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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**AMICUS CURIAE BRIEF
FOR THE EUROPEAN COURT OF HUMAN RIGHTS
IN THE CASE STADERINI AND OTHERS V. ITALY**

ON

**THE STABILITY OF ELECTORAL LEGISLATION AND SOME
FEATURES OF A MIXED ELECTORAL SYSTEM**

**Approved by the Council for Democratic Elections
at its 81st meeting (Venice, 5 December 2024) and
adopted by the Venice Commission at its 141st Plenary Session
(Venice, 6-7 December 2024)**

On the basis of comments by

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Table of Contents

I.	Introduction	3
II.	Background and scope of the <i>amicus curiae</i> brief	3
III.	Analysis.....	4
A.	First question concerning the stability of electoral law	4
1.	Code of good practice in electoral matters and interpretative declaration	4
2.	Analysis.....	7
B.	Second question concerning the mixed electoral system.....	9
C.	Third question concerning effective remedies.....	12
IV.	Conclusion	14

I. Introduction

1. By letter of 9 July 2024 and pursuant to Rule 44, paragraph 3(a), of the Rules of Court, the European Court of Human Rights requested an opinion from the Venice Commission on the following questions raised by the pending case of *Staderini and Others v. Italy* (Application No. 6235/23):

1. Having regard to the principles set out in the Code of Good Practice in Electoral Matters and in the light of recent developments that have taken place in the Council of Europe member states (as reported, for example, in the Reports on Electoral Law and Electoral Administration in Europe adopted on 9-10 June 2006 and 8-9 October 2020), what are the substantive standards and procedural guarantees that state authorities must provide to comply with the principle of stability in electoral legislation?

2. In a system combining allocation of the seats according to a majority system and proportional representation, are the electoral rules that:

i) prohibit to cast a vote under the proportional system for a list or coalition other than that chosen under the majority system and,

ii) in the event that electors vote only for a candidate according to the majority system, automatically allocate a vote also to the related list or coalition in the proportional system

compatible with the principles of equal and free suffrage? If so, under which conditions?

3. Should state authorities guarantee an effective remedy allowing individuals to challenge electoral laws on the ground of being contrary to the principles of stability of electoral law, equal and free suffrage?

2. Mr Oliver Kask, Mr Tomáš Langášek and Ms Katharina Pabel acted as rapporteurs for this opinion.

3. This opinion was drafted on the basis of comments by the rapporteurs.

4. The draft opinion was approved by the Council for Democratic Elections at its 81st meeting (Venice, 5 December 2024) and it was adopted by the Venice Commission at its 141st Plenary Session (Venice, 6-7 December 2024).

II. Background and scope of the *amicus curiae* brief

5. It is not for the Venice Commission to go into the facts of the case, or into the interpretation and application of the European Convention on Human Rights (ECHR). The questions are of a general nature and inquire into issues of general comparative constitutional law. This is the basis on which the Venice Commission will respond.

6. In order to put the issue in its context, however, the following facts, as related in the “subject of the case”, are of interest:¹

The application concerns the instability of Italian electoral law and the compatibility of the law for the election of members of the Chamber of Deputies and the Senate (Law no. 165 of 3 November 2017, which entered into force on 12 November 2017, known as the “Rosatellum”) with the applicants’ right to free elections, guaranteed by Article 3 of Protocol No. 1 to the Convention.

¹ Unofficial translation of the French original published on 19 February 2024.

The applicants allege that, prior to the last legislative elections of 25 September 2022, the Italian electoral system was modified three times, in particular:

- *by Constitutional Law No. 1 of 19 October 2019, which reduced the number of seats in the Chamber of Deputies and the Senate;*
- *by Law No. 177 of 23 December 2020, on electoral redistribution;*
- *by Law No. 84 of 30 June 2022, which exempted certain political parties or groups from the obligation to collect authenticated signatures for the presentation of lists at national level.*

In the light of the Court's case-law and the Venice Commission's Code of Good Practice in Electoral Matters, adopted on 18 and 19 October 2002, the applicants complained that this legislative instability was contrary to Article 3 of Protocol No. 1.

As to the voting system used, the applicants complain that Article 1(19)(c) and (21)(a) of Law No. 165 of 2017 infringed the principle of freedom to vote. They explain that the said provisions introduced a mixed voting system which provides for the allocation of 36% of the seats in each chamber according to a majority system and the remaining part according to a proportional system. However, the law does not allow a separate vote to be cast, i.e. a preference to be expressed under the proportional system for a list or coalition other than that chosen under the majority system. Moreover, if a voter votes only for the candidate of the majority system, his/her vote is automatically allocated to the corresponding list or coalition in the proportional system.

According to the applicants, this voting system distorts the will of the people as regards the choice of the legislature.

Finally, the applicants complain of the absence of an effective domestic remedy in breach of Article 13 of the Convention.

