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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

COMPILATION

OF VENICE COMMISSION OPINIONS AND REPORTS

CONCERNING BICAMERALISM¹

¹ This document will be updated regularly. This version contains all opinions and reports adopted up to and including the Venice Commission's 135th Plenary Session (9-10 June 2023).

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I. Introduction

This document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning bicameralism. Its aim is to provide an overview of the approach of the Venice Commission with regard to these topics.

The compilation is intended to serve as a source of reference for drafters of constitutions and of legislation regulating the types of bicameralism, for researchers, as well as for the Venice Commission's members, who are requested to prepare opinions and reports concerning legislation dealing with bicameralism. When referring to elements contained in this compilation, please cite the original document but not the compilation as such.

The compilation should not, however, prevent members of the Venice Commission from introducing new points of view or diverge from earlier ones, if there is a good reason for doing so. The compilation should be considered as merely a frame of reference.

The reader should also be aware that most of the opinions (as opposed to general reports and studies) from which extracts are cited in the compilation relate to individual countries and take into account the specific situations there. The citations will therefore not necessarily be applicable in the context of other countries. This is not to say that recommendations contained therein cannot be of relevance for other systems as well.

Venice Commission reports and studies quoted in this compilation seek to present general standards and principles for all member and observer States of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.

Each citation in the compilation has a reference that sets out its exact position in the opinion/ report/study (paragraph number, page number for older opinions), which allows the reader to find it in the opinion or report/study from which it was taken. In order to gain a full understanding of the Commission's position on a particular issue, it is useful to read the whole text of the opinion in question and the complete chapter in the Compilation on the relevant theme. Most of further references and footnotes are omitted in the text of citations; only the essential part of the relevant paragraph is reproduced.

The compilation is not a static document and will be regularly updated with extracts of recently adopted opinions by the Venice Commission. The Secretariat will be grateful for suggestions on how to improve this compilation (venice@coe.int).

II. The added value and criticism of bicameralism

"33. Matters concerning the structure of the legislative branch belong to a group of constitutional solutions in which the scope of states' freedom is very wide. In fact, it is difficult to find a common European or international standard with regard to the organizational structure of the legislature.

34. There is no general rule in favour or against bicameralism. There are different solutions in comparative constitutional law today and in the past. A number of democratic countries such as Sweden, Finland, Hungary, Portugal, Slovakia, Denmark, and Bulgaria do not have a second chamber. It is also worthwhile to refer to the ongoing dynamic discussion that takes place in Italy or Spain around bicameralism. Each country has a specific tradition and rules on the composition of Parliament, and on electoral rules and functions of each Chamber. But this is not a static approach. Each constitutional tradition evolves, and so the applicable constitutional tradition is not in itself a definitive obstacle to changing the system from a bicameral to a unicameral one. (...) When referring to unicameralism or bicameralism, political and constitutional theory consider different models. From a first point of view, bicameralism institutes the principle of checks and balances within the legislative branch. After a long evolution, the second chamber in the United Kingdom and in Canada now functions to "cool" or moderate the House of Commons. In the United States the Senate serves that same function, but also functions as the territorial or federal chamber, representing the States. Many countries with federal, or even regional and decentralized, structures have adopted this system, with notable differences among them regarding the specific powers and composition of the second chamber.

35. The Venice Commission has produced some observations and reflections on the question of bicameralism. First of all, in small countries a Senate is less frequent than in larger ones: "It would appear that second chambers are particularly unlikely to serve a purpose in the smallest or least populated countries of Europe (Denmark, Norway, Sweden, Finland, Estonia, Latvia, Lithuania, Portugal, Cyprus, Malta, Greece, Slovakia, Bulgaria and Hungary). In other words, all these countries with fewer than 15 million inhabitants deem it unnecessary to operate a second chamber. (...) Moreover, lack of a second chamber has required these countries to establish alternative bodies to represent their various economic, cultural and social interests to complement their single chamber.

36. Any highly decentralized state needs a second chamber to ensure dialogue between the center and the periphery. Since the Council of Europe considers decentralization, or more precisely local self-government, to be an essential component of democracy, second chambers clearly have a bright future.

