political Party Regulation, which encourage the introduction of special measures to ensure that national minorities have an equal opportunity to be elected and represented in parliament. The measures proposed are extensive considering the size of the groups affected by this provision. While the Venice Commission and the OSCE/ODIHR were informed by the authorities that there are historical reasons for such measures, it should be noted that such measures have not been reflected in prior electoral legislation in Armenia.

41. Articles 83.5 and 95.9 enable the national lists of each party or alliance to include a second part, with candidates of the four largest national minorities. This second part of the list has four sections, one for each group, and for each section the list shall include up to four candidates.

With the smallest minority groups, it may be difficult for some parties to find qualified candidates. It is not mandatory for lists to have candidates for the minority groups, but if they have, they may have up to four for each group. Therefore, if there are no candidates of a certain group, it cannot be represented.

42. The candidates representing national minorities may be listed in part two of the national list, where their ethnicity is indicated. Article 95.9 states that the d'Hondt method will be used for the distribution of the four additional seats. According to Article 95.9 the mandate is passed on to the next party if the party does not have a minority candidate; according to Article 100.2, if a party has been awarded a minority seat and the party does not have a candidate from a minority which has not been filled yet, the seat remains vacant. This apparent contradiction seems to be a translation issue.

43. The arrangement of extra seats for national minorities may change the political balance among the parties. Having minority representatives taken within the seats won by the parties and filled from the ordinary candidate lists could be considered.

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

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

47. According to Article 9(2) of the new Elections Act, nationality lists may be drawn up by nationality self-government, supported by at least one per cent of the voters registered with a maximum of 1,500 signatures from the nationality. The five per cent threshold is waived for such nationality lists but they are entitled to one seat only if they secure at least one fourth of the electoral Hare's quota. The national minorities that fails to win a mandate will still be entitled to a non-voting parliamentary spokesperson, who is the unsuccessful candidate ranked first on the nationality list.

48. This positive development in the new Elections Act follows up decisions of the Constitutional Court of Hungary which ruled that the general representation of national and ethnic minorities was not properly guaranteed, based on Article 68 of the 1949 constitution, due to a lack of implementation of the law that the Court had called upon parliament to enact.

The Venice Commission and the OSCE/ODIHR therefore welcome the introduction of such provisions aiming at favouring the participation of national minorities in parliament.

49. Article 12(2) of the new Election Act stipulates that voters registered in the electoral roll as minority voters may vote for a candidate in a single-mandate constituency and the list of their nationality or, in the absence thereof, for a party list. This provision limits the choice of minority voters in the proportional race on election day, especially when there is only one list competing for the vote of the respective minority. The choice of ballot is done when registering in the nationality register. Taking into consideration the requirement of prior registration as a nationality voter, the Venice Commission and the OSCE/ODIHR recommend that as voters have the right to choose between registering to vote for normal party lists or national minority lists, the law should allow such registration in a reasonably short timeframe before election day. This would ensure that all voters have sufficient information to make an informed choice. However, it would be preferable to give to the voters from national minorities the possibility of choice on election day between nationality lists and party lists.

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

11. In the previous version of the draft law, a specific preferential treatment was reserved to “a minority national community participating in the total population to 2%”; in the current version of the draft law, this quantitative criterion has been substituted for “the minority national community of Croats”. It is true that, according to the last census (2003), only the Croats had reached a percentage lower than 2 per cent (i.e. 1 per cent), so that they appear to be the only beneficiary of the specific preferential treatment. However, Venice Commission and OSCE/ODIHR are of the opinion that it would be preferable to maintain an objective, quantitative criterion in order not to stigmatise one specific group and, more importantly, not to create a possible basis for discrimination in the Constitution, should, in future censuses, the Croats reach a higher percentage or other minority groups reach lower percentages. Should the quantitative criterion be preferred, a reference to the census should also be added, as previously recommended.

12. Article 30 of the draft law maintains the preferential measure for minority candidates lists that the number of candidates must not be lower than one third (instead of two thirds) of the number of seats to be allocated. This measure is a positive development.

[...]

