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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

REPORT ON BICAMERALISM

Adopted by the Venice Commission at its 138th Plenary Session (Venice,15-16 March 2024)

on the basis of comments by

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I. Preliminary and methodological notes

1. On 4-5 July 2022, the Venice Commission and the Spanish Centro de Estudios Políticos y Constitucionales[1] organised an International Seminar on "Bicameralism: phenomenology, evolution, and current challenges of a "contested institution"". As noted during the seminar, bicameralism is an evolving attempt to answer socio-political demands and it is important for core elements of modern constitutionalism and democratic theory. Some recent trends at the global level have demonstrated a new and increasing interest in bicameralism and have fostered further debate on this institution, not least in the light of democratic backsliding.

2. Following the seminar, the Venice Commission undertook the preparation of this report and Ms Bernoussi, Mr Bustos Gisbert, Mr Langášek, Mr Newman, Ms Nussberger and Ms Otálora Malassis were tasked with its preparation.

3. The rapporteurs prepared a questionnaire which was distributed to all members (or substitute members) of the Venice Commission, that can be found in an appendix to this text. The questionnaire exists in two versions, one targeting bicameral countries (24 member states) and one addressed to unicameral countries (37 member states).

4. The Secretariat of the Venice Commission collected 47 replies to the questionnaire for a total of 61 member states, 19 of bicameral countries (available at: by country and by question) and 28 of unicameral countries[2] (available at: by country and by question), and proceeded to complete the information on the 14 missing countries with desk research.[3]

5. In May 2023, the results of the questionnaire were also shared with the Council of Europe Congress of Regional and Local Authorities (hereinafter, the "Congress"), which was preparing an information report on "The role of second parliamentary chambers in Europe in enhancing the representation of regions and local authorities",[4] approved by the Congress Governance Committee on 1st June 2023 (hereinafter, the "Congress information report").

6. The expert who contributed to the report, Mr Zoltán Szente (expert, Hungary), joined the group of rapporteurs of the Venice Commission and the Congress information report became an inspirational document for the work on this report.

7. During two meetings held in Venice in June and October 2023, the rapporteurs discussed and agreed on the structure of the report, which includes three main chapters: (i) an introduction to the topic, with an historical perspective and a presentation of arguments in favour or against bicameralism, (ii) a descriptive chapter on second chambers, their typology and relationship with lower chambers, based on data collected through the questionnaire, and (iii) an analytical chapter with elements for good practices on bicameralism.

8. The second descriptive chapter is substantially based on the structure and content of the Congress information report which, in order to avoid repetition and redundant work, was taken as a basic text, complemented with the additional information collected by the Venice Commission and a broader geographical scope (the Congress information report covers the 46

[1] Ministerial department of the Ministry of the Presidency, Justice and Relations with the *Cortes* (Parliament) of the Government of Spain.
[2] It should be noted that Peru is listed under the unicameral countries although, in March 2024, on the week of adoption of this report, the Peruvian Parliament voted a constitutional reform opting for a bicameral system. The second chamber (*Senado*) will be established with the next elections in 2026.
[3] Bicameral missing countries: Algeria, Brazil, Chile and Kazakhstan. For unicameral countries: Armenia, Bulgaria, Costa Rica, Georgia, Republic of Korea, Luxembourg, Malta, Montenegro, Serbia and Tunisia.
[4] The role of second parliamentary chambers in Europe in enhancing the representation of regions and local authorities, information report approved by the Congress Governance Committee on the 1st June 2023, prepared by co-rapporteurs Benoît Pilet (France, ILDG) and Doerte Liebetruth (Germany, SOC/G/PD), with the expert contribution of Mr Zoltán Szente. Available also in French.

Council of Europe member states, while the Venice Commission report covers all its 61 member states).[5]

9. The report was discussed at the Joint meeting of the Sub-Commission on Democratic Institutions and on Federal and Regional State and adopted by the Venice Commission at its 138th Plenary Session (Venice, 15-16 March 2024). The Venice Commission is grateful to the Congress for its excellent cooperation and fruitful exchanges on the matter.

II. Introduction to Bicameralism: historical background and current rationale

A. Historical roots – the idea of bicameralism

10. The idea of bicameralism as a model of governance has developed over the centuries in a gradual manner and was not the end-product of a system of government organised in accordance with prior principles.

11. The second chamber, as the "upper" house,[6] historically primarily represented the privileged orders and classes. This kind of representation itself was partly the guardian and partly the source of these privileges. Although many trace the origin of the bicameral system back to the Greek city-states and the Roman Empire, in the twelfth and thirteenth centuries, estate assemblies representing the privileged classes functioned in continental Europe as three- or four-chamber assemblies from the Spanish kingdoms to the German and Italian small principalities and in many other countries throughout Europe. Moreover, by the end of the thirteenth century, the constitution of the English Parliament, which ultimately gave rise to the Westminster model prevalent in most Commonwealth countries, had grown to "a representation of the three estates and a concentration of the local institutions — the clergy, the barons and the communities, associated for financial, legislative, and political action".[7] In 1297 it obtained the fullest recognition of its rights as representing the whole nation, when the King was obliged to confirm the previous Charters and recognised Parliament's role in the levying of taxes.

12. The separation of the aristocratic chambers in the Middle Ages was mainly based on the intention to preserve the privileged position of the nobility and clergy. As history progressed and the democratic foundations of government took root, the role of second chambers evolved towards other functions, i.e., to recognise the special status of certain social classes.

13. However, some second chambers – such as in the United States – were already more or less democratic from the late 18th century and, in the 19th century. Constitutional and political studies started to make a distinction between the aristocratic "upper houses" based on birth or social status and "senates" which were built on democratic principles.[8] The protection of "historical rights" and interests provided less and less legitimacy for the second chambers, in addition to the strengthening of the political movements of the late 19th and early 20th centuries, with the gradual spread of democratic values. Already in the 19th century, some attempts were made to rethink and transform the political and constitutional role of upper houses. In fact, as universal suffrage spread, the upper houses' often dominant or equal position both in political life and public law declined. The lower chambers gained more and more decisive influence in financial-related legislation, the absolute veto of the second chambers was in many cases turned into a suspensive veto (or in some cases was completely abolished), and their legislative powers became more limited.

[5] Which are distributed between Europe, the Americas, Asia and Africa.
[6] The terms "second chamber" and "upper house" are used interchangeably in this report.
[7] William Stubbs, *The National Assembly of the Three Estates*, reprinted in *Early English Parliaments: High Courts, Royal Councils, or Representative Assemblies?.* Gerald P. Bodet, Boston: D.C. Heath & Co., 1968, pages 1-13.
[8] Georg Jellinek, *Ausgewählte Schriften und Reden*. Verlag von O. Häring, Berlin, 1911, pages 188-193.

14. In the post-World War II democracies, the classic constituent principles of the second chamber, in particular the membership based on social class or private privileges, clearly violated democratic principles. Hence, most second chambers were given new representative characteristics, which could justify their continued existence. This is one of the (main) reasons why there are different types of upper houses. Today, the composition and functions of the second chambers vary substantially from country to country (unlike the lower chambers) also because they are the result of historical compromises between the constituent political forces of a given state. For federal countries in particular, the aim to establish a common governing system among the pre-existing states determined the development of bicameral models.[9]

15. One of the classic debates is whether unicameral or bicameral parliaments are more democratic and/or more efficient. At the beginning of the 20th century, supporters of the bicameral system most often referred to the fact that unicameral parliaments are rare in democratic states, and they even hinted that the countries that use this legislative model are not the most developed democracies, and that the developing trend everywhere is the transition to a two-chamber system. At that time, unicameral parliamentary systems existed only in a few countries (such as Serbia or Greece) in Europe. In contrast, other political thinkers would argue that unicameralism usually appeared in Europe in revolutionary situations and only temporarily (e.g. England after the execution of Charles I in 1649, Spain in 1810, France and the Deutscher Bund (Germany) in 1848.[10] Others have acknowledged that there can be internal peace and stability even with a unicameral parliament, as shown by the example of some Balkan states (Bulgaria, Montenegro) or Norway.[11] However, after the Second World War, as some countries with established democratic systems abolished the second chamber of the legislature,[12] and thus after intense debate, the empirical argument that unicameral systems were less democratic could no longer be defended.

16. It can be generally observed that the number of bicameral parliaments declined significantly in the early part of the 20th century,[13] but the situation changed further in the second half of the century, when states chose the opposite constitutional option, and the establishment of bicameral parliaments was favoured. In fact, today approximately 40% of parliaments around the world are bicameral. This process was considered as a "revival" of bicameralism.[14]

17. The above historical perspective is important because the relevance of bicameralism should not be characterised as a snapshot, but in dynamic terms, as its relevance and role change according to the circumstances of each country at specific historical and political moments.

18. Nowadays, countries can also opt for a stronger or weaker bicameralism, which can be distinguished on the basis of three factors:[15] (i) Symmetry/Asymmetry: depending on whether both chambers have essentially the same powers; (ii) Congruence/Incongruence: depending on whether both chambers have the same partisan composition or not; (iii) Perceived Legitimacy:

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[9] "A distinction is usually drawn between classical bicameralism, which is the result of a more or less accepted tradition (but also of a deliberate option in the restored democracies of Poland and Romania) and concerns unitary States, and structural bicameralism, which is presented as a constitutive, and therefore necessary, characteristic of States with a federal structure", Lauvaux Philippe, *Quand la deuxième chambre s'oppose*, Pouvoirs 2004/1 (n° 108), pages 81-99.

[10] John A. R. Marriott, *Second Chambers. An Inductive Study in Political Science.* Freeport, New York, Books for Libraries Press, 1910, page 2.

[11] Harold W. V. Temperley, *Senates and Upper Chambers.* London, Chapman and Hall Ltd., 1910, page 9.

[12] The second chamber was abolished in Denmark in 1953, in Sweden in 1969, and in Iceland in 1991. In November 2009, a successful referendum was held in Romania on the establishment of a smaller, unicameral parliament.

[13] Drexhague, B., *Bicameral legislatures. An international Comparison*. The Hague, 2015, page 5

[14] Coakley, J., *The strange revival of bicameralism*. Journal of Legislative Studies 20(4), 2014.

[15] Lijphart, A., *Patterns of democracy: Government forms and performance in thirty-six countries,* New Haven, Yale University Press, 1992; Russell, M., *Rethinking bicameral strength: a three-dimensional approach*, The Journal of Legislative Studies*,* 19/3, 2013.

depending on whether the second chamber has sufficient legitimacy (usually democratic but also of other kinds) to fully perform its constitutional powers or not.

19. The current arguments in favour or against bicameralism will be reported in the next sections, in the context of modern democracies. It should be noted that examples of countries provided between brackets throughout the whole report do not represent exhaustive lists and are based on the replies provided to the questionnaire.

B. Arguments objecting to bicameralism

20. Second chambers, unlike lower chambers, are constantly being called into question. In democracies governed by the rule of law, the need for a chamber where the representatives of the people sit, discuss, and decide on the most important issues for the country is beyond question. This is not the case with second chambers. It seems inescapable that from time to time the usefulness of these chambers is questioned wherever they exist, except in federal states where bicameralism seems to be an essential feature of their constitutional design. This questioning does not work the other way around. In unicameral countries, it is not so common for public opinion or political parties to discuss the desirability of adopting a bicameral parliament. Only rarely, in contexts of criticism of the actual functioning of the political system (in particular, of the parliament) may the quest for a bicameral parliament appear in public opinion, even though it is quite common for these unicameral systems to have had second chambers in their constitutional history. When questioned, second chambers are challenged with a series of recurrent objections, listed and elaborated below.

21. The *democratic objection*: the mere existence of a second chamber, unless it is elected on the basis of popular representation, may raise democratic doubts. If there is a chamber to represent the people, why should a specific chamber to represent other interests be established? Are these interests not sufficiently represented through the first chamber? There has been an argument that a second chamber is either useless (if it acts in coherence with the lower chamber) or mischievous (if it tries to overcome the will of the people as set by the lower chamber).[16] Following this argument, whereas the law is the will of the people, and the people cannot at the same time have two different wills on the same subject; the legislature representing the people must also be unified.[17]

22. The *duplication objection*: it is quite often the case that the second chamber operates along party lines. Its members represent and defend political interests established by political parties and no other interests. Thus, it merely duplicates the debates in the lower house without contributing substantially to parliamentary procedure[18] and, when the political majorities in the two chambers do not coincide, a problem of democratic accountability may arise. In general, this

[16] Attributed to both Sieyès and Bentham. See Bentham, *Theory of Second Chambers*, Lewis Rockow, The American Political Science Review, Vol. 22, No. 3 (Aug. 1928), pages 577-578; David Fisk, *Superfluous or Mischievous: Evaluating the Determinants of Government Defeats in Second Chambers*, Legislative Studies Quarterly, Vol. 36, No. 2 (May 2011), page 231.

[17] See e.g., Yves Mény, *Government and Politics in Western Europe. Britain, France, Italy, West Germany*. New York – Oxford University Press, 1991, page 157. The argument is often traced back to Sieyès' famous pamphlet *Qu'est-ce que le tiers état?* Paris, 1789. For an English version, see Emmanuel Joseph Sieyès, *Political Writings,* Hackett Publishing Company, Indiana/Cambridge, 2003, pages 92-162.

[18] This was a common objection to the Czechoslovak bicameralism between the two World Wars – the system of elections into both chambers was the same with the constitutional presumptions that each chamber would be elected at a different time (their terms differed – 6 years for the Chamber of Deputies and 8 years for the Senate), in practice the upper chamber was regularly dissolved earlier in order to have elections into both at the same time. As a result, their compositions (in respect of proportional representation of political parties) were almost identical.

objection systematically applies when the second chamber is elected on the basis of popular representation, in particular, in a system of perfect bicameralism.[19]

23. The *delay/blockage objection*: duplication of parliamentary procedures leads to delays in decision-making as the legislative process would become more difficult and cumbersome, less rapid and efficient. In the case of strong second chambers, it can even block the system whenever they use their veto powers, especially if used in a biased manner.

24. The *cost objection*: second chambers not only duplicate procedures, but also increase the costs of parliamentary functioning.

25. The *heterogeneities objection*: very often second chambers are designed to represent territorial entities that are not homogeneous among themselves: special/ordinary regions; regions/local governments; regions/ethnic groups/linguistic minorities/ or even groups not well represented by the lower chambers. But even in homogeneous second chambers (representing regions or states - *Länder* - identical in nature and competences) the territories represented will diverge significantly in size or population.

26. The *new institutional designs objection*: the difficulties of second chambers to represent specific and diverse interests can be avoided by using other, more effective institutional designs to represent those interests without resorting to dilettante bicameralism. The same can be said with regard to the technical functions assigned to second chambers. In other words, the functions of a second chamber can be performed by other bodies that are better suited to do so and not so costly in terms of political responsibility, money, and risks for timely decision-making.

C. Arguments favouring bicameralism

27. Inasmuch as it can take different forms,[20] bicameralism remains widely practised.[21] The bicameral choice of each country depends on the history, the own trajectory of each political society, the place and power of the opposition and above all the impact of changes in the State which, by conferring many powers on the territories, have in practice significantly affected the prerogatives of the second chambers.[22] Nevertheless, several functions or justifications remain and seem to indicate that bicameralism is still very much alive and kicking. The following elements

[19] See Italy, for example. From the questionnaire: The composition of the two chambers is the same. One is the mirror of the other on a smaller scale, except for minor differences. In terms of powers/competences, the Italian parliamentarism is perfectly symmetrical and the two chambers enjoy the same status. In recent times the bicameral system is becoming very problematic and in fact in the praxis it operates as an "alternate unicameralism": decisions are taken in one chamber – either Senate or Chamber of deputies – whereas the other one merely confirms the decision taken by the first one.