III. Analysis

A. First question concerning the stability of electoral law

7. The first question put by the ECtHR is the following:

Having regard to the principles set out in the Code of Good Practice in Electoral Matters and in the light of recent developments that have taken place in the Council of Europe member states (as reported, for example, in the Reports on Electoral Law and Electoral Administration in Europe adopted on 9-10 June 2006 and 8-9 October 2020), what are the substantive standards and procedural guarantees that state authorities must provide to comply with the principle of stability in electoral legislation?

1. Code of good practice in electoral matters and interpretative declaration

8. The principle of the stability of electoral law is provided for in the Code of good practice in electoral matters of the Venice Commission² among the “conditions for implementing” the principles of electoral law, together with the “regulatory levels” (Guideline II.2.b), and the European Court of Human Rights has referred to it in several decisions.³ This principle was subsequently the subject of an Interpretative declaration adopted by the Commission in 2005⁴ and of a Revised interpretative declaration adopted by the Commission in 2024,⁵ following the 4th Scientific Electoral Experts Debates which were co-organised by the Venice Commission and the University of Barcelona and were devoted to the topic of “The stability of electoral law”.⁶ Many

² Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters.

³ See e.g. ECtHR, [Ekoglasnost v. Bulgaria](#), no. 30386/05, 6 November 2012, paras 68f.; ECtHR, [Georgian Labour Party v. Georgia](#), no. 9103/04, 8 July 2008, para. 88.

⁴ Venice Commission, [CDL-AD\(2005\)043](#), Interpretative Declaration on the Stability of the Electoral Law.

⁵ Venice Commission, [CDL-AD\(2024\)027](#), Revised interpretative declaration on the Stability of electoral law.

⁶ See the Conference Proceedings published by the Venice Commission on 19 February 2024, [CDL-PI\(2024\)004](#).

opinions and reports⁷ of the Commission have referred to the electoral stability criteria and have specified them and applied them to specific cases.⁸ Similarly, the 2022 Commission's Revised Code of good practice on referendums⁹ includes the principle of stability of referendum law (Guideline II.3).

9. Guideline II.2.b of the Code of good practice in electoral matters¹⁰ provides:

"II.2. Regulatory levels and stability of electoral law

(...)

b. The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law."

10. The Explanatory report to the Code of good practice in electoral matters makes it clear that "stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections."¹¹

11. The Explanatory report also states that "it is not so much changing voting systems which is a bad thing – they can always be changed for the better – as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests."¹² Further, "one way of avoiding manipulation is to define in the Constitution or in a text higher in status than ordinary law the elements that are most exposed (the electoral system itself, the membership of electoral commissions, constituencies or rules on drawing constituency boundaries). Another, more flexible, solution would be to stipulate in the Constitution that, if the electoral law is amended, the old system will apply to the next election – at least if it takes place within the coming year – and the new one will take effect after that."¹³

12. According to the 2024 Revised interpretative declaration on the Stability of electoral law,¹⁴ the Venice Commission interprets Guideline II.2.b of the Code of good practice in electoral matters as follows:

⁷ See, *inter alia*, Venice Commission, [CDL-AD\(2020\)023](#), Report on electoral law and electoral administration in Europe - Synthesis study on recurrent challenges and problematic issues, which expressly named Italy as one among several countries where important electoral reforms were adopted only a few months prior to recent elections in a hasty and non-inclusive way, without providing an opportunity for meaningful public debate and consultations with stakeholders (para. 19).

⁸ See the Compilation of Venice Commission opinions and reports concerning the stability of electoral law, [CDL-PI\(2020\)020](#).

⁹ Venice Commission, [CDL-AD\(2022\)015](#), Revised Code of good practice on referendums. See already the first version of the Code of Good Practice on Referendums, [CDL-AD\(2007\)008rev-cor](#).

¹⁰ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Guideline II.2.b.

¹¹ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Explanatory report, para. 63.

¹² Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Explanatory report, para. 65.

¹³ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Explanatory report, para. 66.

¹⁴ Venice Commission, [CDL-AD\(2024\)027](#), Revised interpretative declaration on the Stability of electoral law.

“1. The principle according to which the fundamental elements of electoral law should not be open to amendment less than one year prior to an election does not take precedence over the other principles of the Code of Good Practice in Electoral Matters.

2. It should not be invoked to maintain a situation contrary to international electoral standards, to prevent amendments in accordance with these standards based on consensus between government and opposition and on broad public consultations, or to prevent the implementation of decisions by national constitutional courts or supreme courts with equivalent jurisdiction, international courts or of recommendations by international organisations.

3. The one-year principle aims at ensuring legal certainty, which is a key element of the Rule of Law. In the electoral field, legal certainty means that the confidence in democratic elections in line with international standards should not be undermined by late amendments to primary or secondary legislation, including from electoral bodies.

4. The principle concerns the fundamental rules of electoral law. Other changes to electoral law may be subject to the principle if the scope or timing of the changes may negatively affect legal certainty for voters, candidates or the electoral administration.