15. The system is as follows. If none of the lists of candidates of the same specific minority or minority national community reaches the general threshold of 3 per cent, but some of the lists individually gain no less than 0,7 per cent of the valid votes, the latter lists take part in the allocation of the seats *corresponding to a maximum of 3 per cent of the total number of valid votes*. It must be understood that this upper limit applies irrespectively of the actual sum of the votes individually obtained by the participating lists. Even if the total is of, say, 6 per cent, the “aggregated” list will only participate in the allocation corresponding to the 3 per cent upper limit. It would however be suitable to make the text of the law clearer on this point.

16. It is clearly stated that this right shall be exercised by candidate lists representing a specific (the same) minority nation or a specific (the same) minority national community “as specified in the election application, title of the list of candidates or constitutive act of the submitter of the list of candidates”. This is a welcome clarification which had been specifically suggested by the Venice Commission and the OSCE/ODIHR.

[...]

55. Regarding the authentic representation of minorities, the use of a general model for all minority nations or other minority national communities without reserved seats is introduced by the draft law, with a lower quorum requirement which partially takes into account the actual population of minorities. This model is original and balanced, is in conformity with the Constitution and applicable international standards, and therefore deserves a positive assessment.

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

51. Regarding the authentic representation of minorities, the use of a uniform model for all minority nations or other minority national communities without reserved seats is introduced by the Draft Law. The Code of Good Practice in Electoral Matters illustrates that special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (for instance, exemption from a quorum requirement) do not in principle run counter to equal suffrage. However, guaranteeing reserved seats is not an indispensable way of affirmative action.

52. The Draft law operates with a lower quorum requirement in order to secure authentic representation of minorities. There is a debate among the political parties on the measure of the quorum. It is difficult to give an opinion on this issue in an abstract way. The actual size of minorities should be taken into account. All circumstances and the impact of the provision on the entire electoral system have to be balanced.

CDL-AD(2010)023 - Joint Opinion on the Draft Law on Amendments and Supplements to the Law on the Election of Councillors and Members of Parliament of Montenegro

14. The amendments (Article 64) make a significant change in the election system for national minority candidates in local elections. Previously, the election system for local elections was a proportional representation system that required mandates to be allocated to candidates on lists in accordance with special rules to ensure that members of a national minority received a number of mandates corresponding to census population strength. The amendments raise concerns about equal suffrage and non-discrimination as they create separate electoral systems on the same ballot. One system is a proportional representation system for the general population of election contestants and the second system is a plurality or "first-past-the postsystem" (FPTP) for national minority candidates. Under the proposed new Article 13.14 of the Election Law, a voter has one vote and chooses an election, either the PR election or FPTP election for national minorities, in which the voter will participate. The "weight" of vote and "equality" of suffrage depends on which election the voter opts for when the voter marks the ballot. This joint opinion does not provide a mathematical analysis of the potential consequences of the hybrid PR/FPTP two elections/one vote ballot system. However, in general, it can be seen that there may be some issues presented concerning equal suffrage and non-discrimination in the exercise of suffrage rights. It is *recommended* that there be careful consideration before this system is adopted and that potential adverse consequences, both mathematically and legally, are evaluated fully.

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

82. As noted earlier, Article 81 of the Law on Parliamentary Elections creates an exception to the legal threshold for mandate allocation for "political parties of ethnic minorities and coalitions of political parties of ethnic minorities". These political parties and coalitions participate in the mandate allocation for members of Parliament even if they receive less than 5 per cent of the votes. Although Article 81 of the Law on Parliament Elections requires a

definition of “political party of ethnic minority” in order to determine which political parties and coalitions under the legal threshold are entitled to participate in the allocation of mandates, the concept is a positive one that facilitates the representation of ethnic minorities. ***The OSCE/ODIHR and the Venice Commission recommend that consideration be given to providing a similar provision in the Law on Local Elections.***

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

46. In particular, the Venice Commission points out that conditions for participation in local elections should be attuned to the local situation and should not be subject to any condition related to representation at national level. For instance, an organisation of a certain national minority may be highly representative of that national minority in a certain county, even though it does not fulfil the requirement that the number of its members is equal to or more than 15 % of the total number of citizens who, at the latest census, have declared they belong to that minority, and even though it would not have at least 300 members in 15 counties of the country. The requirement concerned is even more striking since Article 44 of the Law does restrict the requirement of a certain measure of support to the constituency concerned.