[20] Classical unitary bicameralism or federal structural bicameralism, an upper chamber of the council type with an imperative mandate (Germany) or of the senate type with a representative mandate (France), symmetrical or asymmetrical bicameralism, an instance of cooperative federalism or a means of regulating the parliamentary system.

[21] "The decision to bring together the Presidents of all the Senates and Second Chambers in the world for the first time in the spring of the year 2000 was not simply a matter of celebrating a highly symbolic date in a particularly solemn way. In fact, it was necessary once it had been established that there had been a major revival of bicameralism in contemporary parliaments. This observation is based on a few simple, objective facts: at the beginning of the 1970s, some 45 countries had a bicameral system, but today this number has risen to more than 80, and many countries are considering creating a Senate or have decided to do so without the Chamber yet being created. What is more, far from being an "anomaly", bicameralism is currently the parliamentary system under which the largest number of the planet's inhabitants live, and the one chosen by the most economically powerful states: of the fifteen countries in the world with the highest gross domestic products, only two - the People's Republic of China and South Korea - have a unicameral parliament". *Le bicamérisme dans le monde : situation et perspectives*, La Galaxie Senat, www.senat.fr

[22] "This phenomenon of the transformation of the State, which results in the transfer of a large part of the legislative power of the national parliament to the assemblies of the federated entities and the consequent reduction of the second chamber to a secondary role, can be found in the regional States as well as in Spain, Italy and the United Kingdom". Portelli Hugues, *Bicamérisme ou pouvoir régional*, Pouvoirs, 2016/4 (No. 159), pages 101-108.

concur to determine the need/preference for a bicameral system or appear to militate in favour of its success, bearing in mind that each virtue may in itself possess its opposite element.

28. *The perception as added value.* Second chambers must enjoy a specific "legitimacy perceived by the public"[23] by performing important and useful functions within the constitutional order. In other words, they must find their justification in the added value they bring to the political system. This added value is to be found in the roles entrusted to the second chambers by the Constitution, which may or may not be expressly outlined and may be present together with varying relative weight.

29. *Counterweight role*. One of the main purposes of the second chambers is to become one of the checks and balances of the constitutional order, particularly within the legislature itself. This is a crucial purpose insofar as it is primarily a check on the lower house, which represents the people. This function to provide an internal division of legislative power is probably often behind the decision to adopt a bicameral parliament. In other words, the major reason for establishing a second chamber "is the evil effect produced upon the mind of any holder of power, whether an individual or an assembly, by the consciousness of having only themselves to consult".[24] This function explains why the most frequent power of second chambers is the one to impose a veto (definitive or suspensive) over the decisions made by the lower chamber. Faced with the majority bloc, especially in a parliamentary system, the second chamber can act as a counterweight and a counter-power, becoming the defender of public freedoms (French Senate) and acting as the guardian of the fundamental pact at the time of constitutional revisions (Germany, United States, Czechia, etc.). Depending on the constitutional design, the second chamber could also constitute an extra check over the executive in the interests of the separation of powers and the system of checks and balances.

30. *Representation of territories*. Whether for the federated states in a federal state or for the provinces, regions or communities in decentralised or regionalised unitary states, their participation in the decision-making is an essential justification for bicameralism in Venice Commission member states. Second chambers may be designed to represent territorial interests in regional or unitary states (even in some federations where second chambers are not designed to represent member states) to balance the popular representation of the lower chambers. Thus, these chambers participate in legislative, executive, constitutional and financial matters and defend local interests in any decision-making process. In a federal state, this is the quid pro quo for relinquishing sovereignty to the federal government (United States, Switzerland, Germany). Second chambers are an essential feature of federalism through which member states take part in the federal parliament. At the same time, the second chamber provides a counterbalance to the powers vested in other federal bodies, not only the lower house. In a regionalised state, it is a way of remaining united by obtaining the greatest possible degree of autonomy (Spain, Italy).

31. *Representation of other interests that are not duly accommodated in the lower house*. One of the main current justifications of a bicameral model is that it allows the balancing of different interests in an institutionalised way. Initially conservative (United Kingdom, France) and supposed to attenuate the voice of the people, the second chamber can adorn itself with another function, tribunitian and inclusive,[25] by aggregating categories not taken into account by the first chamber, such as certain professions, young people, the diaspora and professional chambers

[23] Meg Russell, *The Contemporary House of Lords: Westminster Bicameralism Revived*, 11 July 2013, pages 228–257.
[24] John Stuart Mill, *Considerations on Representative Government*, Harper & Brothers, New York, 1862.
[25] Many States are engaged in processes of democratisation or deepening of the rule of law which, for their very success, require the involvement of sections of the nation which, spontaneously and for a wide variety of reasons, are not inclined to participate: bicameralism assumes this function of integrating and stabilising a transition process which is the key to the success of democratisation.

(Slovenia, Ireland, Morocco[26]) or by channelling a diverse representation of interests, such as linguistic, ethnic, religious, etc (Bosnia and Herzegovina,[27] Canada). The inclusion of these interests is useful in building a "second opinion" not identical to that of the lower chamber that may lead to a better representation of the national interest.

32. *Regulation of community tensions.* Political transitions are often accompanied by relevant regulatory mechanisms (new elections, transitional justice, constitutional justice, mediation, new constitution), and this toolbox could be supplemented by decentralisation and bicameralism. Whereas many Eastern European countries have resisted bicameralism in their democratic transition,[28] others considered the adoption of bicameralism as a solution to dissuade and prevent political conflicts. The Belgian case is not far removed from these concerns, given that even in the most serious political crises, resilience has benefited from the territorialisation of decision-making processes.

33. *Reflective role (moderation)*. A virtue of upper houses is that they act as a brake on hasty and ill-considered legislative action, allow time for more reflection and "sober second thought", and provide a necessary check and balance on the political impulse by providing a forum for a greater diversity of views and input into the legislative product. "Faced with the ardour of the nation's direct representatives, it may be wise to take into consideration the voice of the elders, the rural population, the experts and the electors, who will force discussions, exchanges of arguments and the wisest law. The search for consensus is a factor of stability".[29] As the Venice Commission already noted: "Second chambers are often characterised as embodying a particular measure of wisdom, balance and expertise".[30]

34. *Technical role: improving the legislation.* The Venice Commission has observed that bicameralism constitutes a guarantee of efficiency by improving the quality of legislative production and second chambers have made outstanding contributions to the law-making process.[31] Also it has been argued that legislative inflation, along with "the growing complexity and technicality of problems", and the rapid expansion of the field of law and legislation "justify

[26] Adopted in 1962, then abandoned before being re-established in 1996, Moroccan bicameralism is an interesting example from the point of view of law and political science in that it raises questions about its presence, then its absence, and finally its resurgence. It is worth asking whether it does not ultimately tell the story of the relationship between royal power and representative power. Do the two thirds, then the third in a unicameral model, then the bicameral option with an indirectly elected second chamber, not play the role of supporters for the regime (Leveau Remy, *Le fellah marocain, défenseur du trône*, Collection Références, Presses de Sciences Po, 1985, page 300), as the second chambers of unitary states always did at the outset putting the brakes on the results of the people's chamber and blocking progressive reforms (see in this respect the French Senate's long-standing reticence regarding paid holidays, income tax and women's suffrage)? Or are they relays for the redeployment of elites, as was asserted by an informed observer for whom "in Morocco, we have a societal bicameralism, different in nature from the aristocratic (House of Lords, in Great Britain) or political type, prevalent above all in federal states. It brings together representatives of different elites linked to social pluralism. And it has its place and its legitimacy, which have nothing to do with the Economic and Social Council, which has no legislative powers, confined as it is to an advisory role. This is neither a "burden" nor a "luxury" but a necessary condition for consolidating parliamentary democracy. It is up to the parties to take full advantage of this opportunity by ensuring that their own candidates are better selected" (Sehimi Mustapha, *Débat sur l'utilité du bicaméralisme*, Maroc hebdo, 8 October 2015; Mohamed Madani does not share the same observation; indeed, the latter maintains that "the social content of bicameralism was profoundly aristocratic, it was the bicameralism of the *zaouias* and the *chorfas*, in Mohamed Madani, *Le bicaméralisme, un projet héritage, forum politique*, Fondation A. Bouabid*,* 1999, page 47).

[27] It should be noted that the case of Bosnia and Herzegovina is subject to difficult comparisons due to its unique arrangement octroyed by international agreements to end the war.

[28] Ukraine, Slovakia, Serbia, Montenegro, Macedonia, Moldova, Lithuania, Hungary, Georgia, Estonia, Croatia, Azerbaijan, Armenia, Albania, Bulgaria, Latvia, Kosovo, Kyrgyzstan.

[29] Larcher Gérard, *Le Sénat et le bicamérisme, garants de la démocratie*, Les Cahiers Portalis 2017/1 (N° 4), pages 9 to 18.

[30] Patrice Gélard, CDL-AD(2006)059rev, *Report on Second Chambers in Europe, "Parliamentary complexity or democratic necessity?"*, para. 40; Venice Commission, CDL-AD(2022)004, Chile - Opinion on the drafting and adoption of a new Constitution, para. 37.

[31] Patrice Gélard, CDL-AD(2006)059rev, *op. cit.*, para. 40; and Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 37.

the intervention of a second chamber responsible both for considering bills from a new angle and for re-reading the texts adopted by the other chamber."[32]

35. *Constitutional safeguard role*. Some of the shared characteristics of second chambers in the Venice Commission's member states suggest that second chambers play a constitutional safeguard role in dealing with legally or politically sensitive issues. Thus, the second chambers play an important role (almost symmetrical in all cases and at times with a stronger position vis-à-vis the lower chamber) in procedures for amending the constitution; in deciding on treaties relating to supranational integration or of a quasi-constitutional nature; in the appointment of high-ranking officials; in powers related to the head of state (especially impeachment procedures in presidential states, but also with regard to symbolic acts linked to monarchies), etc. These functions are safeguarded by guaranteeing the consent of the second chamber to modify its constitutional position and powers. The abolition of the senate (specially in federal states) is usually considered a global reform of the constitution and frequently requires the consent of the member states (that may be extended to the equal representation of the states in the senate, e.g., United States).

36. *Continuity and stability role*: Second chambers may convey, by their composition and the length of their members' terms of office, a greater continuity and stability of the political system compared to the overall renewals of the lower chambers. They can counterbalance radical changes resulting from strong shifts in the political majorities at any given time. This role makes them particularly suitable to symbolise the continuity and permanence of the state and to deal with the head of state on an equal footing with the lower house or to play a moderating role regarding basic constitutional decisions. This could also contribute to reinforcing the confidence of the public and other states.

37. To conclude, and besides the above traditional patterns of argumentation, it is important to stress that the bicameral model can be used for bringing democracy closer to the people and enhancing participative processes. Indeed, bicameral models have the potential of being further developed in order to give a voice to those groups of society (e.g., ethnic or linguistic minorities, women, people with disabilities, etc.) not adequately represented in a purely majoritarian system.[33]

III. Categorisation of Second Chambers

A. Types of second chambers

38. Today, a total of 24 out of 61 Venice Commission member states (40%)[34] have a bicameral parliamentary system, that is a legislature that consists of two chambers.

39. Second chambers in parliamentary systems of Venice Commission member states vary widely in terms of their composition, powers and working methods. To understand better their role in modern political and constitutional systems and how they work, it may help to classify them.

40. The following subsections will discuss second chambers, classified according to:

- their composition and their resulting representative nature;

[32] Célestin Keutcha Tchapnga, *Droit constitutionnel et conflits politiques dans les États francophones d'Afrique noire*, Revue française de droit constitutionnel, 2005/3 (n° 63), pages 451-491.
[33] See, for example, the reply to the questionnaire of Belgium regarding the discussion about "participative democracy".
[34] Algeria, Austria, Belgium, Bosnia and Herzegovina, Brazil, Canada, Chile, Czechia, France, Germany, Ireland, Italy, Kazakhstan, Mexico, Morocco, the Netherlands, Poland, Romania, Slovenia, Spain, Switzerland, Tunisia, United Kingdom and United States of America.

- the method by which their members are selected; and
- their powers.

41. The next section will look at their relationship with the lower house.

1. The composition and representative nature of second chambers

a. Federal second chambers

42. In federations, the main reason for choosing a bicameral system stems from the form in which the relevant states were born: the union of pre-existing states that retained residual sovereignty through their equal participation in a second chamber (either a senate, as in the United States, or a council/*Rat* in the Holy Roman Empire of the German Nation. Thus, the second chambers and the power conferred on them were contractual residues,[35] in those federations which had their origin in previous confederations.

43. Whether it was born of aggregation (United States) or devolution (Belgium), the foundation of bicameralism in federated states lies in the compromise between unity and diversity and the search for a balance between cohesion and self-government.

44. The representation and participation of the constituent units or federated states in federal decision-making and the exercise of power at the federal level is also achieved through other constitutional (executive or judicial) bodies, but most characteristically it takes place in the upper house of the federal legislature.

45. While the first houses or assemblies, such as the House of Commons or House of Representatives, have tended to be based on the principle of representation by population, the upper house or second chamber has usually been designed to ensure that smaller provinces or states have more weight and thus a stronger voice.[36]

46. There are two types of representation of the constituent units in federal upper houses. The principle of equal representation of unequal states means that federated states have an equal representation in the second chamber, regardless of their size or other factors. That is, each constituent unit sends the same number of delegates to the second chamber of the federal legislature (Brazil, United States and, partially, Switzerland. For more details, see the section on the methods of election below). The equal legislative representation of the constituent states was based on the 18th and 19th century concept of federalism, which regarded the legislature as the supreme branch of power among the state powers and therefore saw parliamentary representation as the strongest guarantee of the sovereignty of the constituent units. The equal representation of constituent parts in the upper house is not only based on tradition but also serves to compensate for the territorial imbalance reflected in the composition of the lower house, where, because of universal suffrage, the more populous federated states are overrepresented.

[35] Antonio La Pergola, *Residui contrattualistici e struttura federale nell'ordinamento degli Stati Uniti*, Milano, 1969.
[36] "The essence of federal systems as political systems is that they are intended to be based not solely on majoritarian principles but upon the recognition and accommodation of diversity. This has almost invariably been translated in the institutions of the federal legislature into a majoritarian first chamber and a non-majoritarian representation of regional interests in the second chamber." Ronald L. Watts, *Bicameralism in Federal Parliamentary Systems*, in *Protecting Canadian Democracy—The Senate You Never Knew*, edited by Serge Joyal, McGill-Queen's University Press, 2003, page 69. See also David E. Smith's succinct observation: "Federalism and bicameralism go hand-in-hand. Few federal systems are not bicameral, and none of these is a major federation." In Smith, *Bicameralism: A Concept in Search of a Theory,* in *The Canadian Senate in Bicameral Perspective,* University of Toronto Press, 2006, page 89.

47. The weighted representation of the constituent units is the other widespread principle of federal legislatures. According to this principle, the federated states send members to the upper house of parliament in proportion to their population. For example, according to the German Federal Constitution, in the German *Bundesrat* (Federal Council) "[E]ach *Land* shall have at least three votes; *Länder* with more than two million inhabitants shall have four, *Länder* with more than six million inhabitants five and *Länder* with more than seven million inhabitants six votes",[37] and the *Länder* can appoint as many members as they have votes. The composition of the Austrian *Bundesrat* (Federal Council) is even more proportional, with the largest *Land* having 12 members in the second chamber, while each *Land* is entitled a minimum representation by 3. However, to avoid *Länder* with large populations gaining decisive influence in the upper house, strict proportionality is not usually applied, instead of which "weighted representation" is in use, where the larger constituent units have more seats than the smaller ones.

