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

**DRAFT REPORT**

**ON**

**THE RECALL**  
**OF MAYORS/LOCAL ELECTED REPRESENTATIVES**

**on the basis of comments by**

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## I. Introduction

1. By letter of 7 November 2017, the Congress of Local and Regional Authorities of the Council of Europe (hereinafter “the Congress”) asked the Venice Commission to examine the compatibility of local recall referendums, aimed at cutting short the term of office of a local elected representative, with international standards and best practice. The Congress’ request was made in connection with existing regulations and practice enabling voters, in the Republic of Moldova, to recall mayors through popular referendum.

2. Ms Tanja Karakamisheva-Jovanovska, Ms Monique Jametti and Mr Josep Maria Castella Andreu acted as rapporteurs for this report. The report was prepared on the basis of contributions by the rapporteurs and available information on relevant national legislation and practice from a number of states. Relevant information was provided, regarding national legislation and practice in over 20 states, by Venice Commission members.

3. *Following its discussion at the Council for Democratic Elections, and by Sub-Commission on Democratic Institution (Venice, March 2018), it was adopted by the Venice Commission at its ... Plenary Session (Venice, June 2017).*

## II. Preliminary remarks

### 1. Scope and subject of the report

4. The present report does not aim to provide an exhaustive account of the different mechanisms by which local elected representatives may lose their mandate. Its purpose is, as requested by the Congress, to examine the very concept of local recall referendum as a mechanism of direct participation, its possible justification and acceptability, as well as the impact it may have on the effective, democratic and legitimate governance of the concerned communities.

5. To do so, the Venice Commission has taken account of existing national regulations and practices in the field in Europe and outside Europe, and has reviewed these in the light of the principles of representative democracy.

6. The Commission’s objective was twofold: on the one hand, to assess the advantages but also the risks that entails, in a political system based on representative democracy, the local recall as an accountability instrument and a political process based on the direct participation of citizens; and on the other hand, to find out whether it is possible to identify common democratic conditions and safeguards likely to govern the recourse to this tool in those societies having opted to make use of it.

7. The recall of elected representatives is a well-known, although not widespread, political institution which seems to attract increased interest in recent years. It provides the electorate with a mechanism enabling them to remove from office, before the end of his/her term, i.e. without waiting the next regular elections, an elected representative who no longer gives satisfaction.

8. Despite its potential attractiveness, this institution touches upon the very essence of a representative democracy, a system based, by definition, on the principle of representation, where citizens transfer their sovereignty - that is, the right to rule - to their elected representatives who, on behalf of the citizens, make decisions and establish policies in the interest of all. Obviously, within this framework, the recall raises the crucial and difficult question as to whether and under which conditions voters, while transferring the power to decide to their representatives, might retain a “right” to decide to recall (“un-elect”) those representatives in case of dissatisfaction with their work.

9. The Commission's attention was focused on the particular case of democratically elected mayors and their possible recall by the way of popular referendum.

## 2. International instruments and documents

10. In the preparation the present report, the Venice Commission has taken into account European and international instruments and documents of relevance for the analysis of the concept of local recall, and further related topics: the free/imperative mandate, the local self-government principles including citizens' participatory rights at the local level. These include in particular:

- European Charter of Local Self-Government (CETS No. 207) and Additional Protocol to the Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);
- Recommendation No. R(96) 2 of the Committee of Ministers to member States on referendums and popular initiatives at local level, and guidelines attached to it;
- Recommendation No. R (98) 12 of the Committee of Ministers to member states on supervision of local authorities' action R (98)12 on supervision of local authorities' action;
- Recommendation Rec(2001)19 of the Committee of Ministers to member States on the participation of citizens in local public life;
- Recommendation CM/Rec(2009)2 of the Committee of Ministers to member states on the evaluation, auditing and monitoring of participation and participation policies at local and regional level, and the CLEAR tool appended thereto;
- PACE Recommendation 1704 (2005) on referendums;
- PACE Resolution 1303(2002), Functioning of democratic institutions in Moldova, par. 8
- the Guidelines for civil participation in political decision making (CM(2017)83-final);
- Congress, Resolution 401 (2016) on preventing corruption and promoting public ethics at local and regional levels;
- Congress, Local Democracy in the Republic Moldova, CPL (12) 9, Part II;
- Congress, Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy;
- Congress, Report, CG34 (2018) 09 final, 27 March 2018, Fact-finding mission on the situation of local elected representatives in the Republic of Moldova;
- Congress, Resolution 420 (2017) and the explanatory memorandum on "Local democracy in the Republic of Moldova: clarification of the conditions surrounding the suspension of the Mayor of Chişinău";
- Report on liability local elected representatives for acts or omissions in the course of their duties, Steering Committee on Local and Regional Authorities (CDLR),1998;
- the OSCE 1990 Copenhagen Document (on the Human Dimension of the CSCE).

11. The Commission also took into account its own findings in thematic and country-specific reports on issues of relevance for the present analysis (see specific references in the sections below).

### III. General remarks - representative democracy, free mandate, revocation and recall

12. The principle of free political mandate and its corollary, the prohibition of any imperative mandate, are at the foundations of representative democracy.

13. Different in nature, although linked to the representative mandate, are revocation and recall; while revocation is a power in the hands of Parliament to cease the mandate of a parliamentarian, recall is a referendum that gives the electors the power of removal of an elected representative.

14. Having its origins in Roman law, the imperative mandate gave way, throughout history, to the gradual enfranchisement of representatives, and was eventually replaced by a system - the representative government - where "*representatives do not exclusively represent their local electors but an abstract body, the nation, whose will is superior of and different from local constituencies*".<sup>1</sup>

15. The **classic theory of political representation**, with its new, liberal, understanding of the concepts of political legitimacy and sovereignty and their source, the nation, is at the origins of the free mandate and is clear on the prohibition of the imperative mandate. Both Burke<sup>2</sup> and Sieyès<sup>3</sup> agreed during the eighteenth century on the free mandate of representatives as a basic characteristic of the political representation, as also the election of representatives and the absence of revocation and recall.<sup>4</sup>

16. When authors refer to the binding imperative mandate and its prohibition, they refer to different possible sources of interference with the free mandate: electors, groups and (later in democratic State) political parties.<sup>5</sup> From this perspective, a possible contradiction arises between the prohibition of the imperative mandate and the functions and the reality of parties; one may thus question the real impact of the prohibition of the imperative mandate. According to Ciaurro,<sup>6</sup> the prohibition of the imperative mandate is a liberal "dam" to the most extreme consequences of the democratic principle.

17. As a rule, today's democracies are representative democracies and, as acknowledged by the Venice Commission in its 2009 *Report on the imperative mandate and similar practices*, the imperative mandate "is generally awkward to Western democracies".<sup>7</sup> Participation and representation are however two concepts that are not conflicting, and they

<sup>1</sup> For a brief historical and theoretical background of the imperative mandate, See Venice Commission, *Report on the imperative mandate and similar practices*, CDL-AD(2009)027, par.4-7.

<sup>2</sup> E. Burke, *Speech to the electors of Bristol*, 3 November 1774. See also James Madison's views regarding the representation in "*The Federalist Papers*", London: Dent, 1787-8:1911, p. 45. According to Madison, the power to select representatives and punish them retrospectively through de-selection gives electors a certain influence in enforcing their interests. In between elections, however, the representatives are free to vote in the public policies as they want and not like electors want (the essence of the free mandate).

<sup>3</sup> E. Sieyès on the deputies as representatives of the whole Nation. *Speeches at the National Assembly* 15 and 16 June 1789. *On the prohibition of the imperative mandate. The motion of 8 July 1789*. In *Escritos y Discursos de la Revolución*, CEC, Madrid, 1990, pp. 38, 47 and 58.

<sup>4</sup> Before the French Revolution, members of the Third State received *cahiers de doléances* or instructions from their constituencies. This is also the tradition in the Diet or Congress of Confederations with delegates or ambassadors of the sovereign states and still remains in the German *Bundesrat*. In the liberal tradition, parliamentarians represent the whole nation or (later in the democratic one) the people. The Parliament as institution represents the people.

<sup>5</sup> The role of political parties in democratic States is well known, also in constitutional terms. See i.e. Article 6 Spanish Constitution ("Political parties are the expression of political pluralism; they contribute to the formation and expression of the will of the people and are an essential instrument for political participation [...]"), or Article 21 of the Basic Law for the Federal Republic of Germany ("Political parties shall participate in the formation of the political will of the people [...]).

<sup>6</sup> L. Ciaurro, "Article 67", *Commentario alla Costituzione*, vol. I, a cura di R. Bifulco, A. Celotto, M. Olivetti, UTET, Torino, 2006, p. 1290.

<sup>7</sup> CDL-AD(2009)027 par. 11.

cannot not be analysed in complete isolation. They are connected and complementary in many ways. Representative democracies are normally open to some instruments of direct and participatory democracy<sup>8</sup> according to their constitutional and legal provisions and political traditions.

18. National constitutions or legislation in Europe usually do not include specific regulation of the recall, at national, regional or local level.