5. In particular, the following are considered fundamental rules:

- rules that determine the right to vote and stand for election, including voter and candidate registration;
- the drawing of constituency boundaries and rules relating to the distribution of seats between the constituencies;
- the electoral system proper, i.e. rules relating to the transformation of votes into seats;
- essential elements of the voting process;
- rules relating to the membership, independence and impartiality of electoral commissions or another body which organises the ballot or can decide on electoral rights;
- rules guaranteeing the effectiveness of election dispute resolution;
- electoral contestants' access to public media.

6. In addition to the one-year principle:

- a) once elections have been called, no amendments to electoral law should be made, unless they are strictly necessary to comply with binding decisions by national constitutional courts or supreme courts with equivalent jurisdiction, or by international courts;
- b) any reform of electoral legislation to be applied during an election should occur early enough to allow candidates and voters to understand the changes and the electoral management bodies to understand and apply them.”

2. Analysis

13. As the above-mentioned documents show, stability of electoral law is important for the public's confidence in the electoral process. The stability of electoral law is not an end in itself, but rather a safeguard to achieve free elections being "the free expression of the opinion of the people", in the terms of Article 3 of Protocol No. 1 of the ECHR.¹⁵ The stability of the most sensitive features of electoral law, including the electoral system, the composition of the election commissions and the drawing of constituency boundaries, is essential to the legitimacy of the democratic process.

14. The principle of stability of electoral law is one of the procedural restrictions on majority rule in the exercise of legislative power. While democracy means majority rule, pluralism, which is a necessary component in the Council of Europe conception of democracy, requires some protection against political majorities that seek to limit pluralism through legislation.¹⁶ The 2024 Revised interpretative declaration highlights that the principle of stability of electoral law aims at ensuring legal certainty as a key element of the Rule of Law principle. It thus draws a link between the principle of the stability of electoral law and the confidence in the democratic elections.

15. For these reasons, both frequent amendments of the electoral law and amendments shortly before elections should be avoided.

a. Frequent amendments of the electoral law

16. The Explanatory report to the Code of good practice in electoral matters refers to frequent amendments as a matter of concern,¹⁷ but neither the Code nor the Revised interpretative declaration provide for clear standards.

17. That said, it is clear that both frequent reforms of the electoral legislation over a long period of time – leading to general instability of electoral legislation – and numerous but small changes to the electoral legislation shortly before an election give rise to concerns, which are two-fold: on the one hand, frequent reforms of electoral law undermine the public trust in the electoral system because the electoral law will be perceived by the public as being part of the political game and subject to political manipulation for short-term political gains. On the other hand, frequent reforms can cause practical difficulties for electoral management bodies to apply the law and for voters and contestants to adapt to ever-changing rules.¹⁸

18. In several opinions¹⁹ the Venice Commission stressed that the practice in some countries of frequently amending the electoral legislation risked undermining the integrity of the electoral process. Therefore, it repeatedly called for a more comprehensive and systemic reform of the electoral law, well in advance of elections with an inclusive consultation process.

19. In the absence of clear guidelines on this matter, a flexible case-by-case approach is necessary to assess whether the frequency of reforms undermines public trust in the electoral

¹⁵ See Eirik Holmøyvik, Conference Proceedings published by the Venice Commission on 19 February 2024, [CDL-PI\(2024\)004](#), p. 24.

¹⁶ See Eirik Holmøyvik, Conference Proceedings published by the Venice Commission on 19 February 2024, [CDL-PI\(2024\)004](#), p. 24.

¹⁷ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Explanatory report, paras 63 and 65.

¹⁸ See Eirik Holmøyvik, Conference Proceedings published by the Venice Commission on 19 February 2024, [CDL-PI\(2024\)004](#), p. 26f.

¹⁹ See e.g., most recently, Venice Commission, [CDL-AD\(2024\)010](#), Georgia - Follow-up Opinion to the Joint Opinion on the draft amendments to the Election Code and to the Rules of Procedure of the Parliament of Georgia, paras 18ff. See also e.g. Venice Commission, [CDL-AD\(2023\)030](#), Armenia – Joint Opinion of the Venice Commission and the OSCE/ODIHR on the Draft Amendments to the Electoral Code and related legislation, para. 14; Venice Commission, [CDL-AD\(2010\)047](#), Ukraine – Opinion on the draft election code of the Verkhovna Rada of Ukraine, para. 9.

system or hampers the application of the law in practice. Several factors need to be taken into account, such as legal technique and political priorities. For instance, it may be acceptable that reforms be split into more technical amendments which can be adopted rather rapidly and more fundamental or sensitive issues which require longer consultation processes. By contrast, repeated revisions of the same provisions can be seen as more problematic.

b. Amendments of the electoral law shortly before elections

20. Regarding amendments shortly before elections, the one-year principle established by Guideline II.2.b of the Code of good practice in electoral matters applies, first and foremost, to fundamental rules of electoral law. That said, according to the Revised interpretative declaration, “other changes to electoral law may be subject to the principle if the scope or timing of the changes may negatively affect legal certainty for voters, candidates or the electoral administration.”²⁰ The Code of good practice in electoral matters refers, non-exhaustively, to three fundamental rules of electoral law, namely the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries. The Revised interpretative declaration includes a more extensive, but again non-exhaustive, list of rules which are considered fundamental.²¹ This list includes, *inter alia*, rules that determine the right to vote and stand for election, including voter and candidate registration.