47. The said unequal treatment also runs counter to the principle of proportional representation. In relation to national minorities a deviation from formal proportional representation may be justified to guarantee access of national minorities to representative bodies. The Code of Good Practice in Electoral Matters provides for this in Principle I.2.4 as follows: “*Special rules guaranteeing national minorities reserved seats or providing for exceptions to the normal seat allocation criteria for parties representing national minorities (...) do not in principle run counter to equal suffrage*”. However, such a measure of “positive discrimination” should not have the effect that it favours one national minority or one group within a national minority to the disadvantage of one or more others to the extent that the latter are not able to effectuate their right to participation in public affairs.

[...]

8. There is no special guarantee in Article 7 or any other provision of the Law that national minorities will be allocated seats in the local representative bodies in proportion to their number in the constituency concerned. Such a guarantee is not required by international or European standards, but may be needed under certain circumstances in order to ensure effective participation in public affairs of the national minority concerned.

9. The presence of only one list for each minority in the political game could help this minority to be represented - proportionally - in the elected bodies. However, this does not justify restricting competition between lists of the same minority. In the free play of political forces, one can assume that both voters and candidates would think, and dispute, the consequences of their vote and its possible division between rival groupings. Even in the case that miscalculations may give rise to some unwished for result of loss in representation, the lesson derived from that experience is within the usual scope of the democratic process, where electorates also learn by mistake, and not through the supposed prescient limitation of their choices.

[...]

57. However, the provision of Article 7 is problematic. It strongly restricts the possibility of more than one grouping of persons belonging to a national minority to be represented in authorities at local level throughout the country. In practice, this principally affects the Hungarian minority. These restrictions do not appear justified. In particular, they are not justified by the necessity

of ensuring unity so as to preserve the electoral weight of a minority, inasmuch as one has to take for granted that electors know how to safeguard their minority interests. It has to be emphasised that these comments only concern local elections.

CDL-AD(2004)040 - Opinion on the Law for the Election of Local Public Administration Authorities in Romania

23. The system of proportional representation is sometimes criticised, in general terms, for encouraging the creation of parties along national or ethnic lines. Article 61 of the Law appears to try to compensate for this effect, at least to some extent, by providing that, "At the regular elections 2001, the proponents of slates shall, while compiling slates, acknowledge the principle of the adequate representation of the minority population, taking into account the local circumstances."

24. This provision is nevertheless unsatisfactory, for two reasons. First, it does not require parties to place minority candidates in positions where they have a reasonable chance of being elected under the system of blocked lists laid down by the Law. Article 11 paragraph 3 mentions only the obligation to pay heed to the principle of gender equality, but is silent on ethnic proportionality. Even those parties that might be seriously committed in presenting such proportional slates would not be able to guarantee any proportionality in the outcome, as the overall composition of the council is the result of the winning candidates of different party lists (and not different ethnic lists).

[...]

26. On a more general level, the manner of list voting (blocked or open) has been the subject of much discussion in all countries adopting new election laws. Different arguments favour each of those alternatives, and neither oversteps the bounds of democratic standards. The Croatian election law has adopted the method of voting for the party leader and does not allow preferential voting within the limits of the slate. This solution undoubtedly strengthens individual parties, especially the party leader, who has a decisive say in how the names of candidates are arranged on a slate. The order in which candidates are listed determines who gets elected; the electorate exerts a smaller influence on the concrete personal composition of a given representative body. However, for the reasons described above, this voting method presents the disadvantage that it may disrupt the principle of proportional representation of minorities. At the same time, though, it avoids possible strains due to internal campaigning such as nationality appeals between candidates on a given slate. It should be emphasised that legal solutions that are less likely to trigger conflicts should be promoted. Therefore, even if the possibility of voting for a given candidate would appear to constitute a better safeguard of minority rights, this is not always the rule. It therefore appears that the adopted solution may be the better one in Croatia's current situation.

CDL-AD(2002)003 - Consolidated Opinion on the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units of Croatia

C. Delimitation of constituencies

1. General documents

14. The process of drawing the electoral boundaries should not prejudice national minorities. For instance, dividing a geographically-concentrated minority among several electoral districts so that it constitutes a minority of the voters in every single electoral district (ethnic gerrymandering) should be prohibited, and can be considered as a violation of the principle of non-discrimination. Electoral boundaries may be delimited in a way that ensures the representation of concentrated minorities. However it is also important to avoid another danger namely drawing ethnic seats in such a way that it could lead to a form of electoral apartheid.