19. **Constitutions** of different countries:

1) prohibit imperative mandate in a disposition placed in the chapter on the national parliament (Article 7, section III chapter 1 Titre III French Constitution 1791; among current constitutions, for instance: Article 67 of the Italian Constitution; Article 27 of the French Constitution; Article 38.1 of the German Basic Law; Article 67.2 of the Spanish Constitution; Article 68.2 of the Moldovan Constitution),<sup>9</sup> and

2) proclaim that the parliament represents the people (i.e. Article 147 of the Portuguese Constitution; Article 66.1 of the Spanish Constitution; Article 50 of the Andorran Constitution) and parliamentarians are representatives of the whole country and not of their constituency (Article 7, section III chapter 1 Titre III of the French Constitution 1791; Article 152.2 of the Portuguese Constitution)

20. Some Constitutions also recognize, in the bill of rights, the fundamental right of public officials and representatives to accede and exercise the public functions and positions. This happens in the context of the right of suffrage, or of participation in public affairs: Article 51 of the Italian Constitution; Article 23.2 of the Spanish Constitution; Article 25 of the Andorran Constitution, not to mention the French Declaration of Human and Civic Rights of 1789 (Article 6).

21. **Constitutional Courts** have rejected, based on such provisions, attempts to revoke or recall elected representatives, and have stated that the parliamentary mandate is a representative one, on behalf of the whole nation.<sup>10</sup> The prohibition of the imperative mandate means that the parliamentarian is free to vote according to the instructions of the party and also free to depart from those instructions and vote in another way.

22. Constitutions and standing orders usually regulate the causes of early termination and suspension of the parliamentary mandate, such as voluntary resignation, death or incapacitation, or guilty verdict. However, as a rule, constitutions do not contain specific provisions against “floor crossing” or switching parties practices. At the same time, while acknowledging that parliamentarians need to comply with the discipline of the parliamentary

<sup>8</sup> Participatory democracy is not a synonym of direct democracy. Many scholars are talking about the ‘democratic innovations’ in the participatory form of democracy (see Saward 2003, 116, Habermas, 1987, Bohman, 1998, etc.). These include “associative democracy” and “deliberative” democracy as participatory models.

<sup>9</sup> See also the *Statute for members of the European Parliament* (Decision EP 28 September 2005 (2005/684EC, Euratom):

Article 2

1. Members shall be free and independent.

2. Agreements concerning the resignation from office of a Member before or at the end of a parliamentary term shall be null and void.

Article 3

1. Members shall vote on an individual and personal basis. They shall not be bound by any instructions and shall not receive a binding mandate.

2. Agreements concerning the way in which the mandate is to be exercised shall be null and void.

<sup>10</sup> In Lithuania, the Constitutional Court has ruled in a number of occasions that the mandate means that electors have no right to recall a member of the Seimas and his/her freedom cannot be limited by parties, or organisations that nominated them. See also Judgment of Moldovan Constitutional Court of 19 June 2012, on the interpretation of Articles 68 alin. (1), (2) and 69 alin. (2) of the Constitution (Application nr. 8b/2012), par. 44; more recently, see Spanish Constitutional Tribunal judgement 123/2017 (in relation with senators appointed by the Assemblies of Autonomous Communities).

group to which they belong,<sup>11</sup> constitutional courts have rejected the link between the resignation or expulsion of an MP from the parliamentary group, and the early termination of the mandate and his/her expulsion from parliament.<sup>12</sup> The party or parliamentary group may well exclude the MP from the organization, yet this exclusion does not entail the loss of the parliamentary mandate.

23. One of the consequences is the transformation of the principles of the theory of representation into a **fundamental right of the representatives to access and exercise their positions, and indirectly a citizen's right**. In Spain, thanks to the recognition of such constitutional right (Article 23.2), individual appeals by elected representatives - parliamentarians or local authorities - are possible before the Constitutional Tribunal (*recurso de amparo*). The Tribunal has a long-standing doctrine protecting the rights of representatives *vis-à-vis* the party or the parliamentary group they belong to. Although this right is not explicitly mentioned in the Constitution, the Constitutional Tribunal built it from the right to "access" to public positions, without having to consider the clause of the prohibition of the imperative mandate (Article 67.2 SC). Such a right includes, then, not only the "access" but also the "exercise" and the "continuity" in the position.<sup>13</sup> Through this right, not only the position of parliamentarians is protected, but also that of the local representatives, and this without the need to extend the prohibition of the imperative mandate (of the parliamentarians, in an original and restrictive interpretation) to local authorities.

#### **Moldovan constitutional case-law**

24. In line with Article 68, para 2, of the Moldovan Constitution stating in the chapter on parliament, that "[a]ny imperative mandate shall be deemed null and void", the Moldovan law on the conditions of office of local elected representatives (Law 768 of 2 February 2000) also establishes that "Any imperative mandate shall be null and void" (Section 4, subpara 1). The same law at the same time includes the recall ("*d*) Recall by a local referendum pursuant to the Electoral Code") among the reasons for curtailing the term of office of mayors (Section 5, subpara 4). Article 177, para 2, of the Electoral Code sets out the grounds for the mayor's recall: a) failure to uphold the interests of the local community; b) failure to properly exercise the responsibilities of the office prescribed by the law, and c) infringement of moral and ethical norms if this conduct has been "confirmed in the established way".

25. In a judgment it delivered in 2012,<sup>14</sup> the Moldovan Constitutional Court interpreting Article 68, para 2, of the Constitution held that "*in line with free representation, the parliamentarian's mandate is irrevocable: voters cannot end it prematurely and the practice of 'blank resignations' is prohibited. Voters cannot, therefore, express dissatisfaction with the way in which a candidate has fulfilled his or her mandate other than by refusing to vote for that candidate again when he or she seeks re-election.*"

26. However, in a decision adopted in October 2017,<sup>15</sup> while it rejected, for admissibility reasons, a request for constitutional review regarding inter alia art. 177 para (2) of the Electoral Code (the grounds for mayor's recall), the Moldovan Court suggested through its considerations, that the provisions of article 68, para 2 of the Constitution may only be

<sup>11</sup> Judgment of Moldovan Constitutional Court of 19 June 2012, on the interpretation of Articles 68 alin. (1), (2) and 69 alin. (2) of the Constitution (Application nr. 8b/2012).

<sup>12</sup> Constitutional Court of Serbia, Decision of 27 May 2003

<sup>13</sup> See also ECtHR case law on the individual's right to sit as a member of parliament once elected (*Paunović and Milivojević v. Serbia*, application no. 41683/06, 24 May 2016; *Ganchev v. Bulgaria*, no. 28858/95, Commission decision of 25 November 1996, Decisions and Reports 87, p. 130)

<sup>14</sup> Judgment of Moldovan Constitutional Court of 19 June 2012, on the interpretation of Articles 68 alin. (1), (2) and 69 alin. (2) of the Constitution (Application nr. 8b/2012), par. 44

<sup>15</sup> Constitutional Court Moldova, Decision of inadmissibility of the request no. 123a / 2017 on the constitutionality control of Articles 33 and 34 of the Local Public Administration Act and art. 177 par. (2) of the Electoral Code (the mayor's dismissal by referendum), Chisinau, 4 October, 2017

applied to the national parliament, and that its considerations in the 2012 judgment may not be extended to the local mandate.

27. The Court referred, in its decision, to its own past case law (a decision of 2002)<sup>16</sup> in which it had concluded that, by withdrawing the provision enabling removal of mayors by local referendum, one of the citizens' rights had been restricted, without the restriction being justified in the Moldovan Constitution. The Court had pointed out in the 2002 decision to *the citizens' right to revoke an elected official for failing to respond to the interests of the collectivity*, right based on: the principle of direct exercise of sovereignty by the people; the right to administration, i.e. to participate in the administration of affairs public directly; the principle of citizens' direct consultation on local issues, all constitutionally protected principles.

28. Moreover, although it did not take a stand on the constitutionality of the contested articles of the Electoral Code, the Court provided in its 2017 decision a number of elements of reasoning, based also on relevant views expressed by the Venice Commission and the Congress, such as:

- that, to guarantee the free exercise of the local elective mandate, in accordance with the European Charter, the legal provisions regulating the termination of mandate must be interpreted in a restrictive manner and only applied to exceptional cases ( CDL-AD(2014)022, §27);
- that the mayor, being a publicly elected authority, is not subordinated either to the local council (which cannot dismiss the mayor except by organizing a local referendum), or to any other public authority of another level (see Congress, report on "Local Democracy in the Republic Moldova "CPL (12) 9 §65);
- that the law provides for guarantees and safeguards in the local recall procedure: the Electoral Code requires that the decision to hold the local referendum must include in a substantiated manner, for each particular case, the reasons for the mayor's dismissal; the Central Electoral Commission decision on the date of referendum needs to contain relevant and sufficient factual arguments to justify the mayor's dismissal; there is judicial review of these two decisions, enabling the court to verify and rule on the merits of the reasons for the mayor's recall, in each individual case.

#### **IV. European approach. Venice Commission work**

29. It may be noted that, at European level, the prevailing approach is consistent with national constitutions and European constitutionalism principles on the free mandate of the parliamentarians and the prohibition of revocation and recall.

30. The Venice Commission had several occasions to address issues of relevance for the present report, both in the framework of its thematic work and in a number of country-specific opinions.