48. There are also *mixed systems*. For example, in Mexico, the principle of majority, the principle of largest minority and the proportional representation coexist in the electoral system of the Senate. In Belgium and Bosnia and Herzegovina, the representation of members combines the representation of entities and ethnic/linguistic criteria.[38]

49. Finally, in Canada a special case of a second chamber may be observed, in a federation that, to some extent, follows the Westminster tradition. Its members are appointed by the Governor General on the advice of the federal Prime Minister, on a regional territorial basis generally reflecting the provinces and territories that constitute the federation.

b. Second chambers of regionalised (and decentralised) countries

50. Representation of territorial interests in an upper house is also found in so-called "regionalised" or "decentralised" states. France, Italy, Spain, the Netherlands and, with increased devolution, the United Kingdom are usually included in this category (as was Belgium until the 1993 constitutional reform that made it a federal state) because their regions ("nations" in the United Kingdom, or "comunidades autónomas" in Spain) which are larger territorial units within the state, have a special constitutional and administrative status that includes their autonomous provincial (regional) legislature and executive. With increasing regionalisation, some regional states (primarily Spain and Italy) can be seen as a transition between unitary and federal state structures.

51. In these countries, regional autonomy and the structure and operation of autonomous institutions are to some extent similar to those of federal states, with the fundamental difference that they do not have constitutions. In fact, one of the most common differences between a federated state and a decentralised or regionalised territorial authority lies in the fact that the latter does not have constituent power because it derives its competencies from the national constitution.

52. It is worth underlining that in some cases of increasing devolution of legislative competences to regions (Italy, Spain, United Kingdom) a second chamber is constitutionally provided for, but it is not designed primarily to represent the territorial interests of the components on which the States are divided (Regioni, Autonomous Communities and Nations, respectively). Thus, not all decentralised countries (in particular those with relevant legislative competences) have a second legislative chamber tailored primarily to represent territorial interests.

[37] Basic Law, Article 51 (2).
[38] In Bosnia and Herzegovina, ten members are elected by the federation (five Croats and five Bosniaks) and five by the Republika Srpska (five Serbs). While in Belgium, 29 senators are elected by the Flemish Parliament, ten senators by the Parliament of the French Community, eight by the Walloon Parliament, two senators by the French language group in the Brussels Parliament and one senator by the Parliament of the German-speaking community.

53. It should be noted that, formally, decentralised countries are unitary (i.e., non-federal) states, with two forms of representation of territorial interests in their parliamentary second chambers. A distinction can be made between the upper chambers that represent the territorial interests in general, and those that give voice to the (regional, provincial) self-government of those territorial units through the selection of members by indirect election on regional/provincial/local bases. The representation of territorial interests in general (i.e., the population of the constituent units) leads to the upper houses of popular representation (see below).

54. The African unitary states which are member of the Venice Commission have opted for decentralisation, or even regionalisation, to a greater or lesser extent, and this has been achieved with second territorial chambers with indirect suffrage. This is the case in Morocco,[39] Algeria[40] and Tunisia.[41]

c. Second chambers based on popular representation

55. These second chambers are elected at least largely in the same way as the lower chambers, that is, by universal, equal, direct and secret suffrage. Consequently, party politics plays a dominant role in the functioning of these upper houses, which does not, however, exclude the representation of special interests.

56. This group includes the Italian Senate and, largely based on popular representation, the second chamber of the Spanish Cortes. Among the post-communist countries, this kind of senate was established in Romania and in Czechia.[42] In Romania, members of both houses are directly elected under the same electoral system. The simultaneous application of variants of the principle of popular representation in Czechia is interesting. The Czech Senate is created by a two-round majority system, which, from the point of view of the electoral system, counterbalances the proportional system of the Chamber of Deputies. Also, the Polish Senat and the Chilean Senado fall within this category of second chambers.

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[39] Moroccan Constitution, 2011, art. 63: "The House of Councillors comprises a minimum of 90 and a maximum of 120 members, elected by indirect universal suffrage for a six-year term, as follows: - three-fifths of the members representing local authorities. This number is distributed among the regions of the Kingdom, in proportion to their respective populations and observing equity between the regions. The third reserved for the region is elected at the level of each region by the Regional Council from among its members. Two-fifths of the members elected in each region by electoral colleges made up of elected representatives of the most representative professional chambers and employers' organisations, and members elected at national level by an electoral college made up of employee representatives.

[40] Algerian Constitution, 2020, art. 121: "The members of the People's National Assembly are elected by direct universal suffrage and secret ballot. Two thirds (2/3) of the members of the Council of the Nation are elected by indirect and secret suffrage, at the rate of two seats per wilaya, from among the members of the Communal People's Assemblies and the members of the People's Assemblies of the wilayas. One third (1/3) of the members of the Council of the Nation shall be appointed by the President of the Republic from among national personalities and experts in the scientific, professional, economic and social fields".

[41] Tunisian Constitution, 2022: art. 81(2): "The National Council of Regions and Districts. The National Council of Regions and Districts is made up of elected deputies from the regions and districts. The members of each regional council shall elect from among themselves three members to represent their regions on the National Council of Regions and Districts. The elected members of the regional councils of each district elect one of their number to represent the district on the National Council of Regions and Districts. The deputy representing the district is replaced under the conditions laid down in the electoral law." This provision needs to be put into perspective, given that the new Constitution abolished the notion of legislative power by limiting it to one function.

[42] In both countries, the introduction of a two-chamber system was very controversial, with the result that in Czechia, for example, members of the Senate were elected only in the autumn of 1996, three years after the formal introduction of bicameralism with the new constitution for the independent Czechia, after the dissolution of Czechoslovakia. In both countries, advocates of the bicameral system have mostly invoked the familiar arguments of following their (pre-communist) tradition or the old European models and making legislation more robust. Of course, there were also political considerations linked to specific situations. For example, during the constitutional design, there was a widespread opinion that the real reason for the creation of the Czech Senate was to find a suitable place for the former Czechoslovak upper house members providing them for new political positions. Milos Calda-Mark Gillis, *Czech Republic. Is legislative illegitimacy the price of political effectiveness?*, East European Constitutional Review 2 (1995).

57. In most of these countries (Czechia, Poland, Spain) there are currently majoritarian electoral systems for the selection of senators by popular representation.

d. Second chambers based on other organisational principles

58. Federalism, the representation of territorial interests and popular representation are the most common organisational principles for European second chambers. In addition, there are also upper chambers structured according to specific or multiple principles, that have a different representative nature compared to those discussed so far.

59. For example, a distinction can be made between a person as citizen and a person in relation to the categories to which s/he belongs: professions, functions, women, young people, the diaspora, ethnic, linguistic and/or religious communities, etc. The second chamber is thus the political space in which the voices of certain professions, social classes, ethnic groups or categories of humanity that are insufficiently represented in the lower chamber are represented as such. This recognition of certain specificities can be seen in the United Kingdom in the appointment of spiritual lords and temporal lords[43] (and several different selection methods and entitlements), in the representation of corporatism in Ireland,[44] Morocco,[45] and Slovenia[46] of ethnic and linguistic communities in Bosnia and Herzegovina[47] and Belgium.[48]

60. Corporatism is still present in most modern democracies to some extent, but even in the countries where it is more strongly present (e.g., in the form of social partnership in Austria and in the system of so-called corporatist pluralism in northern Europe), it manifests itself primarily in the representation of political interests, rather than as an institutional principle.

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[43] https://www.parliament.uk/site-information/glossary/lords-spiritual-and-temporal/

[44] Members of Seanad Éireann, the upper house of the Irish parliament, are selected through a combination of appointed and elected processes. There are 60 members of the Seanad, with 43 elected by various panels and 6 elected by graduates of certain universities. The remaining 11 members are appointed by the Taoiseach (Prime Minister) of Ireland. The 43 elected members of the Seanad elected from five special panels of nominees (known as vocational panels) are chosen by an electorate consisting of TDs (members of Dáil Éireann), outgoing senators and members of city and county councils. Nomination is restrictive for the panel seats with only Oireachtas members and designated nominating bodies entitled to nominate. Each of the five panels consists, in theory, of individuals possessing special knowledge of, or experience in, one of five specific fields. In practice the nominees are party members, often, though not always, failed or aspiring Dáil candidates.

[45] In Morocco, the members of the second chamber, called the Chamber of Councillors, are elected at the level of each region, by indirect universal suffrage by electoral colleges, with 3/5 representing local authorities and 2/5 representing the most representative professional chambers and employers' organisations and employees' representatives.

[46] In accordance with the Slovenian Constitution, the National Council represents social, economic, professional and local interest groups. 40 members of the National Council include 22 representatives of local interests, six representatives of non-commercial activities, four representatives of employers and four of employees, and four representatives of farmers, crafts and the liberal professions. As provided for in article 96 of the Constitution, the National Council includes four representatives of employers, elected by law by the electorate (electorates), made up of elected representatives of the Chamber of Commerce and employers' associations organised in the country. Each chamber of commerce and employers' organisation elects one member of the electorate per 10,000 employees from among its members.

[47] Delegates to the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina are elected by indirect suffrage. The designated Croat and Bosniak delegates of the Federation are elected by the Croat and Bosniak delegates to the House of Peoples of the Federation. Delegates from Republika Srpska are elected by the National Assembly of Republika Srpska. Delegates are elected on an ethnic basis.

[48] Belgian Constitution, 2023, Senators from the federated entities: 29 Senators appointed by the Flemish Parliament, 10 Senators appointed by the Parliament of the French Community, 8 Senators appointed by the Walloon Parliament, 2 Senators appointed by the French language group of the Brussels Parliament and one Senator delegated by the Parliament of the German-speaking Community. Seats are allocated according to a system of proportional representation, based on the results of the elections to the parliament concerned. The 10 co-opted senators (4 French-speaking and 6 Dutch-speaking) are appointed by the French-speaking/Dutch-speaking senators from the federated entities. Seats are allocated according to a system of proportional representation, based on the results of elections to the House of Representatives.

61. In some countries (Algeria,[49] Kazakhstan,[50] Italy[51]) territorial interests (indirect election on a territorial basis) have been combined with presidential interests (appointment by the president). In Italy[52] and in France,[53] citizens abroad elect a certain number of senators. In Canada**,** in the early years of the Senate, lawyers and other professional elites tended to be appointed. Over time, an enlightened appointments policy has seen much more diversity, including an increase in the number of women,[54] aboriginal, linguistic and other minority members.

2. Methods of election or selection of second chambers' members

62. Second chambers usually have fewer members than the lower houses which are always elected by popular vote, partly because of their special representative nature and partly because it helps in giving a sober second thought to legislation and makes a richer debate possible. They tend to have more limited powers compared to first chambers, which is particularly important when disagreements between the two chambers in parliamentary decision-making are ultimately resolved in a joint session, in which case the lower house may be able to enforce its numerical majority.

63. Members of the second chamber are usually selected in a different way from those of the lower house, because of the difference in their representativeness. There are some exemptions to this rule, such as in Italy, where members of the Senate are elected with the same electoral system as the lower chamber.

64. Even where the composition of both chambers is based on popular representation, there are differences in their electoral systems or the conditions of voting. There is, of course, a close correlation between the method of selection and the representational nature of the second chamber, but not a perfect correspondence. The same type of representation, in particular the representation of territorial units, can be achieved by several different selection methods.

65. As said earlier, an upper house might represent the linguistic community (Belgium), national community (Bosnia and Herzegovina), regions, provinces and territories (Canada, Slovenia) or professional or interest groups (Slovenia). While the large majority of European upper chambers are meant to represent territories or some particular groups,[55] some upper chambers are not constituted in that way, as their primary purpose is to safeguard the check-and-balance principle inside the legislative branch itself (e.g., the Czech and the Polish Senate).[56] Therefore, different constituting patterns among upper chambers correspond largely to their purpose and role in a constitutional system.[57] There are four ways in which the upper chambers are constituted: (a) direct elections, (b) indirect elections, (c) appointment and (d) mixed models.

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[49] Algerian Constitution, 2021, art. 121, paragraph 2: "One third (1/3) of the members of the Council of the Nation shall be appointed by the President of the Republic from among national figures and experts in the scientific, professional, economic and social fields".
[50] Ten deputies of the Senate are appointed by the President of the Republic, five of which - at the suggestion of the Assembly of the People of Kazakhstan (clause 2, article 50 of the Constitution of the Republic of Kazakhstan).
[51] In Italy, five members nominated by the president of the Republic with life tenure (article 59 of the Constitution). Also, the former presidents of the Republic, after ending their term, are ex officio senators with life tenure.
[52] Article 57 of the Italian Constitution: The Senate of the Republic is elected on a regional basis, with the exception of the seats assigned to the Overseas Constituency. The number of Senators to be elected is two hundred, four of which are elected in the Overseas Constituency.
[53] French Constitution, 1958, art. 24.5: French citizens established outside France are represented in the National Assembly and the Senate. The 2008 constitutional revision extended their representation even to the National Assembly.
[54] In the famous Edwards case, the Judicial Committee of the Privy Council ruled that women were "qualified persons" within the meaning of the provisions of the British North America Act, 1867, and therefore eligible for appointment to the Senate.
[55] Paolo Passaglia, *Unicameralism, bicameralism, multicameralism: Evolution and trends in Europe*. Perspectives on Federalism, 10.2 (2018), page 17.
[56] Petr Just and Jakub Charvát. *Second parliamentary chambers as safeguards against democratic backsliding? Case study of Czech and Polish senates*. Eastern Journal of European Studies (2022).
[57] See, for example, Paolo Passaglia, *op. cit.*, pages 10-15.

Direct Elections	Indirect elections	Appointment	Mixed models
Czechia	Austria	Germany	Belgium
Poland	France	Canada	Algeria
Italy	Bosnia and Herzegovina		Kazakhstan
Direct Elections	**Indirect elections**	**Appointment**	**Mixed models**
Switzerland	Morocco		Ireland
Mexico	Slovenia		Spain
Romania	The Netherlands		The United Kingdom
United States	Tunisia		
Chile			
Brazil			

Table 1: Different ways for constituting the upper chambers

a. Direct elections

66. A widespread method of constituting a second chamber is direct election. Thus, the representatives are directly accountable to their electorate. Given that the principle of a free mandate applies in almost every second chamber, this political responsibility can be exercised only through elections. While direct elections, in principle, provide the upper chamber with the same degree of democratic legitimacy as the lower chamber, different electoral systems and different terms of elections (in some cases combined with only a partial re-election in regular intervals) could result in a different perception of political legitimacy (e.g., proportional systems are generally considered as better means to represent the different political orientations existing in society than majoritarian systems).[58]

67. For instance, in Poland all 100 senators are elected in single-member constituencies, according to a single-round first-past-the-post voting system. Likewise, Brazil applies a first-past-the-post voting model when one third of the Federal Senate is renewed. However, when the two thirds of the upper chamber are elected, a pair of candidates is elected in each constituency, using a plurality voting system. Similarly, all 81 members of the Czech Senate are elected in single-member constituencies. However, unlike Poland and Brazil, Czechia applies a two-round majority system with a week between the first and second rounds. Senators in the United States are elected in dual-seat constituencies (two from each State).

68. In Switzerland, each of the 26 cantons can decide on the electoral system for the seats they hold in the election of members of the Council of States. All cantons except Neuchâtel and Jura apply a majority electoral system. Two representatives to the Council of States are elected in each canton, except for a group of very small cantons (so-called “half-cantons”) with only one representative.