CDL-AD(2017)034 - Report on Constituency Delineation and Seat Allocation

42. Different arrangements of the electoral system may facilitate minority representation:

[...]

- delimitation of electoral districts should facilitate equitable representation (see the HCNM document, paragraph 15).

[...]

CDL-AD(2008)013 - Report on Dual Voting for Persons belonging to National Minorities

10. [...] In that direction the Venice Commissions' Code of good practice in electoral matters provides some of the basic principles for developing electoral affirmative action rules in accordance with the Europe's electoral heritage. Among them we will emphasise here the following principles:

[...]

- e. Electoral districts (their number, the size and form, the magnitude) may be designed with the purpose to enhance the minorities' participation in the decision-making processes.

11. Affirmative action electoral rules, as the experience of the OSCE High Commissioner on National Minorities shows, are particularly productive when applied in local elections. Furthermore, in territories where national minorities represent a substantial part of the population, the delimitation of territorial entities (constituencies, municipalities), in such a way as to prevent dispersal of the members of a national minority, may favour the representation of minorities in the elected bodies, as underlined by Recommendation 43, on Territorial Autonomy and National Minorities, of the Congress of Local and Regional Authorities of the Council of Europe.

CDL-AD(2005)009 - Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries

22. In accordance with the principles of international law, the electoral law must guarantee equality for persons belonging to national minorities, which includes prohibiting any discrimination against them. In particular, the national minorities must be allowed to set up political parties. Constituency delimitations and quorum regulations must not be such as to form an obstacle to the presence of persons belonging to minorities in the elected body.

CDL-AD(2002)023rev2-cor – Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (para. 22 of the Explanatory Report)

Conclusion

[...] as regards the presence of members of minorities in elected bodies, the following general remarks may be made.

[...]

- When a territory where a minority is in the majority is recognised as a constituency, this helps the minority to be represented in the elected bodies, especially if a majority system is applied.

[...]

CDL-INF(2000)004 - Electoral law and national minorities

2. Country-specific opinions

48. National minority representation is a recurrent topic in OSCE/ODIHR and Venice Commission joint opinions on the electoral system of the Republic of Moldova. These joint opinions have stressed the importance of taking into account sizable national minorities living on the territory of the Republic of Moldova. The 2014 Joint Opinion pointed out:

36. The choice of the electoral system – proportional representation, majoritarian or a mixed system – is not what dictates or determines minority inclusion or exclusion. However, the choice of system is not irrelevant to the participation of members of minorities in the electoral process. It is often considered that ‘the more an electoral system is proportional, the greater the chances minorities have to be represented in the elected bodies and majoritarian systems are often seen as not appropriate. This is, however, only relative. Much depends on both the legal and the practical situation in a given state, nevertheless, the delimitation of electoral constituencies should facilitate equitable representation of the entire population and can be a tool to ensure the representation of national minorities.

[...]

49. The delimitation of boundaries can thus be of critical importance to the performance of the system in representing national minorities, limiting or enhancing their representation as a result. Among other measures, it is advisable that constituencies established in areas with concentrated minority population do not merge with other territorial units or parts of the country in order not to dilute the representation of minorities.

50. In the 2013 draft proposal to introduce a mixed electoral system, three constituencies were to be created in the Autonomous Territorial Unit of Gagauzia. While the 2014 Joint Opinion expressed some reservations as to the criteria for determining these three constituencies, the introduction of constituencies specific to Gagauzia was welcomed. The current draft proposal, however, does not prescribe any single-member constituencies specific to Gagauzia. As a consequence, the representation of the Gagauzian minority is dependent on the general rules of representation in the nationwide constituency or representation in uninominal constituencies according to the general criteria in Article 74 and subject to CEC decision. The effective representation of the Gagauz minority would therefore depend on the precise delimitation of constituencies; it is advisable to create contiguous constituencies that do not join parts of the Gagauz Autonomous Region with other parts of the territory.

51. Moreover, the representation that a sizable concentrated national minority may achieve in a single-member constituency may prove to be less than the representation that would be achieved under a proportional system, as majoritarian candidates may receive more votes than are necessary to win seats. This may also result in the compartmentalisation of national minorities or the emergence of tensions between communities. The Venice Commission and

the OSCE/ODIHR therefore recommend ensuring that no revision of the electoral legislation goes without proper consideration of national minorities' representation.