31. In its 2009 *Report on the imperative mandate and similar practices*, the Commission concluded by firmly stating that "*the basic constitutional principle which prohibits imperative mandate or any other form of politically depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism*" (par. 39, emphasis added).<sup>17</sup>

32. The Commission took however note, in its report, of legislative provisions and related practices, allowed by national political and constitutional traditions, which deviate from this

<sup>16</sup> Constitutional Court Moldova, Decision no. 13 of 14 March 2002, point 6

<sup>17</sup> CDL-AD(2009)027, par. 39.



principle, and also observed that *“in these countries these practices have been considered consistent with their own constitutions”* (para 39). In this context, it also briefly referred to the mechanism of recall by electors and acknowledged, in relation to Ukraine, the difficulty to articulate a direct criticism of such mechanisms, *“since there are precedents in democratic countries”* (para 35). The Commission stressed, nevertheless, how important it was, when grounds for curtailing the elective mandate imply legal judgments, that *“these situations should be better dealt with by neutral and independent legal bodies”*<sup>18</sup>.

33. The Commission had already noted, in a previous opinion concerning Ukraine,<sup>19</sup> with respect to parliamentarians' recall by electors, that it would be *“quite unusual to entrust voters with the complex responsibility to evaluate the respect of constitutional and legal obligations by a deputy, as citizen's votes essentially remain the expression of a political choice.”* The Commission had concluded that it would be more appropriate to provide for the termination of the mandate *“through a legal procedure, which would comply with the principle of the rule of law and avoid the use of vague concepts likely to result in arbitrary interpretations essentially motivated by political reasons.”*

34. In the opinion it adopted in 2012 in Romania,<sup>20</sup> in relation to a presidential recall, the Commission underlined, as a fundamental requirement for recall processes, that a clear distinction should be made between the legal and political responsibility of the contested office holder. The Commission noted in particular: *“The procedure for suspending the President confuses in a rather peculiar way legal and political responsibility. It tends to make the President politically responsible before the Parliament and the electorate, although the grounds for dismissal are formulated in a way which invokes legal responsibility. The role of the Constitutional Court in the procedure is also rather unclear. If maintained at all, the procedure of Article 95 of the Constitution on the suspension of the President as it stands should be transformed into a clearly legal responsibility, initiated by Parliament but settled by a court.”*

35. As far as the local level is concerned, the Venice Commission has expressed concerns (in relation to legislative provisions on local self-government in Azerbaijan), over the conditions under which the powers of a municipal councillor can be terminated in advance or temporarily suspended.

36. In its view, adequate guarantees should exist both as regards the type of norms regulating the early termination of office and the authority entitled to take the decision. First, it would be advisable that the specific rules for early termination of power or suspension should not be determined by the statute of each municipality as this may result in an inequality of treatment among municipal councillors. A general regulation is required, at national or regional level, in accordance with the distribution of competencies in each country. Second, if the verification of a failure in the concerned councillor's conduct is required, the termination of the mandate of the municipal councillor cannot be decided by the local council. *“The intervention of the Court is a necessary element of the system [...] This would ensure the free exercise of the functions of local elected representatives in conformity with the European Charter”*.<sup>21</sup>

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<sup>18</sup> CDL-AD(2009)027 par. 35.; see also footnotes 32 to 35 for the Ukrainian experience.

<sup>19</sup> *Opinion on the Law on Amendments to the Legislation concerning the Status of Deputies of the Verkhovna Rada of the Autonomous Republic of Crimea and of Local Councils in Ukraine*, CDL-AD(2007)018, par. 16-17

<sup>20</sup> *Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania*, CDL-AD(2012)026, par. 78.

<sup>21</sup> *Opinion on the draft law on additions to the law on the status of municipalities of the Republic of Azerbaijan*, CDL-AD(2009)049, par. 10-11.

37. The Commission concludes by stressing “*the principle that this dismissal of an elective representative is an exceptional measure to be applied only in case of serious failures*” and that “*all procedural guarantees, including the intervention of a court should be expressly guaranteed*”.<sup>22</sup>

38. Although this was not a case of recall, there are a number of key conditions that could be applied to the recall:

- a) to ensure equality between municipalities and local councillors, the conditions for early termination of the mandate of a local representative should be regulated by law (or Constitution) and not left to each municipal statute;
- b) the recourse to this instrument should be exceptional;
- c) if there are legal causes which require legal appreciation for the early termination of the mandate, the decision should be the result of court legal proceedings.

39. More recently, in 2017, the Commission examined one of the latest attempts to introduce a recall referendum in Europe, a draft law of the Republic of Moldova proposing, in its initial version, the removal of parliament members through a referendum of the voters in their constituency. The Venice Commission welcomed that this proposal had not been retained in the subsequent version of the draft. In its view, in addition to raising potential issues of constitutionality (Article 68.2 of the Moldovan Constitution prohibits the imperative mandate) and contradicting a judgment of the Constitutional Court of 2012 (parliamentary mandates are irrevocable and exercised in the interest of the whole nation), such a mechanism was also in breach of international standards. The Venice Commission referred in its opinion<sup>23</sup> to the *1990 OSCE Copenhagen Document*, requiring that elected officials be permitted to remain in office “until their term expires”, and “in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures” (par. 7.9), as well as the *PACE Resolution 1303(2002) on the functioning of democratic institutions in Moldova* (par. 8), and its own 2009 *Report on the Imperative mandate and similar practices*.

40. The Commission noted that the proposed amendment “*would have effectively established a system of general recall of representatives, which in a certain political context, may well function as an imperative mandate.*” The Commission further stated that this “*has to be considered as a political and not a legal procedure*” and that “[i]nvolving courts in such a procedure would put them at risk to be politicised.”<sup>24</sup>

41. To sum up, while emphasizing the primacy of representative democracy, the Venice Commission thus acknowledges (with reference to Ukraine) that recall processes are allowed, including at the local level, in some countries. In its view, such instruments should only be used sparingly, under equal legal conditions for all local communities and councillors. These are key requirements for the recourse to such instruments, as is the fundamental differentiation that needs to be made, although in many cases it may be very difficult to completely separate these two forms of responsibility in practice, between: on the one side, the political responsibility of local representatives - which may be put in question in the framework of a recall, where this tool is allowed; and on the other side, the legal

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<sup>22</sup> *Ibidem*, par. 27

<sup>23</sup> See *The Republic of Moldova - Venice Commission and OSCE/ODIHR Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)* CDL-AD(2017)012, par.16. The recall initiative required the signatures of at least 1/3 of the voters, and the successful revocation, the votes of at least half of the voters of the constituency, but not less than the number of those having voted for the concerned MP. As grounds for revocation, the draft law envisaged: failure to observe the interests of the community in the constituency; failure to exercise properly the duties of a member of Parliament stipulated by law; violation of moral and ethical norms.

<sup>24</sup> *Idem*, par. 60

responsibility of the office holder (linked to the commission of criminal or illegal acts), which should be established by courts.

## V. National experience

### 1. National legislation allowing for recall processes

42. While its history dates back to ancient times,<sup>25</sup> recall is allowed by the national legislation in a number of contemporary democracies and a number of practical examples of effective use of recall, most of them outside Europe, may be found.

43. Recall has a long tradition in (North and South) America but not in Europe,<sup>26</sup> with the exception of Switzerland and, a more recent evolution, several other European countries. Authors note that, if, in the past, only a few countries had such regulations, more recently - in particular since the 1980's - legal provisions allowing for recall have been introduced in different areas of the world, as one of the possible responses to "*a demand for reinvigorating democracy through more direct citizens' participation*", and that the examples of effective application of the mechanism are growing.<sup>27</sup>

44. The number of countries where the recall is allowed is over 25 countries worldwide, with sometimes significant differences as regards both the level of regulation (national or subnational), the level at which it may be applied (national, regional or local), the authorities concerned,<sup>28</sup> and related grounds and procedure.

45. For example, recall may be activated against all elected authorities in Bolivia, Ecuador, Venezuela, and in Taiwan. Recall may be activated against MPs in Ethiopia, Kyrgyzstan, Kiribati, Nigeria, Liberia, Panama, Palau and Uganda, as well as in British Columbia (Canada). In the United States, 19 federal states practice recall of elected state officials. Additionally, several other US states apply this mechanism at municipal or regional levels of government.<sup>29</sup> At federal level, this mechanism cannot be applied, as it is not allowed by the federal Constitution.

46. In Europe, elected representatives or authorities may be recalled, at different levels, in Croatia (at county and local level) in Germany (subnational parliaments, in five *Länder*,<sup>30</sup> local mayors, in four *Länder*), Liechtenstein (the parliament as whole), Poland

<sup>25</sup> "The origins of the institution can be traced back to the Roman Republic, where tribunes were occasionally recalled (Qvortrup 2011)." See Welp, Yanina (2018) "Recall referendum around the world: origins, institutional designs and current debates", in *The Routledge Handbook to Referendums and Direct Democracy*, Edited by Laurence Morel, Matt Qvortrup, Routledge. <https://www.routledge.com/The-Routledge-Handbook-to-Referendums-and-Direct-Democracy/Morel-Qvortrup/p/book/9781138209930>, p. 1

See also Qvortrup, M. (2011) *Hasta la vista: a comparative institutional analysis of the recall*, Representation, 47(2), pp. 161-170.

<sup>26</sup> "Imperative mandate and recall of representatives are unknown in modern European democracies." See Venice Commission and OSCE/ODIHR, CDL-AD(2017)012, par. 67.