21. As mentioned above, according to the Explanatory report to the Code of good practice in electoral matters stability of the law is crucial to credibility of the electoral process, and the one-year principle is intended to avoid perceived or real political manipulation.²² When considering amendments of fundamental rules shortly before elections, it is therefore relevant to assess whether the amendments may favour any particular political parties, whether they extend or restrict – active or passive – voting rights, and their potential impact on the election outcome.

22. It should be noted that the Venice Commission documents include some additional provisions to the one-year principle. Firstly, Guideline II.2.b of the Code of good practice in electoral matters and paragraph 66 of the Explanatory report make it clear that an alternative way of avoiding manipulation is to define in the Constitution or in a text higher in status than ordinary law the fundamental elements of electoral law (or to stipulate in the Constitution that, if the electoral law is amended, the old system will apply to the next election, at least if it takes place within the coming year).

23. This possibility – to provide the amendments on the level of constitutional or higher-rank law – should however not be interpreted in a manner that if the majority aims to change the electoral law in such a way that it favours them in the elections, it should adopt the new rules on a higher level. Even then, amendments to the main elements of electoral law may come too late to guarantee public trust in elections and public confidence. By contrast, if adequate safeguards are in place for constitutional amendments – such as the requirement of a very high majority vote in Parliament, prolonged procedure and thorough public discussion with the involvement of all political stakeholders –, such amendments may be considered to be in accordance with the Rule of Law and not to violate the principle of stability of electoral law. The assessment of such a procedure must take into account the rules for adopting amendments of constitutional or higher-rank laws and the factual situation in the specific context.

24. Secondly, according to the Revised interpretative declaration the one-year principle should not be invoked to maintain a situation contrary to international electoral standards, to prevent amendments in accordance with these standards based on consensus between government and

²⁰ Venice Commission, [CDL-AD\(2024\)027](#), Revised interpretative declaration on the Stability of electoral law, II.B.4.

²¹ Venice Commission, [CDL-AD\(2024\)027](#), Revised interpretative declaration on the Stability of electoral law, II.B.5.

²² Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Explanatory report, paras 63ff.

opposition and on broad public consultations, or to prevent the implementation of decisions by national constitutional courts or supreme courts with equivalent jurisdiction, international courts or of recommendations by international organisations.²³

25. A third addition to the one-year principle is made in the Revised interpretative declaration which states that once elections have been called, no amendments to electoral law should be made, unless they are strictly necessary to comply with binding decisions by national constitutional courts or supreme courts with equivalent jurisdiction, or by international courts; and that electoral reforms should occur early enough to allow candidates, voters and electoral management bodies to understand and apply the changes.²⁴

B. Second question concerning the mixed electoral system

26. The second question put by the ECtHR is the following:

In a system combining allocation of the seats according to a majority system and proportional representation, are the electoral rules that:

- i) prohibit to cast a vote under the proportional system for a list or coalition other than that chosen under the majority system and,*
- ii) in the event that electors vote only for a candidate according to the majority system, automatically allocate a vote also to the related list or coalition in the proportional system*

compatible with the principles of equal and free suffrage? If so, under which conditions?

27. The Venice Commission has commented on mixed electoral systems in several country-specific opinions,²⁵ most recently in a 2023 opinion on Germany, in which it has recalled that:²⁶

²³ Venice Commission, [CDL-AD\(2024\)027](#), Revised interpretative declaration on the Stability of electoral law, II.B.2. A similar rule was already included in the original Interpretative Declaration on the Stability of the Electoral Law, [CDL-AD\(2005\)043](#), II.2., which stated that the one-year principle “should not be invoked to maintain a situation contrary to the standards of the European electoral heritage, or to prevent the implementation of recommendations by international organisations”.

²⁴ Venice Commission, [CDL-AD\(2024\)027](#), Revised interpretative declaration on the Stability of electoral law, II.B.6.

²⁵ See the Compilation of Venice Commission opinions and reports concerning electoral systems, [CDL-PI\(2019\)001](#).

²⁶ Venice Commission and OSCE/ODIHR, [CDL-AD\(2023\)020](#), Germany - Joint Opinion on the amendments of the German Federal Election Act, paras 29ff. The footnotes included in the paragraphs quoted are the following:

“12 Article 3 Protocol No. 1: “The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the Opinion of the people in the choice of the legislature.”