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)

26. Although it is not possible at this stage to establish any potential impact, the delimitation of single-mandate constituencies in areas with high concentrations of minority communities should ensure respect for the rights of national minorities. Boundaries should not be altered for the purpose of diluting or excluding minority representation.

CDL-AD(2016)003 - Joint opinion on amendments to the Election Code of Georgia as of 8 January 2016

30. The current Election Code stipulates one nationwide constituency, with a proportional distribution of seats. As stated in a previous joint opinion:

“Very few countries are electing the Parliament in one constituency only. In Europe the Netherlands represent a prominent exception. In most other countries there is a degree of geographical representation secured by elections held in a number of constituencies. If a country is rather uniform in terms of population or other relevant criteria, elections in one constituency may work well. It will then be up to the parties to secure the geographical representation when compiling their lists of candidates. However, when minorities are concentrated in certain areas, constituencies can be the most effective instruments for securing reasonable minority representation in the Parliament.”

[...]

34. To avoid criticism on gerrymandering and to guarantee the necessary confidence in the Central Electoral Commission, the draft should provide for a transparent districting process, performed well in advance of the next parliamentary elections and be based on clear, publicly announced rules, taking into account the existing administrative divisions, and historical, geographical and demographic factors. In particular, the delimitation of single-mandate district boundaries in areas with high levels of minority settlements needs to ensure respect for the rights of national minorities, and electoral boundaries should not be altered for the purpose of diluting or excluding minority representation. [...]

36. The choice of the electoral system – proportional representation, majoritarian or a mixed system – is not what dictates or determines minority inclusion or exclusion. However, the choice of system is not irrelevant to the participation of members of minorities in the electoral process. It is often considered that “the more an electoral system is proportional, the greater the chances minorities have to be represented in the elected bodies and majoritarian systems are often seen as not appropriate.” This is, however, only relative. Much depends on both the legal and the practical situation in a given state, nevertheless, the delimitation of electoral constituencies should facilitate equitable representation of the entire population and can be a tool to ensure the representation of national minorities.

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

19. It was noted in the OSCE/ODIHR final report on the 2012 parliamentary elections that the manner in which single-mandate districts were established negatively impacted the potential representation of some national minorities. The OSCE/ODIHR recommended respecting the rights of national minorities in the establishment of single-mandate districts as well as special mechanisms to promote national minority participation. Article 18.2.3 of the draft electoral law

states the boundaries of single-mandate districts “shall be defined with due account of the interests of the members of territorial communities and density of population at respective territory of the national minorities”. There is no additional clarifying text for the implementation of this provision. It is not clear whether this provision only prohibits dilution of national minority voting strength through the division of national minority voting populations into separate districts or affirmatively requires the concentration of national minority voting populations in single-mandate districts. *The Venice Commission and the OSCE/ODIHR recommend that additional clarifying text, explaining exactly what is intended by the phrase “shall be defined with due account” and how the text is to be implemented, be included in Article 18 of the draft electoral law.*

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

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

13. Directly linked to this issue of national minorities and their representation, it has recommended to refer to the Venice Commission Opinion on the interpretation of Article 11 of Recommendation 1201 (1993) of the Parliamentary Assembly of the Council of Europe (CDL-INF(96)4), which underlines *inter alia* that it is:

“necessary for States to take into account the presence of one or more minorities on their soil when dividing the territory into political or administrative subdivisions as well as into electoral constituencies.”

14. The same Joint Opinion also states that:

“in the Moldovan context, where sizeable national minorities exist and some are regionally concentrated, an electoral system meeting the distinct objectives of ensuring further consolidation of the political system and permitting an adequate participation in public life of national minorities and mainstream interests at regional level could be considered, as previously recommended both by the OSCE/ODIHR and the Venice Commission.”

15. The Opinion suggested OSCE-ODIHR Guidelines to Assist National Minority Participation in the Electoral Process as a reference in this regard.

16. 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

17. Very few countries are electing the Parliament in one constituency only. In Europe the Netherlands represent a prominent exception. In most other countries there is a degree of geographical representation secured by elections held in a number of constituencies. If a country is rather uniform in terms of population or other relevant criteria, elections in one constituency may work well. It will then be up to the parties to secure the geographical representation when compiling their lists of candidates. However, when minorities are concentrated in certain areas, constituencies can be the most effective instruments for securing reasonable minority representation in the Parliament. [...]