<sup>27</sup> Serdült, U. and Welp, Y. "*The levelling up of a political institution. Perspectives on the recall referendum*", in Ruth, S., Welp, Y. and Whitehead, L. *Let the people rule? Direct democracy in the twenty-first century*. ECPR Press. Forthcoming, p.1 and p.13

<sup>28</sup> For example, well-known examples of presidential recall may be mentioned, such as those in Venezuela - where Hugo Chavez, former President, faced recall elections in August 2004, while his successor Nicolas Maduro experienced a recall attempt in 2016, or Bolivia - in respect of the President Evo Morales, who survived a recall referendum in August 2009.

<sup>29</sup> Almost all US states that apply the recall use the referendum as a mean of determining whether a particular official really needs to be recall. In 2011, in 17 states out of 50, there were 150 recall attempts (75 lead to the recall of the concerned person); most concerned mayors. The most known case is that of 7 October 2003 in California, when the Governor Gray Davis was recalled and A. Schwarzenegger was subsequently elected.

<sup>30</sup> Bavaria, Rheinland-Pfalz, Brandenburg, Berlin and Bremen." (See: Magsaam, Niels (2014), *Mehrheit entscheidet*, Duncker & Humblot: Berlin p. 511 ff). These Länder allow a referendum for dissolving the regional parliament but not a recall of individual members of parliament.

(representative authorities at subnational and local level), Romania (the country's president, the mayor and the local council), the Republic of Moldova (the country's president, the mayor), the Russian Federation (members of parliament, local elected representatives), Slovakia (the mayor), Ukraine (the mayor). In Switzerland, recall is only permitted at the subnational level - cantonal and communal, in six cantons: Uri - for all elected authorities; Bern, Solothurn, Schaffhausen, Thurgau, Ticino - for the canton's parliament and/or government as a whole; Uri and Ticino - for cantonal but also municipal authorities).<sup>31</sup> Three cantons abolished the recall in the framework of constitutional revisions - in Aargau (1980), Basel Landschaft (1984), and Lucerne (2007). Nevertheless, the instrument appears to be of little relevance in practice, the few attempts to recall having failed, usually due to insufficient number of signatures.

## 2. Local recall

### National legislation and practice

47. According to available information, the recall referendum as a mechanism is available at the local level in at least 15 countries, with a different degree of activation in practice. An increased tendency to have recourse to recall, from small municipalities to bigger cities, has been reported.<sup>32</sup>

48. In **Argentina**, the election and mandate of local authorities is regulated in each of the provinces' Constitutions. The institution of recall of local authorities is not contemplated in every province and the requirements and effects may vary. Some of the provinces that regulate the recall at provincial and municipal level are: Buenos Aires, Catamarca, Corrientes, Chaco, Chubut, Entre Rios, La Rioja, Misiones, Neuquén, Rio Negro, San Luis, San Juan, Santiago del Estero and Tierra del Fuego.<sup>33</sup> In the provinces where recall is allowed, the population directly is enabled to file a petition to recall the mandate of the locally elected authorities, the head of the local administration, the municipal governor, and the members of the council (both directly elected by citizens). The recall is regulated as a citizens' right and it amounts to a "no-confidence" vote due to the poor management of the community. The participation in the recall referendum is compulsory and the percentage to approve the recall varies depending on the province.

49. In **Colombia**, the recall of mayors (directly elected by citizens) was recognized in 1994 as "a political right, by means of which citizens terminate the mandate that they have conferred on a governor or a mayor".<sup>34</sup> Members of local councils are also directly elected but are not subjected to popular recall. The Colombian Constitutional Court referred to the concept of "**programmatic mandate**" to distinguish it from the imperative mandate and the free mandate. According to the Court, following article 259 of the Constitution, when they are elected, candidates commit to fulfil a government programme; hence, if the elected official

<sup>31</sup> See Uwe Serdült (2015), *The History of a dormant institution: legal norms and the practice of recall in Switzerland*, <https://www.tandfonline.com/doi/abs/10.1080/00344893.2015.1056219>

<sup>32</sup> Serdült, U. and Welp, Y. "The levelling up of a political institution. Perspectives on the recall referendum", in Ruth, S., Welp, Y. and Whitehead, L. *Let the people rule? Direct democracy in the twenty-first century*. ECPR Press, p.7

<sup>33</sup> As an example, the Constitution of Buenos Aires establishes: "Article 67- The electorate has the right to require the **revocation of mandate** of the elected authorities founded on causes related to their performance, by promoting this initiative with the signature of twenty per cent of the registered voters on the electoral register of the City or corresponding Municipality. The revocation request is not admissible for those who have not yet reach a year of mandate, nor for those who have less than six months left for the termination of their mandate. The Superior Court must check these requirements and call for a revocation referendum among the ninety days after the request has been presented. The participation on the referendum will be compulsory and it will be binding if the votes for the revocation exceed the fifty per cent of the registered voters."

<sup>34</sup> Article 6 of Law Nr.134 of 1994 on Mechanisms of Citizen Participation. Law Nr. 131 of 1994 on Programmatic Vote further regulated this mechanism, see at: <http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=330#>

fails to comply with the programme without justification, voters shall logically have the right to revoke that mandate. Moreover, in the eyes of the Court, those entitled to remove the mayor or governor are the *active* electors of the concerned local community “*who participated in the election of the mayor or governor, since it is them - and no one else - who made the choice*”.<sup>35</sup>

50. In **Ecuador**, the recall is established in the national Constitution, recognizing in Article 61, among the rights to participation, the right “to recall authorities elected by universal suffrage”, therefore also local mayors and members of local councils, elected by popular vote. Article 105 adds that “all persons, in the exercise of their political rights, will be able to recall elected authorities”. Since 2011, specific rules in the national electoral legislation and the legislation on citizens’ participation regulate the different aspects of the recall mechanism (initiative, conditions and grounds for recall, removal procedure).<sup>36</sup> Under these rules, local voters are enabled to initiate the recall and remove the local authorities directly through their vote. Here again, the electoral legislation provides that, upon registration, candidates (including for the position of mayor), must provide a **work plan** with general and specific objectives and ways to achieve these. According to the national rules, the grounds for recall may be related to: (a) aspects of the work plan that would have been breached; (b) legal provisions on citizen participation that are considered unfulfilled or violated (c) non-compliance with their functions and obligations established in the Constitution and laws.

51. In **Peru**, the country using most intensively recall referendums at the local level in the world,<sup>37</sup> the recall is also constitutionally protected as a **citizens’ participatory right** (see Article 2.17 and Article 31.1 of the Constitution)<sup>38</sup> Mayors and local councils members, directly elected, are subject to popular recall referendum, as stipulated by Article 194.3 of the Constitution. The national legislation further specifies this right and establishes the conditions and procedure for the recall.<sup>39</sup> The National Elections Jury has stressed that one of the requirements related to a popular recall is “*to substantiate the request*”, meaning to give reasonable support to the reasons for recall. This implies giving details on why the concerned authority is questioned, on the shortcomings in the exercise of the function (“*which must have affected notoriously their adequate performance*”), and the incidence of such problems on the local management.<sup>40</sup> In 2017, 27 such referendums took place, of which 13 were successful.

52. In **Costa Rica**, the Municipal Code reform in 1998, in addition to allowing direct election of mayors, established a new mechanism for mayors’ removal, based on recall.<sup>41</sup>

53. In the **United States**, the recall has great power at the local level and at the level of federal states.<sup>42</sup> In at least 29 US federal states, there are specific rules for the removal of

<sup>35</sup> See Constitutional Court judgments C-011/1994 and C-180/1994, available at:

<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4176#0>

<http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=5430#0>

<sup>36</sup> See in particular Constitution (Article 105 and 106), Electoral Law (Articles 199 to 201), National Electoral Council - Rules of Procedure.

See at: <http://aceproject.org/ero-en/regions/americas/EC/ecuador-ley-organica-electoral-codigo-de-la/>

<https://aceproject.org/ero-en/regions/americas/EC/ecuador-reglamento-para-el-ejercicio-de-la/>; see also “La Revocatoria del Mandato en el Ecuador, Países de la Comunidad Andina y del Continente Americano” [Verdugo, 2007], Available in Spanish at: <http://repositorio.uasb.edu.ec/handle/10644/771>

<sup>37</sup> In Peru between 1997 and 2013, there were over 5,000 procedures of recall against local elected authorities in almost half of the country’s 1,645 municipalities.

See “*Recall referendums in Peruvian municipalities: a political weapon for bad losers or an instrument of accountability?*” [Welp, 2015], <http://www.tandfonline.com/doi/abs/10.1080/13510347.2015.1060222>

<sup>38</sup> Article 2, point 17 and Article 31 of the Constitution, see at: <http://www.congreso.gob.pe/eng/?K=362>

<sup>39</sup> Law Nr.26.300 of Participation Rights and Citizen Control, see Articles 20 to 30

<sup>40</sup> National Elections Jury of Peru, Resolution Nr. 3798/ 2014

<sup>41</sup> See *Revocatoria del mandato para funcionarios de elección popular en los gobiernos locales*, [Rivera, 2006, Costa Rica], at: <http://www.tse.go.cr/revista/art/2/rivera.pdf>.

locally elected officials, including mayors and members of local councils. Each state that permits the recall has its own internal rules for managing the process.

54. Recall of local governing bodies is recognized as an instrument in **Japan and in India**.

55. In **Europe**, only a few examples may be found of national legislation allowing early termination of the elected mandate by the way of popular recall, be it at the local or at the central level. As a rule, the vast majority of European democracies do not permit the recourse to such tool.