69. By contrast, in Italy, the Senate is constituted in a parallel voting system, with 37% of seats allocated using first-past-the-post voting and 63% using proportional representation; 196 senators are from Italian constituencies and four senators are elected by Italian citizens living abroad. Moreover, there is a small number of senators for life (*senatori a vita*), either appointed

[58] Paolo Passaglia, *op. cit.*, page 22.

or *ex officio* (currently five).[59] A parallel voting system also exists in Mexico, where 64 members are elected by the principle of majority (two for each state), 32 are elected by the principle of largest minority[60] (one per state) and 32 are elected by proportional representation.

70. In Romania, members of the Senate are elected by direct popular vote using party-list proportional representation in 43 electoral districts. Similarly, in Chile, Senators are elected in 15 multi-mandate constituencies based on proportional representation. They are elected for eight years and renewed by half every four years.

71. The electoral systems further differ in the upper chamber members' term of office or tenure. Members of upper chambers are elected for four years (Poland, Romania and Switzerland), five years (Italy), six years (Czechia, Mexico and the United States) and eight years (Brazil). The Czech and the US Senate apply a continuity rule as one-third of Senators is renewed every second year. A continuity rule is introduced also in the Brazilian Federal Senate, where the renewal of representation occurs alternately every four years, by one and two thirds. The tenure is eight years and does not coincide with the tenure of the lower chamber. Similarly, in Mexico, the six-year tenure of the Senate does not coincide with a three-year tenure of the lower chamber.[61] In contrast, the Mexican Senate is not a continuous body, as the Senate is replaced all at once every six years. However, four countries have identical terms for members of both chambers (Italy, Poland, Romania and Switzerland).

Country	Tenure of upper chamber (years)	Tenure of lower chamber (years)	Continuity rule in upper chambers	Majority system for upper chambers	Proportional system for upper chambers	Parallel voting system to both chambers
Czechia	6	4	1/3 every two years	x		
Chile	8	4	1/2 every four years		x	
Italy	5	5	-			x
Mexico	6	3	-			x
Poland	4	4	-	x		
Romania	4	4	-		x	
Switzerland	4	4	-	x		
United States	6	2	1/3 every two years	x		
Brazil	8	4	Alternately 1/3 and 2/3 every four years	x		

Table 2: Electoral systems in countries that have a direct vote to the upper chamber

72. In some countries there has been a discussion to modify the electoral model or abandon the direct vote. For example, in Poland, it is sometimes recommended to shift the majoritarian system to a proportional system or to replace the elections in favour of appointment procedures (e.g., by the provincial governments).[62]

[59] Senato della Repubblica, Senatori a vita, Available from: https://www.senato.it/leg/19/BGT/Schede/Attsen/SenatoriAVita.html

[60] According to Article 56 of the Constitution of Mexico: "political parties must register a list with two sets of candidates. The largest minority seat shall be granted to the set of candidates heading the list of the political party that shall have attained the second place in the number of votes casted in the corresponding state".

[61] Nevertheless, every six years general elections are held where both, Senate and lower chamber, are elected.

[62] Kulas Bartłomiej, *Polish senate – House that needs to be reformed*. Global Challenges-Scientific Solutions II, 2020.

b. Indirect elections

73. The Venice Commission has previously stated that whereas direct election of the national legislative assembly (and regional or local representative bodies) is one of the principal aspects of the European constitutional and democratic heritage, the second chamber of a bicameral system, does not need to be elected by direct elections, in order to be in line with European standards.[63] "Indirect suffrage is not in itself undemocratic, but it must be based on clear and transparent rules".[64]

74. In indirect elections, members of the second chambers are elected by the legislatures, the regional or local deliberative bodies, special electoral colleges or the governments of the constituent parts of the state. In such electoral systems, the upper house is accountable to the legislative or executive body that elected it. In federal states, this is the dominant election method.

75. In Austria, for example, members of the upper chamber (Federal Council) are elected indirectly, by the *Länder*'s legislatures. The seats are distributed among the federal *Länder* in proportion to their population so that the *Länder* with the smallest populations are entitled to three and those with the largest to 12 seats.[65] Since the members of the Federal Council are elected by the *Länder*'s legislatures for the duration of their respective legislative periods, the members of the Federal Council are not replaced all at once, but successively after every Provincial Parliamentary Election.

76. Indirect elections are also applied in federal countries whose electoral model is built on an ethnic basis. For example, the House of Peoples of the Parliamentary Assembly of Bosnia and Herzegovina is constituted by 5 Croat and 5 Bosniac delegates (elected by Croat and Bosniac delegates in the House of Peoples of the Federation) and 5 delegates from the Republika Srpska, which are elected by the National Assembly of Republika Srpska.

77. Notably, decentralised and unitary states also have indirect elections. In France, most senators are elected by the electoral college in each *département* whose members are popularly chosen through a mixed system of voting (partly majoritarian, partly proportional). Members of electoral colleges are elected by different voting systems in metropolitan and overseas territories. The tenure of the lower chamber is six years, and members are renewed by half every three years. This makes the upper chamber function as a permanent body, distinctive from the lower house, which is renewed every five years.

78. In Morocco, the members of the Chamber of Councillors are elected at the level of each region. They are composed of 72 representatives of local authorities (regions, municipalities, prefectures and provinces) and 48 representatives of the economic forces (professional chambers (20), professional organisations of employers (8) and employees (20)). They are all replaced at the same time.

79. In the Netherlands, Senators are elected on lists by the members of the twelve provincial councils and four electoral colleges of the Caribbean Netherlands and Dutch expatriates.

80. The National Council of Slovenia shows a similar model which emphasizes representation of various social, economic, professional and local interest groups. Different interest groups are represented in the National Council (four employer representatives, four employee

[63] Venice Commission, CDL-AD(2007)007, Opinion on the convention on the standards of democratic elections, electoral rights and freedoms in the member states of the commonwealth of independent states, para. 38.
[64] Patrice Gélard, CDL-AD(2006)059rev, *op. cit.*, para. 32; and Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 39.
[65] It is to be noted that the fair proportionality between the federated states is maintained in the way that the number of members to be delegated by the *Länder* is determined by the Federal President following every general census.

representatives, four representatives of farmers, craftsmen and professional occupations, six members of non-commercial activities and 22 representatives of local interests). Such composition makes the National Council a hybrid between a territorial and corporatist chamber.[66]

Country	Tenure of upper chamber (years)	Tenure of lower chamber (years)	Continuity rule	Electoral body	Proportional system	Parallel voting system
Austria	5-6	5	Provincial parliamentary election	Provincial parliaments	x	
France	6	5	Half members every 3 years	Electoral colleges in *département*		x
Bosnia and Herzegovina	4	4	-	House of Peoples + National Assembly of Republika Srpska		
Morocco	6	5	-	Local authorities and economic forces		
The Netherlands	4	4	-	Provincial councils + Electoral colleges		x
Tunisia	5	5	-	Regional councils and districts		x

Table 3: Electoral systems in countries that have an indirect vote to the upper chamber

c. Appointment (by the executive body of the federated states)

81. In Germany, uniquely, the *Länder* governments delegate the members of the Bundesrat. The *Länder* can send members to the second chamber of the federal legislature more or less in proportion to their population, that is, according to weighted representation (see Table 1). In this way, the Federal Council is composed of ministers and senior civil servants of the federal *Länder's* governments. Germany has 16 federated states - *Länder*, three of which (Berlin, Hamburg and Bremen) are city-states.

Table 1.
Distribution of seats between the German *Länder*

Federal state	Population (millions)	Number of seats
Baden-Württemberg	11.27	6
Bavaria	13.35	6
Berlin	3.74	4
Brandenburg	2.57	4
Bremen	0.68	3
Hamburg	1.89	3

[66] Paolo Passaglia, *op. cit.*, page 19.

Hesse	6.38	5
Lower Saxony	8.14	6
Mecklenburg-Vorpommern	1.63	3
North Rhein-Westphalia	18.12	6
Federal state	**Population (millions)**	**Number of seats**
Rheinland-Palatinate	4.16	4
Saarland	0.99	3
Saxony	4.08	4
Saxony-Anhalt	2.19	4
Schleswig-Holstein	2.95	4
Thuringia	2.13	4
		69

82. In Canada, Senators are appointed ("summoned") by the Governor General. In practice, and by constitutional convention, it is the Prime Minister who advises the Governor General as to whom to "summon" and appoint to the Senate. The law stipulates territorial criteria and specifies how many Senators represent provinces and territories. Senators originally enjoy a life tenure. However, in 1965, the Constitution was amended to set the retirement age at 75. Canada's constitutional and formal process of appointment by the Crown has come under critical scrutiny in many proposals, over the years, for Senate reform. Still, the Supreme Court of Canada voiced philosophical objections to an elected (or quasi-elected) Senate in its 2014 advisory opinion, as inconsistent with the Canadian constitutional design.[67]

83. Following the election of a new government, and further to some of the premises underlying this aspect of the Supreme Court's opinion, in January 2016, the Canadian government established the Independent Advisory Board for Senate Appointments, to provide for a new, more

[67] *Reference re Senate Reform*, [2014] 1 S.C.R. 704, at paras. 54-58: "54. The implementation of consultative elections would amend the Constitution of Canada by fundamentally altering its architecture. It would modify the Senate's role within our constitutional structure as a complementary legislative body of sober second thought.
55. The Constitution Act, 1867 contemplates a specific structure for the federal Parliament, "similar in Principle to that of the United Kingdom": preamble. The Act creates both a lower elected and an upper appointed legislative chamber: s. 17. It expressly provides that the members of the lower chamber — the House of Commons — "shall be elected" by the population of the various provinces: s. 37. By contrast, it provides that Senators shall be "summoned" (i.e. appointed) by the Governor General: ss. 24 and 32.
56. The contrast between election for members of the House of Commons and executive appointment for Senators is not an accident of history. The framers of the Constitution Act, 1867 deliberately chose executive appointment of Senators in order to allow the Senate to play the specific role of a complementary legislative body of "sober second thought".
57. As this Court wrote in the Upper House Reference, "[i]n creating the Senate in the manner provided in the Act, it is clear that the intention was to make the Senate a thoroughly independent body which could canvass dispassionately the measures of the House of Commons": p. 77 (emphasis added). The framers sought to endow the Senate with independence from the electoral process to which members of the House of Commons were subject, in order to remove Senators from a partisan political arena that required unremitting consideration of short-term political objectives.
58. Correlatively, the choice of executive appointment for Senators was also intended to ensure that the Senate would be a complementary legislative body, rather than a perennial rival of the House of Commons in the legislative process. Appointed Senators would not have a popular mandate — they would not have the expectations and legitimacy that stem from popular election. This would ensure that they would confine themselves to their role as a body mainly conducting legislative review, rather than as a coequal of the House of Commons. […]"

transparent, non-partisan and merit-based process for Senate candidatures and advice to the Prime Minister on potential Senate appointments.[68]

d. Mixed systems and other selection methods

84. In some member states, there are several ways of electing members of the upper house, that is, there are different routes to the second chamber. In Belgium, for example, since 2014, 50 senators have been elected by the five parliaments of the communities and regions, while ten members are co-opted by the French-language group (four) and Dutch-language group (six) of the Senate from the parties in proportion to their results in the last general elections. In Spain, senators are elected in two different ways with different constituencies. First, 208 of the 261 senators are directly elected by voters. The primary constituency is the province, and the electoral formula is majoritarian with some modification. Second, the remaining senators (57) are elected by the 17 autonomous parliaments. Each parliament votes for one senator plus one more for each million inhabitants of the autonomous community.

85. In some second chambers members are elected in other ways than by the general or dominant selection method. However, only few members can usually get into the upper house through these special means. In the Italian Senate, for example, some members who, despite having a lifetime membership, are not democratically elected but are appointed by the head of state for "outstanding merit", or who, as former Presidents of the Republic, are *ex officio* members.

86. In Algeria, half of the members of the Council of the Nation (87 out of 174) are renewed every three years for six-year terms. Two-thirds (58) are elected in an indirect vote by an electoral college in 58 electoral districts, while the remaining one-third (29) are established upon appointment by the President of Algeria. Similarly, 40 members of the upper chamber of Kazakhstan are elected by indirect, first-past-the-post ballot by an electoral college made up of delegates from the regions, while ten members are appointed by the President of the Republic.

87. Membership of the British House of Lords can be divided into several different groups. Since 1999, there have been 91 hereditary peers, elected by and from all hereditary peers (i.e., members of the chamber who, by historical tradition, have acquired the office by succession). The House has more than 600 so-called life peers, who have been appointed for life by the monarch, on the recommendation of the Prime Minister, for their social, political or economic achievement. Although most members represent political parties, there are non-partisan peers, as well as former office holders and spiritual lords, who sit by virtue of their ecclesiastical offices (they may be one of 26 Bishops authorised automatically to sit in the House of Lords.). The number of members of the House of Lords is not fixed by law, and its representative character is very complex. Noteworthy, from among European countries, a House of Lords, with such an aristocratic element in its composition, could be found only in the United Kingdom; and it could not be compared to any other European upper chamber.[69]

88. A combination of appointed and elected processes is also characteristic of the Irish upper chamber (the Seanad), where 43 out of 60 members are elected by various panels, six are elected by graduates of certain universities, and the remaining 11 are appointed by the Irish Prime Minister. There are currently five special panels (known as vocational panels), which

[68] The Advisory Board is an independent and non-partisan body whose mandate is to provide non-binding merit-based recommendations to the Prime Minister on Senate nominations: see the terms of reference and reports of the Committee since 2016, available online in English and French: https://www.canada.ca/en/campaign/independent-advisory-board-for-senate-appointments.html https://www.canada.ca/fr/campagne/comite-consultatif-independant-sur-les-nominations-au-senat.html

[69] Paolo Passaglia, *op. cit.*, page 17.

consist, in theory, of individuals possessing special knowledge of, or experience in, one of five specific fields (e.g., Agricultural Panel, Cultural and Educational Panel, etc.). The six university seats have traditionally been elected by graduates of a small number of universities listed in the Constitution. Finally, the Prime Minister appoints 11 members of the Seanad, with the goal of ensuring that there is a diverse range of expertise and viewpoints represented in the house.

3. Powers of second chambers: symmetrical and asymmetrical bicameral systems

89. The heterogeneity of parliamentary decision-making processes around the world demonstrates the open understanding of democracy to accomplish political and legal future-oriented decisions.[70] Thus, the allocation of powers between the chambers must set, at least, two objectives. On the one hand, a second chamber should enrich the democratic procedures to identify other standards of legitimacy (e.g., public welfare, efficacy, rule of law). On the other hand, the existence of two bodies within the legislature should enhance the value of checks and balances, as an essential characteristic of modern constitutional states.[71] The importance of the latter is, in theory, beyond question and can be identified as "[p]olitically the most important and functionally the most effective intra-organ control built into the legislative power holder".[72] In this sense, an important justification for a second chamber is the separation of powers to avoid the risk of abuse entailed by concentrating power into a single body and the enhancement of democracy by drawing upon a broader and more diversified base.