13 ECtHR, *Matthews v. the United Kingdom*, Application No. 24833/94, Judgment (Grand Chamber), 18 February 1999, para. 64; ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, Application No. 9267/81, Judgment, 2 March 1987, para. 54; ECtHR, *Yumak and Sadak v. Türkiye*, Application No. 10226/03, Judgment (Grand Chamber), 8 July 2008, paras 110-111.

14 See similarly ECtHR, *Riza and Others v. Bulgaria*, Applications nos. 48555/10 and 48377/10, Judgment, 13 January 2016, para. 14; *Bompard v. France*, Application No. 44081/02, Decision, 4 April 2006.

15 ECtHR, *Bakirdzi and E.C. v. Hungary*, Application nos. 49636/14, 65678/14, Judgment, 10 November 2022, para. 45.

16 ECtHR, *Lykourazos v. Greece*, no. 33554/03, Judgment, 15 June 2006, para. 52.

17 Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of Good Practice in Electoral Matters, II.4. The UN General Assembly Resolution A/RES/46/137 noted that “recognizing that there is no single political system or electoral method that is equally suited to all nations and their people and that the efforts of the international community to enhance the effectiveness of the principle of periodic and genuine elections should not call into question each State’s sovereign right, in accordance with the will of its people, freely to choose and develop its political, social, economic and cultural systems, whether or not they conform to the preferences of other States”. The OSCE Ministerial Council noted in the 2002 Porto Ministerial

“29. The European Court of Human Rights (ECtHR) has ruled, on the basis of Article 3 of the First Additional Protocol to the European Convention on Human Rights,¹² that the choice of the electoral system by which the free expression of the Opinion of the people in the choice of the legislature is ensured – whether it be based on proportional representation, the “first-past-the-post” system or some other arrangement – is a matter in which states (High Contracting Parties) enjoy a wide margin of appreciation (*Matthews v. the United Kingdom, Mathieu-Mohin and Clerfayt v. Belgium, Yumak and Sadak v. Türkiye [GC]*).¹³ As long as all electors have by their vote the possibility of affecting the composition of the legislature, the choice of the electoral system falls in the state’s margin of appreciation.¹⁴ In this regard, the Court’s task is to determine whether the effect of electoral legislation is to exclude some persons or groups of persons from participation in the political life of the country, whether the discrepancies created by a particular electoral system can be considered arbitrary or abusive or whether the system tends to favour political parties or candidates by giving them an electoral advantage at the expense of others.¹⁵ Any conditions imposed by electoral legislation must not thwart the free expression of the opinion of the people in the choice of the legislature – in other words, they must reflect, or not run counter to, the concern to maintain the integrity and effectiveness of an electoral procedure aimed at identifying the will of the people through universal suffrage.¹⁶

30. The Venice Commission and ODIHR do not recommend any specific electoral system. Different electoral systems and multiple options on how they are presented are found across the member states of the Venice Commission and the OSCE region. They have different advantages and shortcomings; however, the choice of an electoral system is a sovereign decision of a state through its political system, provided that international obligations, guaranteeing, in particular, universal, equal, free and secret suffrage, are respected. The Code of Good Practice in Electoral Matters states that, “within the respect of the above-mentioned principles [that is the rest of the Code], any electoral system may be chosen”.¹⁷ The principles of universal, equal, free and secret suffrage, as developed in the Code, thus apply to electoral systems. The most relevant in the field is the principle of equal suffrage, which entails *inter alia* equal voting rights and equal voting power.¹⁸

31. The perception that the chosen system works well in one state does not necessarily mean that it can be successfully replicated in another. Rather, a chosen electoral system must be seen in the context of the constitutional, legal and political traditions of the state, the party system, and territorial structure. Similarly, there are no international standards recommending a specific method or degree of proportionality regarding the distribution of seats. It is recognised that states enjoy a broad margin of appreciation as long as the revision of such a fundamental element of electoral legislation takes place in an open consultative process, and the methods of allocation of the seats ensure the equality and the inclusiveness of the voting process. Lawmakers could consider the Venice Commission report on electoral systems with a view to identifying an optimum relationship between genuine representation and stability of government, while respecting the principle of equal suffrage.¹⁹”

Declaration, Decision No. 7/02, that “democratic elections can be conducted under a variety of electoral systems.”

18 Venice Commission, CDL-AD(2002)023rev2-cor, Code of Good Practice in Electoral Matters, I.2.

19 Venice Commission, CDL-AD(2004)003, Report on Electoral Systems: Overview of Available Solutions and Selection Criteria, particularly Section 4.”

28. In line with the above, the Venice Commission has repeatedly stressed in its opinions²⁷ that:

- the choice of an electoral system is a sovereign decision of a state through its political system;
- there are different electoral systems, and multiple options on how they are regulated across the member states of the Venice Commission;
- states have wide discretion in designing their electoral systems, provided that international standards guaranteeing, in particular, universal, equal, free and secret suffrage, are respected;
- comparative law arguments should be used with caution, as state institutions and legislative arrangements function within a specific legal, political and cultural context.