56. In **Croatia**, the municipal prefect, mayor and county prefect, as well as their deputy who has been elected jointly with them, may be recalled through a referendum, which may be proposed by 20% of the total number of local voters or 2/3 members of the local representative body. Such recall referendum cannot be called solely for the deputy municipal prefect, mayor and county prefect, respectively.<sup>43</sup> At the same time, the legislation expressly states that members of local representative bodies (also elected by the local population) may not be recalled.<sup>44</sup>

57. In **Germany**, the recall procedure is not foreseen by the Constitution at the federal level. However, two variants of mayors' recall mechanism are in place in the German Länder. On the one hand, the fully fledged direct democratic variant, where the local electorate is given not only the right to vote on a recall referendum (under certain procedural and majority requirements), but also to initiate the recall procedure (with a certain requirement of signatures petitioning the referendum). Four Länder, Brandenburg, Sachsen, Schleswig-Holstein and North-Rhine Westphalia,<sup>45</sup> have adopted this mechanism for mayors. On the other hand, the recall procedure may be initiated indirectly in all the other Länder, except two, by the local council (deciding by qualified majority), while the local electorate only intervenes to finally vote on the recall motion as adopted by the council. In this variant, the "recall" procedure has been seen as a kind of mix of the representative democratic and the direct democratic principles, where the council "exercises some 'representative democratic' check on the local citizens in their exercise of their direct democratic power."<sup>46</sup>

58. In the **Republic of Moldova**, recall is allowed in respect of mayors, directly elected by the local electors, for a specific number of reasons, specified in the law. It may be activated

<sup>42</sup> Between 1903 and 1989, over 6,000 attempts and 4,000 votes for local recall have been reported (see Serdült, U. and Welp, Y. "The levelling up..." quoted above, p.7).

<sup>43</sup> The Local and Regional Self-Government Act and the Act on Referenda and Other Forms of Personal Participation of Citizens in Managing the Affairs of State Authorities and Local and Regional Self-Government (Official Gazette nos. 33/1996, 92/2001, 44/2006, 58/2006, 69/2007, 38/2009, 100/2016 and 73/2017) regulate conditions and procedure, i.e. the initiative of the recall, the time limits for the recall, procedural steps, quorum requirements (turnout and approval majority) and judicial control.

<sup>44</sup> Article 30 of the Local and Regional Self-Government Act (see Footnote 58)

<sup>45</sup> See in particular for the case of Duisburg, in 2012, where the local mayor was recalled following a change in the Local Government Act on 18 May 2011 enabling a citizens' initiated recall procedure. This recall is connected to the Love Parade 2010 when 21 people died and 500 were injured.

See more in Serdült, U. and Welp, Y. "The levelling up of a political institution. Perspectives on the recall referendum", in Ruth, S., Welp, Y. and Whitehead, L. *Let the people rule? Direct democracy in the twenty-first century*. ECPR Press. Forthcoming, p.10;

See also Vetter, A. (2006) *Modernizing German Local Government: Bringing the People Back in?*, in V. Hoffmann-Martinot and H. Wollmann (eds.) *State and Local Government Reforms in France and Germany: Divergence and Convergence*, Wiesbaden: VS Verlag, pp. 253-268.

<sup>46</sup> See Wollmann, Hellmut "The directly-elected mayor in the German Länder — introduction, implementation and impact", March 2014, published online at researchgate.net, p. 14 (available at: [https://www.researchgate.net/publication/238098897\\_The\\_directly-elected\\_executive\\_mayor\\_in\\_German\\_local\\_government](https://www.researchgate.net/publication/238098897_The_directly-elected_executive_mayor_in_German_local_government); last accessed May 9th 2018).

at the initiative of a number of local council members, and needs to be confirmed by popular vote (see before).

59. In **Romania**, under the Public Administration Law,<sup>47</sup> the local recall by the vote of the local population may lead to the dissolution of the local council, as a whole, and the removal of the mayor (both directly elected by the population). The referendum for the removal of the mayor is organised upon the request of the local population, addressed to the representative of the government (the prefect). The recall may be initiated in case of: failure to promote the general interests of the local community or failure to fulfil the tasks associated with the function of mayor under the law, including the tasks that the mayor is expected to execute in his/her capacity as representative of the state.

60. Since the 2000s, the **Polish** legislation, including at the level of the Constitution, also appears to have been receptive to direct democracy arrangements, in particular the referendum.<sup>48</sup> Between 2010 and 2014, local recall elections took place in 111 municipalities (about 4,5% of the number of mayors having being under the threat of removal), out of which 16 resulted in the mayor's dismissal.<sup>49</sup> In 2013, an attempt to recall the mayor of Warsaw failed for lack of sufficient participation in the referendum (25% of registered instead of 29% required), largely due to the call for boycott of the party in place.<sup>50</sup>

61. In the **Russian Federation**, the federal legislation<sup>51</sup> lists the recall by voters as one of the cases of early termination of the mandate of elected heads of a municipal entity. The grounds for initiating local recall must to be established by the Charter of the municipality, but should be limited to "specific unlawful acts" (not necessarily criminal acts) established by a court judgment.

62. According to regional statutes, in most of the Entities of the Russian Federation a local recall (seen as a "loss of confidence") may be the basis for early termination of the mandated of a municipal official. The legislation however varies from region to region and has, in some cases, been recognized as unconstitutional by the Constitutional Court. Nevertheless, the federal legislator has set some rules in this field: voting for the local recall shall be conducted at the initiative of the population, in accordance with the procedure established by federal legislation<sup>52</sup> and with the local referendum legislation.

63. The Russian Constitutional Court has in its case-law established specific safeguards for the implementation of the recall in line with the Constitution and the local self-government principles. In particular, to avoid a subjective evaluation of the activity of the local officials, the grounds for revocation should not allow for extensive interpretation, and should be

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<sup>47</sup> Law n° 215 of 23 April 2001, as republished in M.O. no. 123/20 Feb. 2007, See [http://www.cdep.ro/pls/legis/legis\\_pck.htm?act\\_text?id=78841](http://www.cdep.ro/pls/legis/legis_pck.htm?act_text?id=78841)

<sup>48</sup> Article 170 of the Constitution of Poland: "Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute."

<sup>49</sup> See *Introduction: directly elected mayors in urban governance*, David Sweeting, University of Bristol, UK, in *Directly elected mayors in urban governance, Impact and practice*, Edited by David Sweeting, 2017

<sup>50</sup> The procedure for the recall of the mayor of Warsaw was led by several opposition parties, several interest groups, and NGOs that tried to remove Hanna Gronkiewicz-Waltz from her office. The procedure was initiated by a NGO of the citizens of Warsaw, by filing a petition against the increased price of tickets in public transport, and against the slow construction of the second line of the subway in Warsaw. These were the two key issues on which the procedure for recall of the mayor was based. The opposition in Poland, even before the recall procedure was initiated, was preparing a ground for the mayor's removal, due to the fact that her party was a close coalition partner of the Prime Minister party. The referendum failed due to the low voter turnout.

<sup>51</sup> Article 36, par. 6 of Russian Federal Law No. 131-FZ

<sup>52</sup> Chapter II on *Referendum* of Federal Law No. 67-FZ of 12 June 2002, "On the main guarantees of electoral rights and the right to participate in the referendum of citizens of the Russian Federation", and Art. 22 of Federal Law No. 131-FZ *On local referendum*

supported by facts to be verified. In the Court's view,<sup>53</sup> it is only by providing sufficiently specified grounds and by allowing the contested official to provide explanations at all stages at the recall procedure, that the respect for the rights of the elected official can be guaranteed and local self-government principles effectively implemented.

64. In **Slovakia**, mayors may be recalled by local referendum, as provided by Section 13a.3.a of the Law no. 369/1990 Zb. on Municipalities. According to statistics published by the Association of Slovak Municipalities and Towns, between 2005 and 2015, local referendums were organised in 7,1% of municipalities. Of these, 31,6% did concern the recall of mayor and were valid, 10,6% concerned the recall of mayor but were invalid.

65. In **Switzerland**, recall of municipal executives is possible, since 2011, in two cantons: Uri and Ticino. However, recall procedures in Switzerland do not target individual elected politicians, but the revocation of the cantonal/local body as a whole. Therefore they function more as a no-confidence vote rather than an instrument to sanction elected individuals.

66. In the legislation of **Ukraine** there are legal provisions that allow citizens to recall only mayors (but not other local elected representatives) by way of referendum.<sup>54</sup> There is no official information on examples of such referendums in practice.

67. Recall of mayors was allowed by past legislation, now abolished, in **Serbia** and in "**the former Yugoslav Republic of Macedonia**".<sup>55</sup> Attempts to introduce such mechanism have failed in **Slovenia** (in 2017)<sup>56</sup> and in the **UK**.<sup>57</sup>

68. A special case of recall (revocation and election of new mayor at the same time) may be found in **Spain**, where Article 197.4 of the Organic Law on General Electoral System regulates a special regime for small municipalities, with the so-called system "concejo abierto". This is an exceptional and traditional system from Middle Age with direct election of the mayor by citizens, without councillors, allowing citizens to initiate and pass a constructive motion of non-confidence.