90. In order to assess whether the institutional arrangements of a bicameral configuration are able to achieve the indicated goals, a wide diversity of criteria and parameters has been developed. Unsurprisingly, the existing comparative constitutional studies offer a variety of classifications and terminology, revealing a lack of congruence and clarity in the way certain terms and expressions are defined and understood. Nevertheless, a complex understanding of bicameralism is needed, one that considers the diversity of the distribution of powers and tasks within a legislature.[73]

91. A well-established analysis regarding majoritarian and consensus democracies[74] distinguishes between strong and weak bicameralism on the basis of three features:[75] the formal constitutional powers that the two chambers have, their selection method and if the second chamber is elected by different methods or designated to overrepresent certain minorities. Based on these criteria,[76] bicameral legislatures can be classified as either symmetrical or

[70] Christoph Möllers, *The Three Branches. A Comparative Model of Separations of Powers*, Oxford University Press, 2013, page 84.
[71] Ernst-Wolfgang Böckenförde, *Constitutional and Political Theory. Selected Writings*, Oxford University Press, 2017, page 141.
[72] Because two separate and mutually independent assemblies are "in the position of reciprocally checking, restraining, and controlling each other". See: Karl Loewestein, *Political Power and the Governmental Process*, 2nd. ed., Chicago & London, Phoenix Books, The University of Chicago Press, 1965, page 177 [*Teoría de la Constitución*, 2nd ed., Barcelona, Ariel, 2018, page 246].
[73] Giacomo Delledonne, *Perfect and Imperfect Bicameralism: A Misleading Distinction?* Perspectives on Federalism, vol. 10, issue 2, 2018.
[74] Lijphart, Arend, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-one Countries*, New Haven, Conn., Yale University Press, 1984, pages 90-105.
[75] Lipjhart, Arend, *Patterns of Democray. Government Forms and Performance in Thirty-Six Countries*, New Haven & London, Yale University Press, 1999, pages: 201-211 [*Modelos de democracia. Formas de gobierno y resultados en treinta y seis países*, Barcelona, Ariel, 2000, pages: 190-198].
[76] A richer analytical approach would later be proposed by Russell, adding the "perceived legitimacy" dimension to fully understand parliamentarism. See: Russell, Meg. "Rethinking Bicameral Strength: A Three-Dimensional Approach", *The Journal of Legislative Studies*, vol. 19, no. 3, 2013, pages: 370-391.

asymmetrical.[77] Symmetrical chambers are those with equal or moderately unequal constitutional powers and democratic legitimacy. Asymmetrical chambers are highly unequal in these respects.[78] Upper chambers that are elected directly are seen as having greater democratic legitimacy and tend to have stronger powers, than those that are elected indirectly.[79]

92. The common understanding of this symmetrical/asymmetrical distinction usually focuses only on the formal and legal competences attributed to legislatures' chambers. This reduced sense is used here.

93. Therefore, asymmetry refers to the extent that the legal powers of both chambers are equal. The balance of power between the parliamentary chambers in bicameral systems can encompass a three-level approach: symmetrical, asymmetrical, and mixed systems.

a. Symmetrical bicameralism

94. Symmetrical bicameralism is encountered particularly in countries where the democratic legitimacy of the two chambers is similar, that is, both are directly elected by citizens in a general election. The Italian Senate and the Swiss *Ständerat* are typical examples. Such systems are also known as "strong bicameralism", because of the equal constitutional rank and significant power of the upper house. However, a symmetrical structure is not common in bicameral parliaments because the second chamber is usually elected in a different way from that of the lower house and thus is perceived as having less legitimacy. An exception would be Bosnia and Herzegovina, where the two chambers are equally strong notwithstanding the indirect election of delegates, chosen on an ethnic basis by the respective entities (House of Peoples of the Federation or National Assembly of the Republika Srpska). A deadlock in decision-making is more likely with two chambers of equal status. In Canada, the powers of the Senate and the House of Commons are similar (with the exception of appropriation and tax bills) although the selection of the respective members is different, as senators are appointed. This reflects a difference in nature between the two chambers, where the Senate devotes considerable time and resources to the study of legislative bills and the government is responsible only to the House of Commons.

b. Asymmetrical bicameralism

95. In practice, asymmetrical bicameralism means that the second chamber has at most a suspensive veto in legislative decision-making, that is, it can be overridden by the lower house. This highlights the traditional advisory or reflective role of the upper chambers, particularly in countries where the second chamber's democratic legitimacy is considered weaker. This is why such a division of powers within the legislative branch is often called "weak bicameralism".

96. Modern bicameral systems, with a few exceptions, are characterised by the dominant role of the lower house in the distribution of legislative power. Indeed, in most cases, two independent chambers can hardly be in an equal position of power. For example, in a bicameral system where the chambers have equal power and the executive is politically responsible to both chambers (i.e. in parliamentary government), governance would be very difficult where the two chambers

[77] The use of the dichotomy "symmetry-asymmetry" seems to be taken from the studies on federalism. In one of the first significant articles on asymmetry, Charles D. Tarlton addresses the question of asymmetry and its accommodation within the federal model. See: Charles D. Tarlton, *Symmetry and Asymmetry as Elements of Federalism: A Theoretical Speculation*, The Journal of Politics, Nov. 1965, vol. 27, no. 4, pages 861-867 ["Simetría y asimetría como elementos del federalismo. Una especulación teórica", Fossas, Enric and Requejo, Ferrán (eds.), *Asimetría federal y Estado plurinacional. El debate sobre la acomodación de la diversidad en Canadá, Bélgica y España*, Madrid, Trotta, 1999, pages 21-35].

[78] *Ibidem*, page 206 [194].

[79] Thibaut Noël, *Second chambers in federal systems*. International Institute for Democracy and Electoral Assistance, Stockholm, 2022, page 8.

have different majorities. Moreover, where they disagree about a bill, the legislature as a whole may become gridlocked. In this situation, each house has, in practice, an absolute veto, that is, the power to prevent the other house's decision from being validated. The possibility of a constitutional deadlock is probably too much of a risk for the political system and therefore, there are parliamentary techniques to reconcile such disagreements in bicameral systems. A typical example is the so-called "alternative unicameralism", where decisions are *de facto* taken in one chamber, whereas the other one merely confirms the decision taken by the first one (Italy).

97. As regards in particular the domain of finance bills, especially budget and tax bills, it is widely accepted that these must be tabled in the lower chamber. In most cases, the possibility of amendments to the budget proposal in the upper house is limited or even excluded, that is the upper house can only reject or accept, but not change, the text submitted to it.

98. The different positions of the houses may also result from differences in their composition. Where the upper house owes its existence to historical tradition or represents special (e.g. territorial) interests, it is hardly justifiable that it should be in the same position as the lower house, which is based on popular vote. In such cases, it is reasonable to expect that the upper chamber's powers will be adapted to its composition.

99. Lastly it is important to note that even in some very asymmetrical systems, where the second chamber is clearly subordinate to the lower house, the former usually has some specific powers, including exclusive ones, in terms of ratification of international treaties, appointment of key institutional (or judicial) positions, impeachment of the President of the Republic, challenging the constitutionality of laws, resolving conflicts of interest between institutional (or federal) bodies, etc.

c. Mixed systems and specific powers of second chambers

100. In a sense, power symmetry and asymmetry between the two chambers can be combined, if several upper houses have absolute veto rights in certain cases, while in other cases their resolutions can be overridden by the first chamber's own decision. In such instances, the second chamber is not generally inferior to the first but has equal status with the lower house in certain matters. This is typical of federal and regionalised countries where the upper houses represent territorial interests because the will of these chambers is given greater weight in matters that significantly affect the specific interests of territorial units.

101. Mixed systems are therefore those in which the powers of both chambers are either very similar, with the particularity that there may be specific powers for each of them, or very diverse but the second chamber has a prominent role, in co-decision or in an absolute power of veto on certain matters. For example, in Brazil, Chile, Mexico, Romania and the United States, both chambers participate on an equal footing in the legislative process (can initiate, modify and adopt bills with absolute veto on most legislative texts, often with the exception of financial bills that must originate in the lower chamber), but the Senate has many other specific and exclusive powers, different from those of the lower chamber.[80] In Romania, the government is responsible

[80] In Brazil, the second chamber is responsible for verifying the actions of the executive branch in terms of the use of public funds and compliance with the law, as well as powers in the economic and financial management of the Union, the states, the Federal District, territories and municipalities; appointment of members of higher courts and of heads of major public administration bodies. In Chile, the Senate holds exclusive authority to resolve jurisdictional disputes between political or administrative authorities and superior courts. Additionally, the Senate approves the President's absence from the country exceeding thirty days. It also has the power to declare the incapacity of the President or elected President due to physical or mental impediment, and to assess the validity of a resignation, consulting the Constitutional Court in both cases. In Romania, the Senate validates the mandates of 14 members of the Supreme Council of the Judiciary, elected by the Council, and elects 2 representatives of the civil society to sit in this Council. The Senate acts as first notified chamber in ordinary type laws; laws concerning territory, citizenship, national symbols, private property, electoral system, trade unions, national minorities, prolongation of

in front of both chambers. In federal states in general, second chambers have strong powers on important decisions concerning the fundamental constitutional arrangements of the federation, and decisions relating to the sovereignty of the federal state in general, or at least those parts of them that directly affect the status or powers of the constituent parts. These include, for example, constitutional laws and international treaties affecting the competences of the *Länder* in Austria, constitutional revisions and the special laws on state reforms in Belgium and constitutional revisions or treaties that directly affect the competences and powers of the federal states in Germany.[81] Nevertheless, constitutional amendments often require the approval of the second chamber not only in federations but also in most other countries (e.g. in Czechia, France, Ireland, Romania and Spain), or certain changes to the constitution require at least the approval of the upper house of parliament (e.g. those affecting the status of the monarchy in the Netherlands).

B. Relationship with the lower chamber

102. In general terms there are two types of institutional interaction: those characterised by comity and those characterised by friction. Interaction characterised by comity occurs when the institutions are mutually supportive. On the contrary, interaction characterised by friction arises where an institution seeks to constrain another body or prevent it from acting in some way.[82] One of the original reasons for a second chamber was the idea of acting as a brake on the actions of the lower or popular chamber, but there is also the need for a cohesive body functioning through successive phases of governance, each of which maintains its own value and integrity.[83] In this sense, both chambers must assume that each one has its own role to play as part of the legislative power.

103. The relations between chambers can also be affected to a greater or lesser extent by multiple formal and informal factors: the model and specific function given to each assembly,[84] the powers allocated to them, especially the participation in the law-making process, the composition and renovation criteria, and the role of the entities which give life to those dynamics, the political parties.[85]

104. Finally, the crucial issue concerning the power relations between the first and second chamber is how disagreements between them are settled in subjects where they are on an equal

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the term of office of the President of Romania in case of war or disaster, among others. Furthermore, the Senate acts as decisional chamber in the ratification of international treaties, organisation and functioning of the public radio and TV services, organisation and functioning of the Supreme Council of the Judiciary, structure of the Constitutional Court, among others.

[81] In Germany two separate bodies participate in the law-making process, the *Bundestag* (or Federal Assembly) and the *Bundesrat* (or Federal Council), but the Federal Constitutional Court stated, prior to the 2006 constitutional amendment: "Under the system established by the *Grundgesetz*, the *Bundesrat* is not the second chamber of a unitary legislative body, entitled to decide on legislation on an equal basis with the 'first chamber' […] This can be seen in the formal promulgation decree for laws, which, even in the cases where the *Bundesrat* has a right to participate, does not read: '*Bundestag* and *Bundesrat* have adopted the following law' but rather: 'The *Bundestag* adopted the following law with the consent of the *Bundesrat*". For the Court, the consent requirement for the *Bundesrat* served to avoid "structural displacements" not envisioned by the *Grundgesetz*. Bumke, Christian and Voßkuhle, Andreas, *Casebook Verfassungsrecht*, 7th ed., Tübingen, Mohr Siebeck, 2013, page 533 [*German Constitutional Law. Introduction, Cases, and Principles*, Oxford University Press, 2018, page 491].

[82] N. W. Barber, *The Principles of Constitutionalism*, Oxford University Press, 2018, pages 70-76.

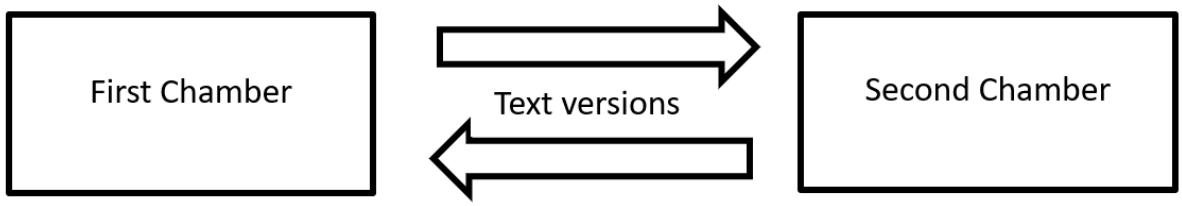
[83] Jeremy Waldron, *Political Political Theory. Essays on Institutions*, Cambridge, Massachusetts & England, Harvard University Press, 2016, chapter three.

[84] For instance, there are two models of federal bicameralism, each based on a different interpretation of the concept of regional representation (the senatorial or political model and the ambassadorial or juridical model). See: Giancarlo Doria, *The Paradox of Federal Bicameralism*, European Diversity and Autonomy Papers, num. 5, 2006: http://webfolder.eurac.edu/EURAC/Publications/edap/2006_edap05.pdf.

[85] The partisan composition is truly relevant because even in the territorial distribution of the seats in the second chambers, when the members are elected, the subject represented is always a community of citizens, never a territory. For that reason, the territorial and the political-partisan aspects are profoundly linked in chambers that, ultimately, interpret the territorial will according to how it is built from the correlation of partisan forces. See: Roberto L.Blanco Valdés, *Los rostros del federalismo*, Madrid, Alianza Editorial, 2012, pages 132-159.

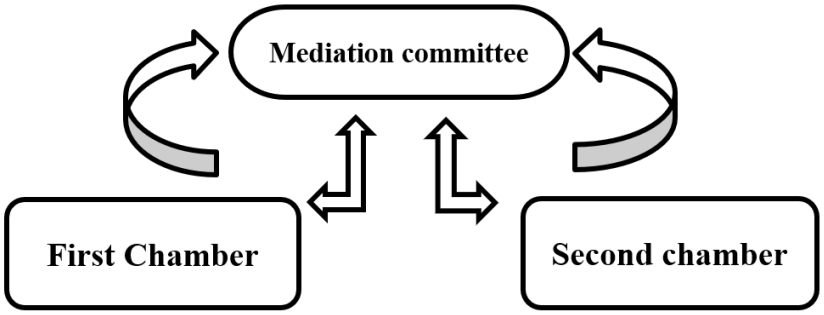
footing and the lower chamber therefore does not always prevail. In order to resolve such disputes, there are three main basic mechanisms. The first is the so-called “navette” system or shuttle, where the two houses exchange a draft text that is revised by each house until a joint text can be agreed by both (see Figure 1). The version adopted by each chamber may shuttle between the two chambers several times until they reach a text that is acceptable to both of them. To avoid endless conciliation efforts, the number of rounds is usually limited by parliamentary rules, and if no common version is reached during these rounds, the bill is considered rejected or a final say is given to the lower chamber by a qualified vote or by simple majority after a fixed time has elapsed.

Figure 1
The *navette*-system



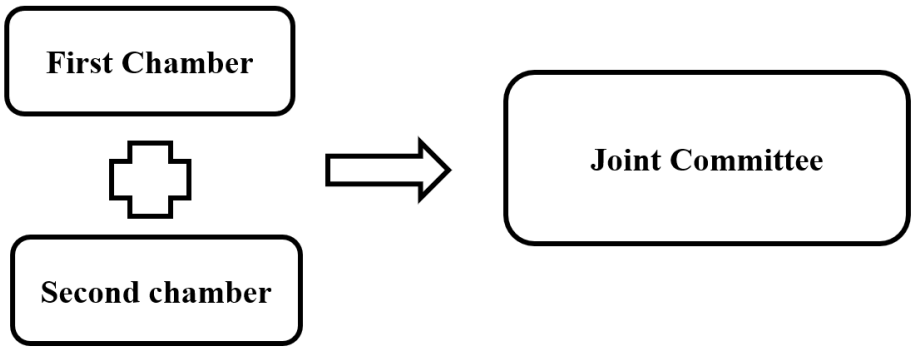
105. Another procedure is where an intermediary parliamentary committee is mandated to draw up a compromise proposal to reach agreement (Figure 2). Members of this mediation committee are usually delegated by the two chambers from among their own members. The task of this body is to reconcile the divergent positions and to work out a compromise text, which must then be separately adopted by each chamber.