29. From this perspective, the question is whether any of the principles guaranteed by Article 3 of Protocol No. 1 to the ECHR and elaborated in the Code of good practice in electoral matters are not respected by the mixed electoral system described under question 2, in particular the principles of equal and free suffrage.

30. The electoral system described under question 2 combines elements of majority and proportional systems (mixed voting system). While the majority of Venice Commission member states use an electoral system with one vote, electoral systems providing the voter with two votes – one under the majoritarian system and the other one under the proportional system – are not uncommon either.²⁸

31. In the present case, the voters can vote either for one candidate and a corresponding party list (or coalition), or just for a candidate or for a party. This system has two particularities: the prohibition of separate (or *split-ticket*) voting (for a party list and for a candidate nominated by another party) and, in the event that an elector casts his/her vote solely under the majoritarian part of the elections, the automatic attribution of the other vote to (one of) the corresponding party list.

32. The question is whether the aforementioned particularities may lead to an interference and, if not justified, to a violation of the right to vote (Article 3 of Protocol No. 1 to the ECHR). It should be stressed in this context that the choice of an electoral system is a sovereign decision of a state, and that voters are free to express their choices in the proportional part of the election. There are different forms of mixed (or hybrid) election systems,²⁹ and the Venice Commission has considered that the choice of a mixed system is in line with international standards.³⁰ “Both electoral principles, majoritarian and proportional, as well as their combination in a mixed system are legitimate choices and it is up to the (...) political class to make its choice.”³¹ In the present case, the effects of the prohibition of separate votes and of the automatic attribution of votes in the event that voters cast their votes solely under the majority component may thwart the

²⁷ See e.g. Venice Commission and OSCE/ODIHR, [CDL-AD\(2017\)012](#), Republic of Moldova – Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament), para. 30; Venice Commission and OSCE/ODIHR, [CDL-AD\(2016\)019](#), Armenia – Joint Opinion on the draft electoral code as of 18 April 2016, para. 27.

²⁸ See e.g. Venice Commission, [CDL-AD\(2015\)001](#), Report on Proportional Electoral Systems: the Allocation of Seats inside the Lists (open/closed lists), para. 16: out of 61 countries analysed in 2015, 13 countries used a mixed system.

²⁹ Cf. Venice Commission, [CDL-AD\(2004\)003](#), Report on Electoral Systems - Overview of Available Solutions and Selection Criteria, paras 19f.

³⁰ See e.g. Venice Commission and OSCE/ODIHR, [CDL-AD\(2023\)020](#), Germany - Joint Opinion on the amendments of the German Federal Election Act; Venice Commission, [CDL-AD\(2013\)021](#), Opinion on the electoral legislation of Mexico; Venice Commission and OSCE/ODIHR, [CDL-AD\(2012\)012](#), Joint Opinion on the Act on the Elections of Members of Parliament of Hungary; Venice Commission and OSCE/ODIHR, [CDL-AD\(2011\)043](#), Joint opinion on the draft election code of Georgia; Venice Commission and OSCE/ODIHR, [CDL-AD\(2011\)037](#), Joint opinion on the draft law on election of people's deputies of Ukraine.

³¹ Venice Commission, [CDL-AD\(2013\)021](#), Opinion on the electoral legislation of Mexico, para. 17.

influence of the proportional element of the mixed voting system. However, the weight given to the proportional or the majoritarian part of the system belongs to the sovereign choice of the electoral system.³²

33. In many countries, voters can only vote for one candidate in a single-member constituency or for a closed party list. The Venice Commission has always considered such systems as compatible with the principle of free suffrage. In the Italian system, voters can choose, at least, among different candidates or among different party lists. In addition, it should be noted that the same candidate can be nominated by several parties; in such a case, voters have two choices: first among candidates *and* then among the different party lists which support the candidate they have voted for. The Venice Commission therefore considers that this system, which in practice gives more choice to the voter than those mentioned above, does not go against any international standard on free suffrage.

34. The situation differs from the one underlying the Court decision in the case *Bakirdzi and E.C. v. Hungary*³³ in so far as in that case, as a consequence of being registered as national minority voters, the applicants could only either vote for their relevant national minority lists as a whole or abstain from voting for the national minority list altogether. By contrast, in the present case all voters can choose between different party lists and candidates.

35. As already mentioned, states enjoy a wide margin of appreciation in choosing a specific model how to transfer votes into seats. Using either the vote for a party list or the vote for a candidate from a party list to distribute mandates based on two different formulas at the same time – one under the majoritarian system and the other one under the proportional system – is rare, but not contrary to voters' right to free elections. Under this system, no voter has an advantage over others, and no votes are distributed to candidates from party lists other than the one in which the voter's preferred candidate is.

36. The principle of equal voting rights requires each voter to have the same number of votes.³⁴ This requirement is met by the present system as each voter has two votes, one under the majoritarian system and the other one under the proportional system. There is no international standard requiring that the two votes can be cast for a party and for a candidate of another party, or that voters can only cast one vote, under the majoritarian system, without this having an effect on the proportional component of elections.