69. There are also examples of legislation allowing for the early termination of the mayor's mandate, in particular where the mayor is not directly elected by the population, as a result of a no-confidence vote taken by the municipal council, without intervention of the voters - a case of revocation different from the recall, such as in Spain, where it operates as a constructive motion (with vote for a substitute candidate at the same time).<sup>58</sup> Similarly, in **Estonia**, where mayors are not elected by direct vote, but by the municipal council, the

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<sup>53</sup> Constitutional Court of the Russian Federation, *Decision of 2 April 2002 on the case of verification of the constitutionality of certain provisions of the Krasnoyarsk Territory Law "On the procedure for recalling a deputy of a representative body of local self-government" and the Law of the Koryaksky Autonomous Okrug on the Procedure for recalling a deputy of a representative local self-government body*.

<sup>54</sup> Relevant substantive and procedural provisions are prescribed by the Law on Local Self-Government in Ukraine No. 280/97 as of 21 May 1997.

<sup>55</sup> The Law of local self-government of 1996, which was applicable until 2002, had one provision which allowed opening the recall procedure through a referendum only for the actual mayors. It was stipulated that if 50% plus one voter went to a referendum and vote for his/her recall, than the mayor mandate ceases. This provision was deleted in 2002 when the current law was adopted. Since 2002 no changes to the law have been adopted.

<sup>56</sup> The Parliament rejected the bill allowing local recall, one month after its initial adoption in the lower house. Resubmitted to the vote, following a negative opinion of the upper house, in which local communities are represented in particular, the law was rejected.

<sup>57</sup> The Recall of Elected Representatives Bill sought to systemize a recall system of elected representatives in England, which included the mayors. However, the bill could make no progress as the 2014-15 session of Parliament has prorogued. Despite the absence of such a mechanism, citizens have petitioned to remove from the office the Mayor of London, in 2017, alleging the crime of treason. According to applicable rules, if the petition receives 100,000 signatures, the Parliament is obligated to debate the proposal. As of January 2018, the mayor Sadiq Khan was still in office.

<sup>58</sup> Article 197 Organic Law on General Electoral System (LO 5/1985 modified by L.O. 2/2011, de 28 de enero)



council may take a vote of no-confidence both against the mayor and against one of its members.<sup>59</sup> In **Serbia**, while between 2004 and 2008 there was an option to recall a mayor by way of referendum, under the current legislation<sup>60</sup> the municipal assembly is authorized to revoke mayors.

### Common features

70. National legislation and practical examples of local recall show that a number of common features may be observed:

- the recall of mayors by popular referendum is rarely used in today's democracies;
- the recall of mayors is, as a rule, associated with the direct election of the mayor by the electors and there are virtually no examples of recall by electors of mayors who are not, according to the national law, elected by direct vote;
- there are some examples of national systems where members of local councils may be the subject of recall, if their mandate is the result of popular vote; in some cases the recall may concern the municipal council as a whole, in others, individual members of the council;
- where mayors are not directly elected by the local population, preference is given to a system, closer to the logic of a representative system, of a *no-confidence motion*, enabling the local council to decide on the early termination of the mayor's mandate a similar system enables revocation of the council's members by the council's vote.

71. It may be concluded from the above that the election system for the office of mayor (whether by direct or indirect elections), and the degree of democratic legitimacy associated to it, has a direct impact on the choice of the mechanisms in place in different countries for the removal of mayors, for bad office, before the end of their term. If the mayor is directly elected by the people, revocation by the municipal council does not seem an option.

72. Further factors, related for example to the government system and the electoral system prevailing in the country and at the local level, may, as part of the national tradition, have an impact on the choice made by the national legal system to allow, or not, the early termination of the mayors' mandate by popular recall. The available information in this regard is however too limited to allow drawing more general conclusions in this report.

## VI. Analysis

### 1. Recall - a specific instrument of direct democracy in a representative system

73. By its very nature an instrument of direct democracy,<sup>61</sup> the recall is part of a set of direct democratic mechanisms of control,<sup>62</sup> agenda setting and accountability beyond elections, which **may operate**, according to the national legal and constitutional traditions, as a complement to representative democracy (the popular initiative, the referendum, the petition, the recall and the veto). The common feature of all forms of direct democracy is that they are based on the direct power of the voters, as opposed to the power of the elected representatives. What differentiates the recall is that the decision taken concerns the crucial

<sup>59</sup> See Articles 32 and 46 of the Local Government Organization Act (English version is available <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/523112017001/consolide>)

<sup>60</sup> Law on Local Self-Government ("Official Gazette of the Republic of Serbia" no. 129/07, 83/14 – other law and 101/16 – other law)

<sup>61</sup> See CDL-AD(2007)018, par. 3 ; see also CDL-AD(2004)003, par.85-86

<sup>62</sup> See Yanina Welp, *Recall Referendum Around the World: Origins, Institutional Designs and Current Debates*, in "The Routledge Handbook to Referendums and Direct Democracy", Edited by Laurence Morel, Matt Qvortrup, 2018 – Routledge

question whether to put an end to the office of an elected representative or body before the end of the term. Hence, unlike other types of referendums, the recall referendum does not invite the voters to take a position on laws or policies but on persons or bodies.

74. In a democracy, politicians are, in principle, primarily accountable to the citizens who elect them. In practice, in contemporary societies, the links are often tenuous and the politicians are increasingly perceived as disconnected from their voters, as they tend to be accountable first to their party leadership and to political decision-makers, and only secondarily to citizens.<sup>63</sup> This has motivated attempts to introduce mechanisms for more effective and direct participation, including regulations on recall, as a means to restore the links between voters and elected officials and to enable voters to provide feedback on the performance of the elected, including removing them as a sanction for a poor record.

75. At the same time, the recall, as a political tool, is by its very nature different from the imperative mandate. While the free mandate serves as a basic foundational principle for the political system as a whole, the recourse to recall, in those jurisdictions where it is allowed, only represents a reactive mechanism, which does not have the character of a default rule. Unlike the imperative mandate - where the binding will of the electors forms the permanent framework for the action of their representatives, the recall only comes into operation as an ad-hoc corrective instrument, *when* and *if* it is activated, being the subject of a decision *dependent* on the political *will* of a prescribed *number of voters*, under *specific circumstances*. From this perspective, the recall has been seen as “as a counter-power in the configuration of checks and balances of democratic institutions”.<sup>64</sup>

76. A distinction has also to be made between the recall of mayors, the vote on the dissolution of a municipal council and the recall of individual municipal councillors. The recall of individual councillors, as members of a collective deliberative body, comes very close to the imperative mandate and appears particularly problematic.

77. This being said, despite its punctual character or the need of activation, the recall enables voters to put an end to an elective mandate and, by doing this, cannot but be at odds with representative democracy and the representative system, based on elections and the free mandate of representatives until the next elections - at least as a principle, and from the perspective of the European tradition. Therefore, where national legal and constitutional provisions are open to recall - and, where recall is permitted, this is often the case for local mayors - this should be regulated very carefully and used sparingly, as a complement to other democratic mechanisms which are available in a representative system.

## 2. Potential and risks

78. By definition, the recall constitutes an empowering tool for citizens, enabling them to remove from office politicians who are seen as having badly performed in office and not to have taken into account the interests of the electorate that has elected them. Recall can play an important role as a protective and preventive mechanism from corrupt and irresponsible holders of political power. In this sense, citizens will no longer be bound to tolerate incompetent politicians and wait for their mandate to end before changing them.

79. The recall has thus the potential to bring elected officials closer to their voters, and by enabling permanent control of the elected officials, make them more accountable and more

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<sup>63</sup> See: Derick W. Brinkerhoff, (2001), Taking Account of Accountability: A Conceptual Overview and Strategic Options, March, 2001: [http://www1.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/ipc/wp-14.pdf](http://www1.usaid.gov/our_work/democracy_and_governance/publications/ipc/wp-14.pdf)

<sup>64</sup> Serdült, U. and Welp, Y., *The levelling up of a political institution. Perspectives on the recall referendum*, in Ruth, S., Welp, Y. and Whitehead, L. “*Let the people rule? Direct democracy in the twenty-first century*”, ECPR Press. Forthcoming, p.1

responsive to the needs of the people they serve. It is expected to help bridging the democratic gap engendered by often lower levels of participation in elections and motivating public participation and interest in public affairs between elections. By doing this, the recall also potentially helps to check and prevent undue influences or interests in the communities' affairs. From this perspective, the recall is a mechanism to shift the balance of power between the electors and the elected. At local level, recall may also be an instrument to settle conflicts between mayors and local councils, if both are directly elected and prove unable to co-operate.

80. On the other hand, beyond the fact that it jeopardizes the independence of the elected representatives - the major flaw associated to it, and despite its democratic vocation, the recall involves complex challenges and risks of abuse, including sometimes adverse consequences, such as instability and ineffectiveness of government. When used irresponsibly, the recall can be abused as a tool - and becomes a political "weapon" - by the political parties in the battle against their political competitors. There is also a risk that recall mechanisms at the local level may be used by the central authorities or opposition parties to remove local elected officials, thus reducing political pluralism in the country. Moreover, the recall can be misused by various interest or pressure groups to destabilize the governance and make it inefficient by preventing selected politicians from taking certain steps or decisions because of the danger of being removed by the citizens. As a result, such perspective makes public office less attractive and may lead to populism.

81. Further vulnerabilities include, in addition to the often prominent role of money in the recall process, the societal costs it involves, such as the climate of confusion, suspicion and division, which is often engendered by recall initiatives, as well as the risk of, ultimately, undermining the trust of the electorate in their elected representatives, as well as in politics and representative democracy as whole.