Figure 2
Mediation process



106. The third option is to hold a joint session of the two chambers for a common discussion, a direct confrontation between the divergent views (Figure 3).

Figure 3
Joint-session model



107. However, in asymmetrical two-chamber systems the lower house of parliament is most often, or in most cases, able to resolve conflicts on its own by deciding whether to accept or reject the second chamber's amendments or counter-opinions without a separate procedure; in effect, to overrule them. A special majority (absolute or qualified) is often required for a decision in the lower house to override a veto of the upper house. Constraints tend to be more likely placed on the second chamber. For example, the upper house must send any objections to the lower chamber within a specified time limit (30 days in Czechia, 60 days in Belgium and eight weeks in Austria), while failure to do so within this period is deemed to indicate no objection to the bill.

108. In some countries certain powers can be exercised by the two chambers only in a joint meeting, but this is not the same as a joint session to reconcile the opposing views of the two houses. These committees vary significantly in terms of composition, procedures, and significance.[86] There can be also joint meetings or sessions in certain ceremonies and other formal and informal gatherings.[87]

[86] Francesco Palermo and Karl Kössler, *Comparative Federalism. Constitutional Arrangements and Case Law*, Oxford, London, New York, New Delhi, Sydney, Hart Publishing, 2019, page 192.

[87] Austria: the Federal Assembly or *Bundesversammlung* is the joint meeting of the National and the Federal Council, that meets for the inauguration of the Federal President, the declaration of war, the decision if the Federal President should be prosecuted for a specific action, among others.
Belgium: the joint session of Parliament (the United Chambers) is convened only on certain occasions, when the monarch must take the constitutional oath before this united body. Only the United Chambers can make provision for a regency if the successor to the Crown is a minor or if the monarch is unable to reign.
Bosnia and Herzegovina: the Joint Collegium of both chambers of the Parliamentary Assembly is held once a month and is a joint session of both chambers to decide on matters of inter-parliamentary cooperation, appointing members of temporary delegations, convening joint meetings with the Council of Ministers, among others.
Canada: the chambers can cooperate by forming Joint Committees to study special issues of interest, such as the Constitution or the official languages.
Czechia: joint meeting of both chambers occurs only when the newly elected President of the Republic is sworn into the office.
France: joint meetings of the chambers occur only for the final vote on a constitutional amendment if the President of the Republic decides not to submit the amendment to a referendum.
Germany: the mediation committee "*Vermittlungsausschuss*" is a mechanism by which the Bundestag and the Bundesrat meet, through 16 members of each chamber, to reach agreements, for instance, on "consent laws" or *Zustimmungsgesetze* where there are different views in each chamber.
Ireland: joint meetings of both chambers are not used to take decisions; they are usually reserved for hearing addresses by foreign dignitaries.
Mexico: joint meetings of both chambers are held for the beginning of the ordinary period of sessions, receiving the annual report of the President of the Republic, taking the oath of the President of the Republic, among others.
The Netherlands: laws that concern the status of the monarch, declarations of war and of a state emergency are decided on by a joint meeting of both chambers.
Poland: the joint deliberation of the Sejm and the Senate is called the National Assembly, within its powers is to take the oath of office from the newly elected president and the recognition of the president's permanent inability to hold office, among others.
Romania: joint sessions for the receipt of the message of the President of Romania, the approval of the State budget, declaration of the state of war or the receiving of the representatives of other States or the representatives of international bodies.
Spain: joint meetings are very unusual and are only foreseen for matters related to the Crown.

109. In addition to formalised procedures, a political solution can also be found, such as dissolving Parliament if the seriousness of a conflict warrants it or if the conciliation process reaches an impasse.

IV. Elements of good practices in bicameralism

110. The replies to the questionnaire provided for this report indicated that in some states bicameralism is not an option, that is, it never was (Azerbaijan) or that it was abolished and that there is no political will to reintroduce it (Sweden, Denmark, Hungary, Kyrgyzstan). For others, bicameralism is a fundamental element of the constitutional structure which would require a broad consensus and stringent requirements to be met before any fundamental constitutional change might be undertaken (United States, Canada, Germany, France); yet, there may be room for debate on improving its functioning. The third group of States is in between those two extremes and either has a bicameral system but reflects on changing or even abolishing it (Slovenia) or does not have one, but is open to a change (Ukraine, Peru[88]).

111. The choice for a bicameral or unicameral system has to be considered also in the background of a general development that is characterised as “democratic backsliding”. In some cases, rule of law procedures are undermined by anti-democratic movements. That is why the discussion on the topic of bicameralism comes at the right time. It is necessary to give an answer to the question if, and if yes, in what way, bicameralism can contribute to the strengthening of democracy or, on the contrary, if it is rather a factor that may reduce the efficiency and fairness of legislative decision-making processes.

112. It is undeniable that a bicameral system is more complicated than a unicameral system. In a bicameral system necessarily more people are involved in the legislative process, more steps have to be taken for the enactment of a law, and the process is thus longer. Different scenarios are possible. First, legislative acts go, as a rule, smoothly through both chambers, but remain unchanged. Second, it is difficult to bring legislative acts through passage in the second chamber without being fundamentally changed or vetoed. Third, the second chamber interferes only in exceptional, well-defined cases.

113. It is obvious that in the first and second scenarios the functioning of the system as a whole will be questioned. Either a second chamber will be considered superfluous, or the legislative process will be criticised as inefficient (see the section on objections above, e.g., duplication, delay, blockage, cost). Therefore, one of the strong arguments in favour of a bicameral system is the credible assumption that it improves the legislative process where necessary but does not slow it down without an added value (see above the chapter on the arguments favouring bicameralism).

114. Some factors appear to play a key role in deciding in favour or against bicameralism: the size of a country’s territory and its population, its diversity, its historical heritage and political culture, its institutional set-up.

115. In light of these factors, bicameralism can help in fulfilling one of the following functions:

1. Representation of local and regional interests,

Switzerland: the United Federal Assembly (*Vereinigte Bundesversammlung, conseils réunis*), composed of the National Council and the Council of States, convenes at least once a year and decides on elections, pardons, and conflicts of jurisdiction between the highest federal authorities. It also convenes for special events and for declarations by the Federal Council.
United States: joint meetings of both chambers, are largely ceremonial, for instance, to hear an address by a visiting dignitary.

[88] In March 2024, the Peruvian Parliament voted a constitutional reform opting for a bicameral system. The second chamber (*Senado*) will be established with the next elections in 2026.

2. Representation of groups otherwise not sufficiently represented,
3. Additional checks and balances, counterbalancing centralistic and authoritarian tendencies,
4. Fulfilment of complementary functions one chamber alone cannot fulfil.

116. Bicameralism will be a useful add-on in any system where these functions cannot be accomplished otherwise. The good functioning (and the necessity) of a bicameral system will thus always depend on the political and constitutional system as a whole.

117. The next chapters will look at how the above-mentioned factors and functions may (or in some cases should) have an impact upon the choice of a bicameral or unicameral system.

A. Size and diversity of a country

118. *Prima facie* it seems that very small countries tend not to have a bicameral system, as previously noted by the Venice Commission.[89] This is surely the case for all those with a population below one million[90] but also for most of those below 10 million, with the exception of Austria, Bosnia and Herzegovina, Ireland, Slovenia and Switzerland. For those five countries, there is often a reason related to their historical background or the political or institutional framework that justifies the choice.

119. Conversely, most countries[91] with a population of over 11 million have a bicameral system. The only exceptions are Türkiye (84.8 million inhabitants), South Korea (52 million inhabitants), Ukraine (about 40 million before the war) and, albeit for a limited amount of time, Peru[92] (33.4 million inhabitants). In Türkiye and in Peru[93], there have been some periods in which these countries have experienced bicameralism.

120. It should also be noted that in those states in which the societies appear to be homogeneous, the legislatures tend to be more unicameral, while where the society is more heterogeneous, i.e., the population is diversified along linguistic, religious, ethnic or other grounds, the bicameral system tends to prevail. In this context, the Venice Commission has recognised the societal value of ensuring representation of different components of society in second chambers, particularly in post-conflict situations in multi-ethnic democracies.[94]

121. The two elements, namely the size of the country and the diversity of its population, are often directly related.

122. It can therefore be concluded that a unicameral system better fits small homogeneous countries, while a bicameral system would be more appropriate for populous and large countries with a composite population. However, this cannot be taken as a rigid rule as there can be good

[89] Patrice Gélard, CDL(2006)059rev, *op. cit.*, para. 33 and Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 35.
[90] Andorra, Iceland, Liechtenstein, Luxembourg, Malta, Monaco, Montenegro, San Marino.
[91] Reference is always made to Venice Commission member states, as there are some really populous countries with one-chamber legislatures in the world, in particular in Africa and Asia (China, Bangladesh, Vietnam, Iran, Tanzania, etc.).
[92] In March 2024, the Peruvian Parliament voted a constitutional reform opting for a bicameral system. The second chamber (*Senado*) will be established with the next elections in 2026.
[93] Peru was a bicameral country until 1993, when the Constitution enacted under Fujimori (still in force today) created a unicameral Congress.
[94] Venice Commission, CDL-AD(2016)024, Bosnia and Herzegovina - Amicus Curiae Brief for the Constitutional Court of Bosnia and Herzegovina on the mode of elections in the House of Peoples of the Parliament of the Federation of Bosnia and Herzegovina, para. 54.

reasons related to specific factors that justify a different choice, such as the historical background (see the next section).

123. In addition, the size of the country is not only relevant in terms of population but also as regards the extension of the territory. The larger the territory, the higher tends to be the diversity of its regions as to language, culture, traditions, economic development, etc. In these cases, the representation of local and regional interests within the legislative process is a strong driving factor to opt for a bicameral system. Yet, it is decisive that the design of the system allows for those local and regional aspects to be introduced in the legislative process. Therefore, it is necessary to design the composition and the competences of the second chamber in such a way that regional and local interests are brought to the fore (e.g., by representation of the people living in a specific part of the country; by the tailoring of the respective competences within the legislative process). In doing so, it is not necessary to ensure a proportional representation of the sub-national entities; the principle of equality will often prevail over the principle of proportional representation, however, "where distinct groups are not geographically concentrated, it is evident that strict equality amongst the sub-national authorities will not produce a proportionate representation of those groups in the second chamber."[95]

B. Historical evolution of a country

124. The role played by tradition in introducing or not introducing a bicameral system for countries in situations of constitutional transition seems to be ambivalent. For some countries tradition as such seems to be an important factor (Poland), while others seem to have critically re-assessed tradition at the moment of system change and opted against the re-introduction of a bicameral system, not rarely so because it was seen to be too conservative or elitist (Greece) or not to respond to present-day needs (Hungary).

125. Looking at the historical roots of bicameralism, two different scenarios can be distinguished. On the one hand, there are states that have inherited a bicameral system that originally reflected decision-making processes in hierarchically structured societies – they could either reject this tradition as no longer adequate or reform and adapt it. On the other hand, there were newly founded states that were called upon to define their new constitutional system. For them bicameralism was a well-developed pattern of constitutional design. They could opt for it for various reasons or reject it.

126. The development of a bicameral model can mirror the governing system in a hierarchically structured society where one chamber represents "the people's" interests and the other chamber the interests of the aristocracy and the clergy (see the roots of bicameralism in the United Kingdom or Poland); sometimes even more than two different groups of society can be represented in different legislative bodies (e.g., the development of the system in Sweden). Such a model can be upheld as traditional institutional pattern, but be re-shaped and re-used for other purposes, e.g., for the balancing of the interests of "the centre" and "the regions". The history of bicameralism in Austria is a typical example of this approach. Yet, in many other states bicameralism was abandoned exactly because it was seen as no longer adequate (Sweden).

127. Newly created states can opt for a bicameral system for many reasons. Most often it is done to enhance federalism and share sovereignty. Bicameralism can thus be a response to the principle of self-determination of the people.

128. However, a bicameral model can also be chosen in order to enhance the principle of separation of powers by providing checks and balances within the legislative process. The French or the American (United States) system might serve as models in this context.

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[95] *Ibidem*.

129. For some countries building up new State structures after the break-down of the communist model, it seems that bicameralism was used as a constitutional "best practice" without a clear vision of what its concrete purpose should be. This might explain why in such countries bicameralism cannot be considered deeply-rooted and/or there is a debate on a possible reform (e.g., in Slovenia, where a second chamber modelled on the Bavarian senate was introduced while the Bavarian senate had been abolished in the meantime; in Kyrgyzstan, where bicameralism was established with the Constitution of 1993 but the constitutional reform of 2003 established that in 2005 a unicameral parliament would be formed instead, in response to a number of factors, including concerns about the efficiency and effectiveness of the bicameral system, and a desire to cut government spending;[96] or in Romania, where bicameralism was chosen with a first referendum after the fall of the communist regime and the unicameral system was preferred following a second referendum in 2009, which was never implemented). At the same time, the bicameral system was discarded due to the fact that the organisational division of the legislature and the resulting rigidity of the legislative mechanism slowed down the process of law-making and therefore delayed the establishment of a democratic legal system (Bulgaria, Hungary, Ukraine[97]).

130. It is interesting to note that many countries have changed the system again and again (Spain) while others have considered bicameralism as a pillar of their constitutional set-up (Germany). Nevertheless, during periods of dictatorship bicameralism was always either abolished or remained a dead letter and was not implemented in practice.[98]

131. To sum up, history and constitutional tradition seem to play a significant role in the permanence of second chambers as a feature of modern parliaments in some states, at least in five senses:

i) The second chamber symbolises the historical continuity of political community. In some states, the second chamber and its configuration became an important symbol of the evolutive nature of the constitutional system; a sort of essential feature of the constitutional structure of the state (France, Ireland, United Kingdom).

ii) Second chambers are essential parts of the original "federal compact" to create a federation. In federations the second chamber has a "foundational" origin to represent the previously existent communities that agree to unite in a federal state while participating in the decisions of the federation through these chambers (United States, Canada, Germany, Austria). Likewise, where the federation is created through a devolution process, the second chamber represents an interesting feature of the federal arrangement (Belgium).

iii) The implementation of a second chamber may appear as reaction to the immediate authoritarian past of a unicameral country. Second chambers may appear as a safeguard against the abuse of power of previous regimes or a way to erect a barrier against a centralised legislative power (some of the post-soviet states, but also other countries, e.g., Croatia, Kirgizstan, Poland, Czechia, Romania).

iv) Second chambers may be a result of the particular circumstances of the "constituent moment" of a given state both because it existed during that moment and played a significant role in it (Spain or, *a contrario sensu*, Portugal) or because it was an

[96] See Venice Commission, CDL-AD(2002)033, Kyrgyzstan - Opinion on the Draft Amendments to the Constitution of Kyrgyzstan.
[97] See Venice Commission, CDL-AD(2009)024, Ukraine - Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine, paras. 48-51.
[98] In Italy, the Senate remained active during fascism, but it was heavily controlled by the government with few dissenting voices.

institutional mechanism to improve the approval of a new constitution by all the political forces (Czechia, Slovenia).

v) Second chamber may inherit corporatist elements linked to different professions or different parts of society (Ireland, Morocco, Slovenia and Tunisia). If from a certain point of view, such a model could be considered as outdated in modern democratic societies, it might be revived to enhance the representation of minorities or other groups of society whose voice is hard to be heard, e.g., people with disabilities, refugees, migrants, ethnic or linguistic minorities. Albeit no replies to the questionnaire refer to explicit constitutional requirements in this sense, in Canada, the current appointments policy has proactively favoured diversity in the upper house, through the appointment of women and members from indigenous peoples, linguistic and other minorities.[99] In this respect, the Venice Commission already noted in the past that "insufficient attention has been paid to the possibility [the second chambers] offer of representing groups whose presence in the lower house is limited or non-existent".[100]

132. Nonetheless, history and tradition are not enough. As already stated in previous sections, second chambers must play an important role within the constitutional system if they are to survive within a political system even if it is fully respectful of its constitutional history and traditions, as the experience of the abolition of second chambers in the Scandinavian states during the second half of the 20th century may show.