37. In reply to question 2, in the view of the Venice Commission the system described under question 2 is therefore compatible with the principles of equal and free suffrage.

C. Third question concerning effective remedies

38. The third question put by the ECtHR is the following:

Should state authorities guarantee an effective remedy allowing individuals to challenge electoral laws on the ground of being contrary to the principles of stability of electoral law, equal and free suffrage?

39. According to the European Court of Human Rights, Article 3 of Protocol No. 1 to the ECHR and Article 13 of the ECHR require the existence of a domestic system for the effective

³² Venice Commission and OSCE/ODIHR, [CDL-AD\(2023\)020](#), Germany - Joint Opinion on the amendments of the German Federal Election Act; in particular para. 35.

³³ ECtHR, *Bakirdzi and E.C. v. Hungary*, nos. 49636/14 et 65678/14, 10 November 2022.

³⁴ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Guideline I.2.1.

examination of individual complaints and appeals in matters concerning electoral rights.³⁵ The existence of such a system is one of the essential guarantees of free and fair elections and is an important safeguard against arbitrariness in the electoral process.³⁶ Article 3 of Protocol No. 1 to the ECHR and Article 13 of the ECHR require a right of appeal whenever a violation of Article 3 of Protocol No. 1 is alleged – including, in the opinion of the Venice Commission, as concerns the stability of electoral law or equality in electoral systems. It is another question to what extent these principles are guaranteed by Article 3 of Protocol No. 1.

40. The Code of good practice in electoral matters includes guidelines on the subject under the heading “An effective system of appeal”.³⁷ As the Venice Commission has previously stated,³⁸ the concept of *effective* appeal corresponds to the principle of effective examination adopted by the European Court of Human Rights in its case-law on Article 3 of Protocol No. 1 and also to Article 2.3 of the International Covenant on Civil and Political Rights. The following points in the guidelines should be highlighted:

“II.3. Procedural guarantees

(...)

3.3. An effective system of appeal

(...)

d. The appeal body must have authority in particular over such matters as the right to vote – including electoral registers – and eligibility, the validity of candidatures, proper observance of election campaign rules and the outcome of the elections.

(...)

f. All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections.”

41. The Explanatory report to the Code of good practice in electoral matters stresses that “if the electoral law provisions are to be more than just words on a page, failure to comply with the electoral law must be open to challenge before an appeal body.”³⁹ The above-mentioned guidelines make it clear that in principle, individuals must have legal standing, and that all violations of electoral law or irregularities in its exercise are in principle considered as sufficient grounds for complaints and appeals, covering a wide range of appealable decisions, actions or inactions corresponding to pre-election, election-day and post-election phases of an electoral process (the list in Guideline II.3.3.d is not exhaustive).⁴⁰ The Venice Commission 2020 Report on election dispute resolution⁴¹ and the data collected⁴² show that most of the countries provide the right to lodge electoral complaints to the main stakeholders, namely the voters and the candidates, for various alleged violations of electoral law.

42. It is another question whether states must provide effective remedies not only to challenge individual acts on the grounds of misapplication of the electoral legislation, but also to challenge the electoral law for not being in accordance with the key principles of democratic elections. According to the European Court of Human Rights, “Article 13 does not go so far as to guarantee

³⁵ ECtHR, [Mugemangango v. Belgium \[GC\]](#), no. 310/15, 10 July 2020, para. 69; ECtHR, *Davydov and Others v. Russia*, no. [75947/11](#), 30 May 2017, para. 274; ECtHR, *Namat Aliyev v. Azerbaijan*, no. [18705/06](#), 8 April 2010, paras 81 et seq.

³⁶ ECtHR, *Petkov and Others v. Bulgaria*, nos. [77568/01](#) and 2 others, 11 June 2009, para. 63.

³⁷ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, II.3.3.

³⁸ Venice Commission, [CDL-AD\(2019\)021](#), *Amicus curiae* brief for the European Court of Human Rights in the case of *Mugemangango v. Belgium* on procedural safeguards which a State must ensure in procedures challenging the result of an election or the distribution of seats, para. 28.

³⁹ Venice Commission, [CDL-AD\(2002\)023rev2-cor](#), Code of good practice in electoral matters, Explanatory report, para. 92.

⁴⁰ See Venice Commission, [CDL-AD\(2020\)025](#), Report on election dispute resolution, para. 50.

⁴¹ Venice Commission, [CDL-AD\(2020\)025](#), Report on election dispute resolution, paras 58ff.