### **3. Recall vs. destitution. The distinction between legal and political responsibility**

82. One important aspect to be taken into account, if and when enabling and activating the mechanism of recall, is the necessary and fundamental distinction between legal and political responsibility and the important risk of confusing the two types of responsibility, by making the contested elected official politically responsible before the electorate, when the grounds for dismissal would in fact entail legal responsibility.

83. This distinction is of particular importance in terms of legal security and from the perspective of the protection of the fundamental rights of the elected representative. It is relevant for instance when conflict of interests, illegal or criminal actions, abuse of power or corruption are included among the reasons for the recall. Such issues should normally be settled by a court according to the legislation in force, and not submitted to the people for decision.<sup>65</sup>

84. As stressed by the Venice Commission in its 2009 Report, the recall, "a characteristically American institution", differs from destitution: "*whilst the second is a judicial proceeding against an elected officer because of some crime, recall is a political process.*"<sup>66</sup> Destitution involves the removal of a mandate as a result of proceedings brought against the mandate holder on the grounds that he has committed an illegal or criminal act. Unlike recall, destitution has no (or at least should not have) political connotation, since it is not a political measure - the fruit of political debate - by which the population would have the possibility to take a decision based on the record of a representative. Destitution involves well-defined procedures and should not include a referendum.

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<sup>65</sup> CDL-AD(2012)026, par. 78.

<sup>66</sup> CDL-AD(2009)027, par. 14

85. As regards local government, there are specific tools for the administrative supervision (and related administrative measures), by higher-level authorities, of the legality of the actions of the local elected officials within the scope of their attributions. These may include also, as allowed by European standards, supervision with regard to expediency, but only in respect of tasks which are delegated to local authorities. These mechanisms are not within the scope of the present report but they may lead in extreme cases to removing a mayor from office.

#### 4. Local recall. The European Charter of Local Self-Government

86. As already indicated, recall is in general absent from European countries' constitutions, and the European doctrine tends to invoke the theory of representation for the prohibition of recall.

87. Based on national constitutional traditions, exceptions are however admitted, in some cases at local level, by constitutions, statutes and doctrine. The question is whether more generally, according to European (and international) instruments relevant for local government, the recourse to recall, in particular to mayors' recall, may be deemed acceptable, and what are the conditions and safeguards which are a minimum pre-requirement for its use.

88. The European Charter of Local Self-Government applies the general principles of representative government and representative democracy at local level. Article 7.1 of the Charter provides: *"The conditions of office of local elected representative shall provide for free exercise of their functions."* Article 7.3 adds: *"Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles"*. The Charter is silent on the potential reasons for ineligibility or incompatibility, leaving to the national legislator the task to draw these limits and conditions, through national legislation and "fundamental legal principles". The Explanatory Report to the Charter interestingly explains: *"this paragraph provides that disqualification from the holding of local elective office should only be based on objective legal criteria and not on ad hoc decisions. Normally this means that cases of incompatibility will be laid down by statute. However, cases have been noted of firmly entrenched, non-written legal principles, which seem to provide adequate guarantees."*

89. Article 3.2 of the Charter once more confirms, at local level as well, the primacy of representative democracy, with all its implications: local self-government *"shall be exercised by councils or assemblies composed of members freely elected by secret ballot...and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute."* This shows also that the importance of various forms of direct participation, including referendums, as an additional component of the local governance, or a complement to it, is recognized.

90. One may assume in view of the above that, under the Charter, the representative system of local governance, based on local organs formed of locally elected representatives, and instruments of direct participation, are not mutually exclusive. The Explanatory Report clarifies that, under the right of self-government, *"allowance is also made for the possibility of direct democracy where this is provided for by statute."*<sup>67</sup> This explanation seems to open the

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<sup>67</sup> The Charter describes the essence of local self-government and contains the main principles, often referring to the internal law of member states to determine the exact content of a rule. However, nothing prevents the judicial authorities of a Contracting State from considering one or other provision of the Charter to be directly applicable and binding, as the Swiss Federal Court did in a judgment of 3 June 2016 (ATF 142 I 216), by which it invalidated, for lack of prior consultation of the concerned citizens, a popular initiative for the merger of several municipalities.

door to direct democracy practices, without expressly excluding the early termination of an elective mandate, where these are allowed by the national legal and political traditions.

91. The importance of direct participation of citizens, especially in relation to directly elected local authorities, but also of necessary safeguards for government stability, has been emphasized by the Congress, in its Recommendation 113 (2002)<sup>68</sup> on the application of Article 3.2 of the Charter: “*Where those in charge of the public authority are directly elected by the people, any dismissal must be endorsed by the people. However, these procedures should at the same time carry all the guarantees necessary for stable local government [...].*”

92. Under the Additional Protocol to the Charter,<sup>69</sup> dealing especially with the right to participate in local affairs, this right “*denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities*” (Article 1.2). Although not mentioning the recall, Article 2 requiring implementing measures to give effect to this right, refers to “*procedures for involving people which may include consultative processes, local referendums and petitions [...]*” (Article 2.ii.a).

93. It would be difficult to conclude from the above that the Charter prohibits the recourse to recall of a local representative or that it contains clear guidance as to the advisable limits of the recall. It may not be said either that it explicitly authorizes recall, since, according to a systematic interpretation of Articles 7 and 3, the Charter permits instruments of direct democracy which are respectful of the representative government.

94. In addition, it is important to point out that, so far ratified by 39 states, the Charter provides for a variable system of undertakings for its State Parties upon ratification, enabling a non-uniform implementation of its principles at national level. Article 12 allows ratifying States to choose amongst its provisions, at least ten of which shall be selected from among a number of key paragraphs. As a result, states may, for example, opt not to choose Article 3.2 of the Charter (although listed among the key paragraphs). It would thus be questionable, since the Charter itself gives ratifying States the choice to be or not to be legally bound by some of its provisions, to formulate, based on those provisions, standards or principles applicable to all.

95. For the Congress of Local and Regional Authorities, in the resolution on the suspension of the Mayor of Chisinau,<sup>70</sup> “local democracy” is a constituent part of the European democracy: “*This implies that local elected representatives must be able to exercise their functions freely, in fact and in law, in the same way that elected representatives at the national level must be able to exercise theirs in any democratic state*”<sup>71</sup>. “*In electing a mayor by direct universal suffrage, voters are delegating their power of action to the mayor and more generally giving him or her a mandate to represent the community as a whole.*”

96. The Congress quotes (in the report to the above Resolution) the doctrine of the Venice Commission on the recall for parliamentarians,<sup>72</sup> and is of the view that this doctrine “should also be applicable *mutatis mutandis* to local elected representatives.”<sup>73</sup>

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<sup>68</sup> Recommendation 113 (2002)\_on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy), see Appendix §3, let. E.ii

<sup>69</sup> Opened to the signature of the state parties to the Charter in November 2011, 6.XI.2009, entered into force on 1 June 2012.

<sup>70</sup> Report CG33(2017) 23 final, no. 67.

<sup>71</sup> Resolution 420 (2017), no. 5

<sup>72</sup> With a quotation of the Joint Opinion CDL-AD(2017)012 on Moldova's electoral reform, cit. above.

<sup>73</sup> Report CG33(2017) 23 final, no 68.

## 5. Conditions and procedure for recall

97. Even if recognized as a political instrument in the hands of the electors, the recall process has to be a strictly regulated and institutionalized mechanism.

98. As far as mayor's recall is concerned, beyond local specificities, national procedures regulate several basic common aspects, which in fact prove to be common to other recall processes as well: the initiative for the recall, the timeframe and/or time limits for the process; a minimum number of signatures as an activating condition; quorum requirements (turnout and approval majority); the possible involvement of the municipal council and judicial control.

99. As indicated earlier in this report, it is important, in terms of equality of municipalities and elected representatives, but also for reasons of predictability and stability of the applicable rules, that the general framework for the recall be established by the law, at national or regional level, and not left to the decision of individual municipalities.

### Grounds

100. Most commonly, grounds for the mayors' recall include:

- failure to uphold the interests of the local community;
- incompetence in the performance of duties; gross mismanagement;
- failure to perform duties prescribed by the law, neglect of duties (for example, not fulfilling his/her obligations);
- failure to implement/violation of legal provisions related to citizen participation;
- unethical behaviour in the service (unprofessional and irresponsible performance of the job), infringement of moral and ethical norms;
- misuse of office and authority (in case of bribery and corruption), conviction for a felony; conviction for a drug-related misdemeanour or a misdemeanour involving a "hate crime".<sup>74</sup>

101. These grounds are usually broad and, in most cases, the petition for recall (must) mention them. There are however different views as to whether these reasons must be proven, substantiated (as required in some cases by the national law<sup>75</sup>), whether they must be assessed by the authority in charge of reviewing the recall procedure<sup>76</sup>, or whether they must be given at all.<sup>77</sup>

102. As discussed above, the most critical question is whether acts or behaviour of the mayor that should normally be the subject of a judicial decision may be among the acceptable reasons for popular recall. The position of the Venice Commission in this regard is clear: to ensure the required independence and an objective assessment, no decision by

<sup>74</sup> Conviction for a crime during the term of office appears to be a reason for recall of local elected representatives at least in several US federal states: Alaska, Kansas, Minnesota, Rhode Island, Virginia etc. (Source: National Conference of State Legislatures, July 2011).