17. By changing the single constituency into a system of local constituencies, geographically concentrated minorities such as the Gagauz would have a fair chance to be represented, even with representatives from a variety of parties/political directions. With such a change, a voter from a concentrated minority would not be forced to choose an ethnically based party to be represented by a person of his/her own ethnic group, but would be able to combine ethnicity and regular political directions in the vote. The individual voter could therefore determine the importance of such ethnic considerations for his/her vote.

[CDL-AD\(2003\)001](#) - *Opinion on the Election Law of the Republic of Moldova (see also para. 17-24)*

III. Reference documents

[CDL-AD\(2017\)034](#) - Report on Constituency Delineation and Seat Allocation, adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017) and by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017)

[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\(2016\)003](#) - Joint opinion on amendments to the Election Code of Georgia as of 8 January 2016, adopted by the Council for Democratic Elections at its 54th meeting, Venice, 10 March 2016 and by the Venice Commission at its 106th plenary session, Venice, 11 March 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\(2013\)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\(2012\)012](#) - Joint Opinion on the Act on the Elections of Members of Parliament of Hungary, adopted by the Council for Democratic Elections at its 41st meeting (Venice, 14 June 2012) and the Venice Commission at its 91st Plenary Session (Venice, 15-16 June 2012)

[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\(2010\)023](#) - Joint Opinion on the Draft Law on Amendments and Supplements to the Law on the Election of Councillors and Members of Parliament of Montenegro as amended through July 2006, adopted by the Council for Democratic Elections at its 33rd meeting (Venice, 3 June 2010) and by the Venice Commission at its 83rd Plenary Session (Venice, 4 June 2010)

[CDL-AD\(2008\)013](#) - Report on Dual Voting for Persons belonging to National Minorities, adopted by the Council for Democratic Elections at its 25th meeting (Venice, 12 June 2008) and the Venice Commission at its 75th plenary session (Venice, 13-14 June 2008)

[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\(2007\)040](#) - Joint Opinion on the Electoral Code of Moldova as of March 27, 2007 by the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), adopted by the Council for Democratic Elections at its 23rd meeting (Venice, 13 December 2007) and the Venice Commission at its 73rd plenary session (Venice, 14-15 December 2007)

[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\(2006\)001](#) - Joint Opinion on the Electoral Code of Moldova as amended on 22 July, 4 and 17 November 2005, adopted by the Council for Democratic Elections at its 15th meeting (Venice, 15 December 2005) and the Venice Commission at its 66th plenary session (Venice, 17-18 March 2006)

[CDL-AD\(2005\)011](#) - Report on the abolition of restrictions on the right to vote in general elections, endorsed by the Venice Commission at its 61st Plenary Session (Venice, 3-4 December 2004)

[CDL-AD\(2005\)009](#) - Report on Electoral Rules and Affirmative Action for National Minorities' Participation in decision-making process in European countries, adopted by the Council for Democratic Elections at its 12th meeting (Venice, 10 March 2005) and the Venice Commission at its 62th Plenary Session (Venice, 11-12 March 2005)

[CDL-AD\(2004\)040](#) - Opinion on the Law for the Election of Local Public Administration Authorities in Romania, adopted by the Council for Democratic Elections at its 11th meeting (Venice, 2 December 2004) and the Venice Commission at its 61st plenary session (Venice, 3-4 December 2004)

[CDL-AD\(2003\)001](#) - Opinion on the Election Law of the Republic of Moldova, adopted by the Venice Commission at its 53rd Plenary Meeting (Venice, 13-14 December 2002)

[CDL-AD\(2002\)023rev2-cor](#) – Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, adopted by the Venice Commission at its 51st and 52nd sessions (Venice, 5-6 July and 18-19 October 2002)

[CDL-AD\(2002\)003](#) - Consolidated Opinion on the Law on the Election of Members of the Representative Bodies of Local and Regional Self-Government Units of Croatia, adopted by the Venice Commission at its 50th Plenary Meeting (Venice, 8-9 March 2002)

[CDL-INF\(2000\)004](#) – Electoral law and national minorities.

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