⁴² Venice Commission, [CDL-REF\(2019\)010](#), Election dispute resolution - Data collected.

a remedy allowing a Contracting State's laws as such to be challenged before a national authority on the ground of being contrary to the Convention."⁴³ In line with this ruling, the standards developed by the Venice Commission, including the Code of good practice in electoral matters, do not require such a remedy to be available in the specific field of elections. However, in the view of the Venice Commission, if a state does grant individuals the right to challenge its laws, this should equally apply to electoral laws, and such standing should not be limited arbitrarily. Furthermore, individuals should be provided with an effective remedy in case they allege a violation of their own individual voting rights as guaranteed by Article 3 Protocol No. 1 – including by non-respect of the principle of stability of electoral law or of equality in electoral systems.

43. In reply to question 3, in the view of the Venice Commission state authorities should guarantee an effective remedy enabling individuals to challenge electoral laws on the ground of being contrary to the principles of stability of electoral law, and of equal and free suffrage when they claim a violation of their own individual voting rights. If the possibility exists under the relevant legal system to challenge the compatibility of legislation as such with the ECHR, such possibility should extend to electoral laws.

IV. Conclusion

44. The Venice Commission has been invited by the European Court of Human Rights to submit an *amicus curiae* brief in the case of *Staderini and Others v. Italy*, concerning the stability of electoral legislation and some features of a mixed electoral system.

45. The Court has put the following questions to the Venice Commission:

1. Having regard to the principles set out in the Code of Good Practice in Electoral Matters and in the light of recent developments that have taken place in the Council of Europe member states (as reported, for example, in the Reports on Electoral Law and Electoral Administration in Europe adopted on 9-10 June 2006 and 8-9 October 2020), what are the substantive standards and procedural guarantees that state authorities must provide to comply with the principle of stability in electoral legislation?

2. In a system combining allocation of the seats according to a majority system and proportional representation, are electoral rules that
i) prohibit to cast a vote under the proportional system for a list or coalition other than that chosen under the majority system and,
ii) in the event that electors vote only for a candidate according to the majority system, automatically allocate a vote also to the related list or coalition in the proportional system compatible with the principles of equal and free suffrage. If so, under which conditions?

3. Should state authorities guarantee an effective remedy allowing individuals to challenge electoral laws on the ground of being contrary to the principles of stability of electoral law, equal and free suffrage?

46. The Venice Commission has reached the following conclusions:

Ad 1.: The principle of stability of electoral law aims at ensuring legal certainty as a key element of the Rule of Law. It is a safeguard to achieve free elections and is essential to the legitimacy of the democratic process. Therefore, both frequent amendments of the electoral law and amendments shortly before elections should be avoided. In principle, fundamental elements of electoral law – including rules that determine the right to vote and stand for election, including voter and candidate registration – should not be open to

⁴³ E.g. ECtHR, [Vallianatos v. Greece](#), no. 29381/09, 7 November 2013, para. 94.

amendment less than one year prior to an election, and once elections have been called, no amendments to electoral law should be made. Possible exceptions to these rules need to be examined on a case-by-case basis. For example, late amendments through constitutional reform may be acceptable if adequate safeguards are in place, such as the requirement of a very high majority vote in Parliament, a prolonged procedure and thorough public discussion with the involvement of all political stakeholders. The Venice Commission's Code of good practice in electoral matters and the Revised interpretative declaration on the Stability of electoral law provide further guidance on the substantive standards and procedural guarantees that state authorities must provide to comply with the principle of stability in electoral legislation.

Ad 2.: The choice of an electoral system is a sovereign decision of a state through its political system, and states have wide discretion in designing their electoral systems, provided that international standards guaranteeing, in particular, universal, equal, free and secret suffrage, are respected. The system described under question 2 combines elements of majoritarian and proportional systems and has two particularities: the prohibition of separate voting (for a party list and for a candidate of another list) and in the event that an elector casts his/her vote solely under the majoritarian part of elections, the automatic attribution of the vote to a corresponding party list. Under this system, no voter has an advantage over others, and no votes are distributed to candidates from party lists other than the one in which the voter's preferred candidate is. There is no international standard requiring that in case of a mixed electoral system two separate votes can be cast for a party and for a candidate of another party, or that voters can cast their vote under the majoritarian system, without this having an effect on the proportional component of elections. The system described under question 2 is therefore compatible with the principles of equal and free suffrage.

Ad 3.: Article 3 of Protocol No. 1 to the ECHR and Article 13 of the ECHR imply a right of appeal whenever a violation of Article 3 of Protocol No. 1 is alleged – including concerning the stability of electoral law or equality in electoral systems. It is another question to what extent these principles are guaranteed by Article 3 of Protocol No. 1. It is also another question whether states must provide effective remedies not only to challenge individual acts on the grounds of misapplication of the electoral legislation, but also to challenge the electoral law for not being in accordance with the key principles of democratic elections. In the view of the Venice Commission, while there are no international standards for such a requirement, if a state does grant individuals the right to challenge its laws, this should equally apply to electoral laws, and such standing should not be limited arbitrarily. In any case, individuals should be provided an effective remedy in case they allege a violation of their own individual voting rights as guaranteed by Article 3 of Protocol No. 1 – including by non-respect of the principles of stability of electoral law or of equality in electoral systems.