<sup>75</sup> See above-mentioned case law of the Constitutional Court of the Russian Federation.

<sup>76</sup> It seems that some provinces in Argentina even prohibit explicitly that the electoral authority judges the motives invoked for the recall.

<sup>77</sup> As pointed out by commentators, the grounds required to initiate the recall are actually the expression of "different models" of representation. "One is based on "dissatisfaction", and accordingly, does not provide basis for accountability (e.g. Peru between 1994 and 2015, Ecuador between 2008 and 2010). The other is based on "programmatically vote" and seems closer to a delegate model of representation" (e.g. some American States such as Georgia, Minnesota or Washington), and sometimes empowers a public body to assess the validity of the reasons (e.g. Ecuador since 2011). See Welp, Yanina (2018) "Recall referendum around the world: origins, institutional designs and current debates", in *The Routledge Handbook to Referendums and Direct Democracy*, Edited by Laurence Morel, Matt Qvortrup, Routledge. <https://www.routledge.com/The-Routledge-Handbook-to-Referendums-and-Direct-Democracy/Morel-Qvortrup/p/book/9781138209930>

the voters should intervene on those matters - such as allegations concerning the commission of certain specific crimes - which (should) fall within the exclusive domain of the courts. In such cases, recall will not be a suitable removal mechanism (see comments above).

103. In view of the variety of national practices and taking into account the risk of confusion between political and legal responsibility, one way to address these questions would be not to provide any list, in the legislation (or local charter), of permissible grounds for mayors' recall. This will be more in line with the political nature of the process, and its understanding as a political act involving the "loss of confidence" on the part of the electors. This does not contradict or prevent the important requirement, in most national regulations, that the petition for initiating the recall should be motivated and should contain a detailed and circumstantiated description of the reasons for which its initiators are proposing the recall. Similarly, this does not mean that there should not be legal norms on the recall. As indicated before, where recall is allowed, it is important that the procedural framework and related safeguards be established by law, and not by the charters of individual municipalities.

### **Initiative**

104. Depending on the requirements of the national legislation, in most cases the popular recall may be initiated directly by citizens.<sup>78</sup> In some systems the initiative belongs to a minimum number of members of the local council (in many cases one third). This last case may be seen as being closer to the no confidence motion by the local council, an instrument which is usually characteristic to systems where the mayor is elected by the local council. It has been noted, however, that such a mechanism (initiative by local council confirmed by popular referendum) may also apply where, like in the Republic of Moldova, the mayor is elected by the local population directly, and not by the local council.

### **Participation requirements**

105. One of the main common features of existing recall regulations, as far as the mayor's recall is concerned, is the clear focus on the participatory - and legitimating - dimension of the recall. This is achieved through different participation requirements imposed to validate the process: the number of signatures needed in support of the petition activating the recall<sup>79</sup>; the number of participating local electors in the subsequent referendum (the turnout quorum); and, finally, the most decisive one, the required majority to approve the mayor's removal (the approval quorum).

106. As a rule, recall thresholds must be sufficiently high to ensure that it is not up to a minority having lost the elections to remove a mayor from office. The Russian Constitutional Court has declared unconstitutional legislative provisions admitting recall of a local elected official by a smaller number of votes than that this person was elected.<sup>80</sup> The Court considered "*unacceptable that the recall can be implemented mainly by the votes of citizens who have remained in the relevant minority during the election, i. e. who voted for candidates who did not receive the necessary majority.*" The Court stressed that "*at least no*

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<sup>78</sup> Argentina, Columbia, Germany, Romania, the Republic of Moldova, the Russian Federation, the United States. In Ecuador, citizens included in the electoral register used in the last elections in the concerned local community.

<sup>79</sup> The number of signatures required for the recall request or petition usually represents a percentage of the votes obtained by the mayor upon election; the range is wide, from 5 or 10% up to 40% of the number of those having elected the mayor.

<sup>80</sup> Decision of 2 April 2002 on the case of verification of the constitutionality of certain provisions of the Krasnoyarsk Territory Law "On the procedure for recalling a deputy of a representative body of local self-government" and the Law of the Koryaksky Autonomous Okrug "On the procedure for recalling a deputy of a representative local self-government body, an elected local government official in the Koryaksky Autonomous Okrug" in connection with the applicants' complaints of Zlobin and Khnaev. See: [http://cikrf.ru/law/decrees\\_of\\_court/pes\\_7p\\_02.html](http://cikrf.ru/law/decrees_of_court/pes_7p_02.html).

*fewer citizens must vote for the recall than the person whom elected the official, so that the vote on the recall does not diminish the value of the voters' will expressed during the elections, and the results of election are protected," and concluded: "Otherwise, conditions are created not only for arbitrary, not based on the actual will of the population, early termination of the powers of specific local government officials, but also for narrowing the scope of representative democracy [...]."*

107. While approaches may differ on the exact level of such thresholds, it is indeed important to propose high thresholds both for support, participation and the approval of the mayors' recall, as a way to reconcile - to the extent possible - the aim pursued through the recall with legitimacy and representativeness requirements of any democratic process.

### **Timeframe**

108. In virtually all countries where the recall is allowed, there are strict rules establishing time limits, during the mayors' term, within which the procedure for recall may be initiated. In this way, a reasonable time for action is left to the elected official in the first part of the term, to prove that he/she is acting in accordance with his/her voters' expectations. These limits range from six months to one year after the start and before the end of the term.<sup>81</sup> There are also jurisdictions where the recall may only be activated in the second half of a term (Bolivia and Venezuela), or where the recall is only allowed once per term (Peru). In Colombia, if, as a result of the voting, the mandate of the local elected is not revoked, it cannot be attempted again in the remainder of the term.

109. One may conclude from such time rules that the purpose is indeed, to provide the elected person with a reasonable period of time for action. This indicates also that, in the concerned systems, the underlying approach to recall is - rightly - that this tool should be of limited use and only intervene as an exceptional solution.

### **Judicial review**

110. The information available to the Venice Commission as regards the judicial review of the different steps in the recall procedure, or the availability of judicial appeal for the challenged elected, is limited. Presumably, such remedies, which are indispensable guarantees for a process which is highly sensitive and subject to various possibilities of abuse and manipulation, are available under the general electoral legislation or in the framework of the administrative law provisions.

111. On the other hand, when the recall process is activated, it is essential for the concerned elected official to be provided adequate opportunities to give explanations and make known his/her views on the action (inaction) complained of and the shortcomings having led to the activation of the recall. Such opportunities are presumably provided in the context of the campaign that usually takes place prior to the vote in favour or against the recall.

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<sup>81</sup> In the Republic of Moldova, the mayor's recall may not be initiated earlier than one year after the beginning of the term, nor later than six months before the end of the term; in Colombia, Ecuador and Peru, the recall is possible only after the first year of the term and before the last year of the term; in Argentina, the recall is usually excluded for the first year of mandate and the last six months.



## VII. Concluding remarks

112. In Europe, recall has been very seldom used in practice, but has drawn some renewed interest in recent years. Its existence depends on the constitutional tradition and openness of each country to such an instrument. In other parts of the world it is more frequent and used mostly at regional or local level.

113. Successful or failed attempts to remove elected representatives by the way of popular vote, as a corrective democratic tool for poor management, have mostly been directed against mayors.

114. European standards are not definitive or conclusive: while they do not explicitly prohibit the recourse to recall, they do not firmly authorize it. The European Charter of Local Self-Government recognizes the free exercise of the functions of the local elected representatives - as does the Congress of Local and Regional Authorities, in its related work - while it at the same time remains open to direct democracy processes, as complementary tools.

115. It cannot be disputed that, by putting an end to an elected office prior to regular elections, the recall goes against the very principle of the free representative mandate on which today's democracies are based. Its use has therefore to remain exceptional.

116. Another important concern is that, in the context of populism and the crisis of representation, recall could introduce a further threat for the stability of representative democracy. Subject to a variety of factors (such as the level of political culture) and influences, even manipulation by the authorities in some cases, it may be instrumentalised and used for populist, demagogic or other kinds of interests.

117. In the opinion of the Venice Commission, the recall of mayors may only be seen as an acceptable, though exceptional, democratic tool, likely to contribute to more responsible and efficient governance, in systems where it is provided for by the national or regional law, if it is regulated very carefully and coupled with adequate and effective safeguards to prevent its misuse. From this perspective, a number of key conditions must be fulfilled:

- popular recall should only be permitted in respect of mayors who are directly elected, when and if it is prescribed by the Constitution or the national law; relevant provisions should attempt to find a balance between the need for voters to be able to remove an elected official having lost their confidence, and the necessity to prevent misuse of the process;
- this implies, in the first instance, that the recall should respond to a real need to correct serious and objective governance deficiencies, in the interest of the community, and be used as a complement to other available tools in a representative democracy;
- in those situations where the reasons for terminating the mandate imply legal assessments, the end of the mandate should be the subject of a judicial decision, and not of a popular vote; therefore, a clear distinction must be made between the legal and political responsibility of elected mayors;
- adequate safeguards should be provided in terms of legitimacy and legality of the recall process: sufficiently high thresholds for initiating (numbers of signatures) and validating the recall (turnout and voting quorums); a clear and reasonable timeframe and procedural safeguards; clearly identified actors and their roles; effective opportunities for defence and discussion provided to the contested official; appropriate legal remedies.