C. Representativeness and balance of powers within the political system

133. The Venice Commission has previously considered "that the debate on bicameralism is linked to those of the form of state and the form of government, and the solutions proposed should be coherent with them. Indeed, bicameralism is often a response to regional differences, ethnic diversity, and multi-culturalism. In a society where these aspects display a heightened significance, bicameralism is to be recommended as it might enhance the possibility of consensus-finding.[101] The second chamber can play a fundamental role in maintaining the balance between the centre and the components of the state and thus be a kind of guarantor of the vertical distribution of power between the centre and the component parts or regions, or even groups, in a state."[102] On the contrary, if the second chamber is seen as always blocking solutions, this could be an additional factor undermining confidence in the political system.

134. Concerning additional checks and balances, the success of bicameralism will depend on the fact of filling real lacunae. An assessment is possible only by reference to the checks and balances enshrined in the constitutional system. Generally, good practice for bicameralism will mean that checks and balances are not duplicated. If expert advice is missing in the general legislative process before the lower chamber, it might be valuable to introduce it in the second chamber. If not, a second round of questioning expert witnesses before another parliamentary committee would be redundant.

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[99] Amongst the considerations taken into account by the Independent Advisory Board for Senate Appointments of Canada, it is stated: "Individuals will be considered with a view to achieving gender balance in the Senate. Priority consideration will be given to applicants who represent Indigenous peoples and linguistic, minority and ethnic communities, with a view to ensuring representation of those communities in the Senate."

[100] Patrice Gélard, CDL(2006)059rev, *op. cit.*, para. 38 and Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 39.

[101] Patrice Gélard, it is "perfectly understandable if small countries and ones that are still establishing their democratic system feel that second chambers are not essential. However they are necessary, and will become increasingly so, in […] states […] that are constitutionally regionalised or heavily decentralised, where second chambers represent geographical areas whereas first chambers represent peoples": CDL(2006)059rev, *op. cit.*, para. 43.

[102] Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 42.

135. In this sense, the Venice Commission has noted that "a second chamber can offer a contribution to the improving of the legislation, if its members are in the position of representing interests which are different from the interests represented by the national general representation present in the other Chamber, or they are able to offer the baggage of specific experience and knowledge".[103]

136. In addition, in bicameral parliaments in which the two chambers are elected or chosen on the basis of different criteria, and in which different parties may hold the majority in each chamber – with the opposition in one having the majority in the other, the Venice Commission found that the political division reflects a form of separation of powers, which contributes to the checks and balances, rather than a simple dichotomy of position/opposition.[104]

137. Lastly, as it is important that the contribution of the second chamber is clearly perceived by the citizens, the second chamber should be granted publicity, including its agendas, deliberations and decisions. This is essential even if the upper chamber's role in the country is merely consultative, as it cannot be fulfilled if the public and those it represents are not aware of its workings and the reasons behind its decisions.

138. The next sections will analyse the bicameral model in relation to the form of government, the form of state, the state structure, the terms of office and status of the members of second chambers, the specific functions/powers of second chambers and other factors/variables that characterise the bicameral models, such as requirements related to the age of members or their gender.

1. Correlation with the form of government

139. If we examine the relationship between forms of government and bicameralism, it is striking that there is no close connection between the two; bicameral systems occur both in parliamentary, presidential and mixed government systems. In most European bicameral countries, the form of government is parliamentary,[105] while presidentialism is overrepresented in the American continents,[106] but this seems to be due purely to the fact that these forms of government are generally more widespread on these continents respectively. There are also some bicameral countries with mixed system (with elements of both parliamentarism and presidentialism) that cannot always be defined as semi-presidential.[107]

140. Since forms of government are most commonly defined and distinguished by the relationship between the legislative and executive branches, it is obvious that there is a close link between systems of government and parliamentary structures. This implies that, on the one side, the political and constitutional role of the second chambers is also to a large extent determined by the form of government of the country in which they operate. On the other side, the

[103] Mr Sergio BARTOLE (Italy), former member of the Venice Commission, Professor at the University of Trieste. Actes de colloque : Bicamérisme et représentation des régions et des collectivités locales : le rôle des secondes chambres en Europe. Disponible au : https://www.senat.fr/colloques/bicamerisme_2008/bicamerisme_200810.html.

[104] Venice Commission, CDL-AD(2010)025, Report on the role of the opposition in a democratic Parliament, para. 34.

[105] Austria, Belgium, Canada, Czechia, Germany, Ireland, Italy, the Netherlands, Poland, Slovenia, Spain and the United Kingdom.

[106] Brazil, Chile, Mexico and the United States, but also Kazakhstan and Tunisia have a presidential system.

[107] Algeria, Bosnia and Herzegovina, France, Morocco and Switzerland (directorial government). France can also be classified as a parliamentary system, where the President has important prerogatives, among which is to dissolve the lower house. Additionally, France has been considered to be a parliamentary system because the main powers of the President require the approval of a parliamentary majority, in particular his/her choice of government and the possibility of passing bills. Nevertheless, in cases where the President has the support of the majority of the deputies, the system can be considered to be semi-presidential.

composition and legitimacy of the upper chambers, which largely determine their position within the legislative branch, also have a strong influence on their relationship with the executive.

141. The most important feature of parliamentary government is that the mandate of the government depends on the confidence of parliament, i.e., the legislature has the power to withdraw confidence and effectively overthrow the executive for political reasons. Therefore, as a general rule, a government can only function continuously if it has majority support among parliamentarians, i.e., the government is able to control the work of the legislature by political means. However, this may be made more difficult if the government has political responsibility towards both chambers, especially if the political composition of the lower and the upper house is different, either because the second chamber is elected in a special way or because of different electoral results.

142. This is one of the reasons why modern bicameral systems, with a few exceptions, are characterised by the dominant role of one chamber – usually the lower house – in the distribution of power in the parliaments. According to the traditional understanding of parliamentary government, one chamber must be subordinated to the other, since the government cannot be responsible for two houses at the same time, if their party majorities are different.[108]

143. The incumbent government's political responsibility towards both chambers may arise primarily in symmetrical bicameral systems, or in connection with legislatures in which the composition of the second chamber is based on popular representation (i.e., the method of its election is similar to that of the lower house). For example, Article 94 of the Italian Constitution states that "[t]he Government must receive the confidence of both Houses of Parliament", and during such a procedure both chambers have the same powers. In such cases, however, other constitutional rules can help ensure that the government enjoys a majority in both houses: this is likely, for example, if both chambers of Parliament are elected at the same time. In contrast, if the upper house represents special interests (e.g., federal member states, regional units or corporations), then it would be unreasonable for it to be able to terminate the mandate of the government entrusted with the realisation of the public interest.

144. Although the political responsibility of the government is usually determined by the constitution, not all constitutions address this issue, but in such cases the constitutional practice regulates the relationship between the parliament and the government in this regard. For example, the Dutch constitution does not mention the parliamentary responsibility of the government, according to established practice, the government and individual ministers must enjoy the confidence of Parliament, but it applies to the *Tweede Kamer* (the lower house), which can withdraw this confidence by a motion of censure.

145. In the power-sharing system of the parliamentary form of government, the political responsibility of the government is counterbalanced by the executive power's right to dissolve Parliament.[109] This can normally be formally done by the head of government under certain conditions, but often at the initiative of the government. However, the dissolution of Parliament does not always affect the second chamber, especially when it is organised on a different basis than the lower house. In Germany, for example, the members of the Bundesrat are delegated by the state governments, so the mandate of the upper house is not affected by the possible dissolution of the Bundestag. And in Canada, the dissolution of the House of Commons does not affect the continued existence of the Senate.

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[108] Meg Russell, *Responsibilities of Second Chambers: Constitutional and Human Rights Safeguards*, The Journal of Legislative Studies, Vol. 7. No. 1., January 2001.

[109] *Parlamentarische Regierungssysteme*. In: E. Fraenkel–K. Bracher (Hrsg.): *Lexikon Staat und Politik.* Fischer-Taschenbuch-Verlag, Frankfurt/Hamburg, 1964, pages 238-243.

146. It is to be noted that even if the executive power has no political responsibility towards the second chamber, the latter usually still participate in the control of the government in various ways (through interpellations, questions, committees of inquiry, hearings, political debates).

147. One of the most important features of the presidential system is that the legislative and executive powers are more consistently separated from each other. The President of the Republic does not receive his/her mandate from the legislature, and the latter cannot dismiss him or her from office for political reasons, and at the same time, the head of state cannot dissolve the legislature either.

148. Likewise, in most countries with mixed governments, the executive power has neither parliamentary responsibility nor the right to dissolve parliament (Algeria, Bosnia-Herzegovina or Switzerland. In France, the President cannot dissolve the second chamber, unlike the lower chamber and in Morocco the chambers can only be dissolved by the King).

2. Correlation with the form of state

149. The forms of modern states are defined by the nature of the office of head of state, by which republics and monarchies are distinguished. A monarchy is a form of state in which the function of head of state is fulfilled by the same person for life. The office of monarch may be hereditary or elective, but in most modern monarchies succession to the throne is based on legal succession, i.e., it is defined by law, and automatic without the intervention of any other body. By contrast, a republic is a form of state in which the head of state is elected for a fixed term either directly by the people or indirectly by a representative body of the people.

150. However, the relationship of the head of state with the legislature, including the second chamber, is not determined by the way in which he or she has won office, but by the powers he or she has to influence the functioning of the legislative power. The scope of responsibility of the head of state depends essentially on the form of government. The vast majority of modern constitutional monarchies are of the parliamentary type, where the status of the ruler is most similar to that of the head of state in parliamentary republics. In other words, the head of state's powers that affect the operation of the legislature (such as convening and adjourning sessions, dissolving parliaments in parliamentary systems or veto power in presidential systems) are much more closely related to the form of government than to the republican or monarchical form of the state. Therefore, the latter has no particular influence on the functioning of the second chambers, and where the head of state's actions directly affect the legislature, they are rather symbolic (for example, the British monarch delivers his annual speech on the government's annual legislative programme in the House of Lords).

151. On the other hand, second chambers may play a significant role in symbolic aspects related to the head of states (both in republics and in monarchies). Also, the Venice Commission previously noted that second chambers are usually involved in impeachment procedures against the president of the republic, functioning as a guarantee for checks and balances (Czechia, Mexico, United States),[110] or in other specific circumstances (in Chile, in case of a vacancy in the office of the President; in Romania, the President of the Republic must require the approval of both chambers following the declaration of a state of emergency or the state of siege). They are also crucial in relation to monarchies, both alone or in joint sessions of the two chambers (in Belgium and Spain the two chambers have joint competences regarding the swearing in of the new King, the appointment of a Regent if the new King is a minor or if the King is unable to reign, the vacancy of the throne; in Morocco, the King should consult the Presidents of both chambers in order to exercise his powers in relation to: declaration of a state of emergency, dissolution of the Houses, extension of the war and the state of siege).

[110] Venice Commission, CDL-AD(2022)004, *op. cit.*, para.42.

3. Correlation with the state structure

152. Whereas unitarian states may or may not have a second chamber, federal states should have a second chamber and they systematically do (Austria, Belgium, Brazil, Canada, Germany, Mexico, Switzerland and the United States). Politically regionalised states (states where regions, or provinces, enjoy legislative powers) usually have a second chamber as well (Italy, the Netherlands, Spain, United Kingdom). The design of second chambers is different depending on the state structure.

153. Second chambers in federations may represent member states in different ways depending on the way its members are selected. Nevertheless, in some federations the second chambers do not intend to represent member states or do not behave on a territorial basis but on party lines. The composition of second chambers in federations is the result of an equilibrium between equal representation of member states and their population/size. The principle of equal representation tends to be predominant.

154. In highly decentralised states (regions with legislative powers), second chambers are the rule. The Venice Commission already found that highly decentralised states need a second chamber to ensure dialogue between the centre and the periphery and that decentralisation, or more precisely local self-government, is an essential component of democracy.[111] However, the composition of second chambers is not linked to the regions (representation of regional interests) in so far as they are elected on the same territorial constituencies that the lower chamber (Italy, Spain) or appointed under other different criteria (United Kingdom).

155. In unitary states second chambers are not selected with the same rules as the lower chamber. Indirect election on a territorial basis (administrative regions and local entities) is the most usual way, but it changes depending on the role of the chamber, its main functions and the state's constitutional traditions. When the selection of the MPs of both chambers is identical or very similar it seems that bicameralism becomes useless and tends to disappear (Scandinavian states) or changes into an "alternative unicameralism" in which the powers of both chambers are informally divided between them without one interfering in the decisions adopted by the other chamber (Italy).

4. Second chamber members' terms of office and status

156. As to the legal status of the members of second chambers, the principle of equal mandate is a general rule in modern parliaments, which means that all representatives have the same rights and duties, regardless of how they obtained their mandate. The latter is important in the case of the upper houses, as there are several upper houses into which members are admitted in several ways.

157. Another widespread rule is the incompatibility of dual membership to both chambers, whereas in some countries it is possible to belong to both the regional/state parliament and the second chamber.

158. In addition, the members of the second chamber generally have similar legal status to those of the lower houses. This means that they have the same status, rights and duties (immunity, inviolability, conflict of interest rules) and similar participatory rights (right to speak, parliamentary freedom of speech, right to vote, right to hold office) as their counterparts in the lower house.

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[111] Patrice Gélard, CDL-AD(2006)059rev, *op. cit.*, para. 33; and Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 36.

159. There is often a difference in the term of office however, because the members of the upper houses are usually elected for a longer period than the representatives of the lower house. It is also common that the second chamber is not renewed all at once, but its members are elected or appointed in stages (continuity and stability role), unlike the representatives of the lower houses that are elected all at the same time at the end of their term (or exceptionally sooner if the house is dissolved).

160. Thus, for example, the Czech and the United States' senates are elected for six years, with a third of the senators being elected every two years. In Chile, the term of office of the Senate is eight years; one half of the membership is renewed every 4 years. The situation is very similar in Brazil, but there one-third and then two-thirds of the senators, who are also elected for eight years, are elected every four years. Half of the members of the Algerian Council of Nations are elected or appointed every three years, so the term of office is six years. In the case of members appointed by state/regional legislatures, it is common that their term of office is linked not to the second chamber, but to the appointing body (Austria and partially Spain).

161. The overlap between the terms of office of the two chambers is even smaller in countries in which the members of the upper house (or a part of them) are appointed, or where the terms of office of senators may also be different. In Canada, since 1965, senators can hold office until the age of 75 (previously they enjoyed life tenure), while members of the British House of Lords still hold office for life (except *ex officio* member bishops, who must retire as bishops at 70 and therefore lose their entitlement to sit in the House). In Austria, the members of the Federal Council are elected by the national legislatures for the duration of their respective legislative periods, which can therefore be of different lengths. In principle, the situation is similar in Switzerland, where the members of the Council of States are elected by the cantons in accordance with their own laws, most often for four years, so that the elections are normally held at the same time as those for the lower house.

162. The situation is special in Germany, where there is a significant difference in the legal status of the members of the Bundestag and the Bundesrat. Members of the Federal Council (the upper house of the federal legislature) are not free to vote in the House, i.e., they have an imperative mandate, and must cast their vote *en bloc*.

163. Members of the second chamber are usually less in number than the lower chamber and this is related to the technical and reflective role (sober second thought) of the second chamber that is expected to be less driven by political passion and rather committed to a more private and/or informal debate. In the same vein, some differences between the members of the upper and lower houses are ofttimes related to age (see section below) and other qualifications, in order to convey a sense of wisdom (in Slovenia, the function of the members of the National Council is honourable, not professional, with the exception of the President). They are usually part of standing committees that carry out highly specialised work and their position is generally protected by the fact that the chief of government usually cannot dissolve the second camber.

5. Specific functions/powers of second chambers

164. As the balance of power has tended to shift towards the lower chambers in bicameral systems, the role of the second chambers has been primarily focused on constitutional protection, and in recent decades the upper houses have sought to develop and perform new, specific functions.

165. *Constitutional amendments*. In some states, the approval of the second chamber is required for the adoption of constitutional amendments, and there are even examples (e.g., France, Czechia or Spain) of the upper chamber having stronger powers of intervention in this respect than in the case of ordinary laws. In Canada, the Senate has a significant role in authorizing

constitutional amendments, but in most cases, it can exercise only a suspensive veto over amendments authorized by the House of Commons.

166. *Oversight*. Second chambers may have the power to guarantee the correct performance of the other powers in relation to specific issues, such as international policy. In Czechia, the President of the Senate announces the election, takes the oath (in joint sessions of both chambers) and accepts the abdication of the President of the Republic; the Czech Senate also declares a state of war and takes decisions related to the army in conjunction with the first chamber; in Germany, the Bundesrat has specific prerogatives with regards to EU law and, in conjunction with the Bundestag, it decides on the state of defence or other emergency issues; in Mexico, the Senate approves international policy, ratifies international treaties, authorises the departure of troops outside the country, solves political disputes that arise between the powers of a state and acts as jury in impeachments; in Poland, the Senate grants consent to the President ordering a nationwide referendum; and, in the United States, the Senate can try impeachment cases and ratifies international treaties.

167. *Appointments*. The second chambers often have significant power, in the election or appointments of members of the high courts (Belgium with respect to the Constitutional Court and the Council of State, Czechia with respect to Constitutional Court, Mexico, Romania, Spain). Occasionally, they are also involved in the election of other public officials (e.g., the head of state in Germany, members of the Monetary Policy Council in Poland, heads of major public administration bodies in Brazil). While this power is usually shared with the lower house, in some countries only the second chamber has such powers (Czechia, United States).

168. *Human rights protection*. The function of protecting fundamental rights should also be emphasised, through the second chamber's right to challenge the constitutionality of a law before the Constitutional Court, its veto power on constitutional amendments or the prerogative to initiate specific procedures (e.g., in Germany, procedures relevant for militant democracy, such as the forfeiture of basic rights or prohibition of political parties).

169. *Veto power on specific subjects*. The second chamber can have absolute veto power on certain specific subjects, related to the protection of the specific interests it represents (e.g., Algeria or Austria, when the provinces' legislative or executive competences are in danger of being restricted). However, it most often has only a suspensive veto, which can be strong or weak. The former means that the veto of the upper house can only be overridden by the lower chamber by a qualified majority, in a specified way. In this case, the second chamber can not only delay the will of the lower house, but if the government majority falls short of the qualified majority required to override a suspensive veto, the upper house can prevent the passage of a controversial bill. In Germany, for example, a veto adopted by the Federal Council with at least a two-thirds majority can be rejected by the *Bundestag* with the same qualified majority and by a vote of at least half of all its members. A weak suspensive veto is when the dissent of the second chamber can be overridden by a simple majority in the lower house, such as in Spain, where the Senate can only delay the entry into force of a law passed by the Congress of Deputies for two months (20 days for urgent laws).

170. *Controlling federalism*. Second chambers may have the power to guarantee the correct development of internal relations in federal or decentralised systems. In Belgium, the Senate intervenes in conflicts of interests between the parliamentary assemblies of the country; in Germany, the Bundesrat participates in the approval of the *Zustimmungsgesetze* involving matters of interest of the *Länder* and in cases of a natural disasters or accidents that endanger the territory of more than one *Land*, the Bundesrat can rescind the measures that the Federal Government adopts; in Mexico, the Senate can dissolve the constitutional powers of a state and settles political conflicts between powers of a state; and, in Spain, the Senate authorises the executive to take the necessary measures so that the Autonomous Communities comply with their constitutional obligations.

171. *Legislative role ad interim*. The upper chamber may have the role of a provisional law maker when the lower chamber is dissolved or inactive. In Czechia, when the first chamber is dissolved, the Senate shall be empowered to adopt legislative measures concerning matters which cannot be delayed, and which would otherwise require the adoption of a statute. The Senate is not authorised, however, to adopt legislative measures concerning the Constitution, the state budget, the final state accounting, an electoral law, or international treaties. In Kazakhstan, the Senate performs the functions of the full Parliament for the adoption of constitutional laws and ordinary laws during the period of temporary absence of the *Majilis* (first chamber), caused by the early termination of its powers.

6. Other factors/variables

172. Some relevant factors for the analysis of the composition of the upper chambers are the requirements, such as specific demographic profiles, that the law itself sets out the requirements to be members of these legislative bodies.

a. Age

173. Age is a relevant issue, since in many cases the age to be elected or appointed to the upper chamber is higher than that required for the lower chamber, which can be observed in Algeria,[112] Canada,[113] Czechia,[114] France,[115] Italy,[116] Kazakhstan,[117] Mexico,[118] Poland,[119] Romania,[120] the United Kingdom[121] and the United States.[122]

174. This may be due to the perception that the powers exercised by the upper house demand a higher degree of maturity, especially in view of its reflective/moderation role (sober second thought). This reason does not necessarily apply to all the cited countries; nevertheless, since its origins, the *ratio* of bicameralism has been to include a different group of individuals in the decision-making process, in order to obtain a distinct representational basis which resulted in distinct chambers with different perspectives and types of members.[123]

b. Gender

175. Another relevant aspect is the gender of the members of the upper chamber. In some cases, parity integrations or quotas of candidacies reserved for women are established.

176. The countries that have gender quota systems as a requirement for the composition of both lower and upper chambers are: France, in the departments that elect senators according to the proportional representation system, the law imposes that the lists must be composed alternately of one candidate of each sex; Italy, gender is a requirement for the composition of the electoral lists for both chambers; Mexico, the rule of parity is foreseen for all positions of public office,

[112] 35 years old for the upper chamber, 25 years old for the lower chamber.
[113] 30 years old for the upper chamber, 18 years old for the lower chamber.
[114] 40 years old for the upper chamber, 21 years old for the lower chamber.
[115] 24 years old for the upper chamber, 18 years old for the lower chamber.
[116] 40 years old for the upper chamber, 25 years old for the lower chamber.
[117] 30 years old for the upper chamber, 25 years old for the lower chamber.
[118] 25 years old for the upper chamber, 18 years old for the lower chamber (2023 constitutional amendment).
[119] 30 years old for the upper chamber, 21 years old for the lower chamber.
[120] 33 years old for the upper chamber, 23 years old for the lower chamber.
[121] 21 years old for the upper chamber, 18 years old for the lower chamber.
[122] 30 years old for the upper chamber, 25 years old for the lower chamber.
[123] Some of the second chambers are named the “Senate”. Since Ancient Rome, this expression (from *senes*, “elders”) “evoke the idea of maturity and the public roles appropriate to male elders within the patriarchal framework of Roman society”. Luigi Capogrossi Colognesi, *Law and the Making of the Roman Commonwealth*, Cambridge University Press, 2018, page 20.

parties must guarantee that the list of candidates of proportional representation for the Senate must be composed alternately between men and women; Spain, the list of candidates for the Senate shall be as close as possible to the numerical balance between men and women, the rule for all elections is that no gender can be represented on the lists by more than 60% and gender split must not exceed two-thirds to one-third; and Tunisia, the Constitution requires gender parity in elected assemblies.

177. There are also other countries that, although they do not have gender parity rules, have other mechanisms to achieve significant membership of women in the upper house, for instance: in Canada, although there is no constitutional requirement to achieve gender parity in the Senate, this has been effectively achieved by an appointments policy that guarantees diversity in the upper house (as of May 2023, of the 90 sitting Senators, 48 are women, including the presiding Speaker);[124] in Ireland, there is no requirement to achieve gender parity, however, since 2023 the parties must select, at least, 40% of female candidates, if the quota is not met, political parties will lose 50% of the State funding; and in Romania, the list of candidates must ensure the representation of both genders, but there is no specific gender quota.

V. Conclusions

178. Following the International Seminar on “Bicameralism: phenomenology, evolution, and current challenges of a “contested institution””,[125] the Venice Commission undertook the preparation of this report aimed at identifying good practices on bicameralism, in light of the increasing interest it attracts at global level and the opportunities it may offer in the context of democratic backsliding.

179. As the Venice Commission has previously stated: “There is no general rule in favour or against bicameralism.”[126] Determining the internal structure of the legislature is the sovereign right of each country; there are no international rules or obligations. The analysis of the need for bicameralism and the answer to the question of whether it is a democratic necessity must be made “in the concrete situation of a particular State”[127] and it should encompass a "global perspective" of the second chamber within a particular constitutional system.

180. There is no theoretical or empirical evidence showing that either the unicameral or the bicameral system is more democratic or more efficient. Bicameral legislatures exist also in relatively small countries with unitary structures and homogeneous societies, such as Czechia, Ireland and Slovenia, while unicameral parliaments exist in some larger states (South Korea, Ukraine, Türkiye). Therefore, each state must decide which model to adopt based on its own traditions, and the specificities of its population and political system.

181. The following considerations should be taken into account. First, bicameralism should bring an added value to the political system. In addition, the existence of a second chamber is indispensable in federal states where it represents the federated states and should also be recommended in regionalised and decentralised states and large countries encompassing different cultures or ethnically, linguistically or religiously diverse communities. Thus, these

[124] In 1929, the Judicial Committee of the Privy Council (then Canada’s final court of appeal) ruled in Edwards v. Attorney General for Canada [1930] A.C. 124, that Canada’s constitutional statute, the British North America Act of 1867, must be interpreted as having “planted in Canada a living tree, capable of growth and expansion within its natural limits”, and so construed the provisions of the Act referring to the appointment of “qualified Persons” to the Senate as including eligible women. The first woman was appointed to the Senate in 1930. Likewise, there is no constitutionally-mandated gender quota system for the lower, elected house. In the last election to the House of Commons, 103 women were elected out of a total of 338 seats.

[125] Organised by the Venice Commission and the Spanish *Centro de Estudios Políticos y Constitucionales* (Ministerial department of the Ministry of the Presidency, Justice and Relations with the *Cortes* (Parliament) of the Government of Spain), on 4-5 July 2022.

[126] Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 34.

[127] Venice Commission, CDL-AD(2022)004, *op. cit.*, para. 41.

communities' specific, legitimate interests can be represented at national level in the upper chamber. In certain circumstances, bicameralism could also be a solution to prevent political conflicts and regulate community tensions.

182. The legal status of the second chambers should be enshrined in the national constitution, and their operation should be subject to constitutional guarantees, including the individual status of their members. The rules of operation should be regulated in a detailed, predictable and enforceable manner in the usual local way (by law, by standing rules or by conventions).

183. The relationship between the upper houses and the lower chambers, as well as with other legislative bodies in the country (e.g., at provincial or regional level), should be clearly defined, with particular attention paid to the division of power and labour between them. In addition, faced with the majority bloc in the lower chamber, the second chamber may act as a counterweight and a counter-power, establishing a system of checks and balances within the parliament.

184. Likewise, the relationship of the second chamber with other state powers (the executive, the head of state) should be clarified by the constitution, in light of the principle of the separation of powers and the system of checks and balances. The governmental power to dissolve the second chamber in parliamentary systems should be restricted to cases in which the second chamber has the correlative power to give and withdraw confidence in the government, and those cases that require resolving blockage in extreme situations.

185. The composition of the second chamber should be based on uniform criteria, such as popular representation or *sui generis* representation of territorial (or other type of) units with the same legal status. This does not mean that other ways of establishing the upper house, based on the country's history and traditions, are not legitimate.

186. The constitutional status of the second chamber, and in particular its powers, shall be adapted to the function for which it was created. In such matters, it should be granted at least a consultative right, which is guaranteed by the suspensive veto power. The greater the importance a constitutional polity attaches to the interests represented in the upper house, the stronger the powers which should be given to the second chamber.

187. Where stronger powers, such as an absolute veto, or even equal powers to the first chamber in symmetrical bicameralism, are entrusted to the second chamber, efficient anti-deadlock mechanisms to solve disagreements between the two chambers must be established to avoid blockage without transforming the second chamber into a useless and redundant burden seen as undermining effective decision-making procedures.

188. The second chambers are representative bodies, parts of the legislature, and their members must therefore be granted the rights that enable them to carry out their duties. To this end, they must be granted the so-called status rights which guarantee their independence, i.e., protection against illegitimate external influence. This calls for national legislation to guarantee immunity, conflicts of interest rules (incompatibility) and financial support covering at least the expenses incurred in performing their duties. In addition, the participation rights[128] of members of the upper chamber must be guaranteed within the framework of national laws or legislative standing rules.

189. Members of the second chamber should have equal rights, but this does not exclude the possibility that the groups of representatives forming a majority in the chamber may have greater real influence on the functioning of the house. Unless there are other compelling reasons not to do so, the principle of a free and independent mandate should be granted, which means that

[128] Right to attend chamber sessions and meetings, right to speak, parliamentary freedom of expression, right to ask questions, right to make proposals, right to form political groups, right to be elected to parliamentary office, right to participate in the decision-making (the right to vote).

members of the chamber cannot be instructed or recalled by anyone during their term of office. At the same time, it should be possible for the second chambers to involve in their decision-making process all stakeholders, public bodies and NGOs who are affected by the issues they deal with.

190. In this respect, it is worth noting that bicameralism might be a means of enhancing participatory democracy, insofar as a second chamber might provide an inclusive forum that offers enhanced representation to diverse groups of society whose voice is hard to be heard, e.g., women, refugees, migrants, people with disabilities, ethnic or linguistic minorities.

191. The complementary role of second chambers in crisis situations, whether caused by internal or external factors, should also not be underestimated. Moreover, approval by both the lower and upper houses of parliament can strengthen the legitimacy of constitutional amendments.

192. When bicameralism is not a viable or recommendable solution, the possibility of establishing other bodies should be envisaged, such as an intergovernmental conference of regions or similar platforms, that could perform the functions of a second chamber and that may be better suited to do so because it is less costly in terms of political responsibility, financial implications, and risks for timely decision-making.

193. Finally, it is to be noted that the good functioning of democracy very much depends on how democratic processes and procedures are perceived. In this context it is important to stress that bicameralism is not an end in itself but must serve a valid purpose, and that purpose must be visible for all. To this aim, the work of a second chamber should always be transparent and granted publicity and visibility, including the publishing of its agendas, deliberations and decisions, in order for the public to be aware of its work, the reasons behind its decisions and the added value it gives to the constitutional system.