37. Third, a Senate also can have other important roles. "Second chambers are often characterized as embodying a particular measure of wisdom, balance and expertise. Certain chambers have made outstanding contributions to the law-making process and improving the quality of legislation." This results in part from the additional time they typically have to better study the issues: "Second chambers often have more time at their disposal and can interest themselves in topics that are too often neglected by lower houses faced by more urgent matters". This contribution in quality compensates for the delay than can result from the discussion of a bill in both Chambers of the Parliament instead of only one."

38. Another criticism of a Senate is the cost of second chambers. However, the Venice Commission has found that: "In practice, these arguments are over-simplified and deserve closer analysis. The so-called high cost of second chambers is actually very

relative (...) the numbers of members of parliament in monocameral and bicameral states do not differ significantly. Finally, monocameral systems often include a form of "phantom" chamber, such as Luxembourg's Council of State, which calls on groups of experts, including academics, to consider draft legislation and draft opinions. Such institutions also bear a cost.

39. The last criticism is related with the less democratic character of some Senates, when members are selected by indirect suffrage (particularly in some federal states). "Indirect suffrage is not in itself undemocratic, but it must be based on clear and transparent rules. Nor is it wrong to use a variety of methods to select members of second chambers". The different methods of election to second chambers are often related with other kinds of representation or the presence of other groups: "insufficient attention has been paid to the possibility they offer of representing groups whose presence in the lower house is limited or non-existent."

(...)

41. The analysis of the need for bicameralism and the answer to the question of whether it is a democratic necessity must therefore be made in the concrete situation of a particular State. This is also the case in Chile where bicameralism belongs to the constitutional tradition of the political system in the context of the checks and balances of the presidential form of government.

42. The Venice Commission considers 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, multi ethnicity, and multi- culturalism. In a society where these aspects display a heightened significance, bicameralism is to be recommended. The second chamber can play a fundamental role in maintaining the balance between the center and the components of the state and thus be a kind of guarantor of the vertical distribution of power between the center and the component parts or regions, or even groups, in a state, as pointed out in the opinion of the Forum of Senates cited above. An appropriately designed Second Chamber may play an important role in terms of territorial representation by: (a) strengthening democratic systems through the diversity of representation and (b) strengthening the guarantee of the rights of indigenous people. In addition, bicameralism is also a guarantee for the checks and balances typical of a presidential system and two different bodies are necessary for the impeachment of the President and some other authorities."

[CDL-AD\(2022\)004](#), Chile-Opinion on the drafting and adoption of a new Constitution of Chile

"50. In summary, second chambers seem to be intended generally to ensure some representation of sub-national entities, in particular in federal states. This seemingly permanent feature was present at the time of the drafting of the ECHR and of the ICCPR and still is present today. It is therefore very unlikely that these treaties could be interpreted as requiring a radical change of the constitutional order of most countries with a bicameral system. At least, systems ensuring no equal representation of the population in second chambers but aiming to ensure other aspects of the principle of equality, should be considered in conformity with these treaties."

[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

"48. The draft opts for the introduction of a bicameral system. This is a political choice which has both advantages and drawbacks. Since the territorial structure of Ukraine is not based on federal or regional principles, a bi-cameral system is not a natural choice. Nevertheless, even in a unitary system, it can improve territorial representation and, due to the longer term of office of the Senate, enhance continuity. On the other hand, bicameralism complicates legislative and budgetary processes and may introduce new causes for political dead-locks.

49. The Senate seems to be seen by the drafters as a "less political" body due to the system of election of senators. It consists of three senators who are elected in the Autonomous Republic of Crimea, each region (oblast), the City of Kyiv, and in the cities that have the same status as an oblast. The former Presidents, who were not removed from the office by the procedure of impeachment, are also members of the Senate. One third of the Senate is elected every two years. The Senate can be seen as an instrument which should balance the competences of Verkhovna Rada. The main role of the Senate is to participate in the legislative process, and to replace the Verkhovna Rada in the process of the appointment to important positions in the state. One may have doubts whether this role of the Senate as a less political body is not overestimated.

50. All in all, the expected benefits and the possible disadvantages of a second chamber should be carefully weighed against each other.

51. As regards the composition of the Senate, the draft provides that all regional units would have the same number of representatives while there are important demographic inequalities between these units (e.g. 4.6 million inhabitants in the Donetsk oblast; 900.000 inhabitants in the Chernivtsi oblast). This would lead, in practice, to great inequality between voters (the weight of their votes) in different regions."

[CDL-AD\(2009\)024](#), Ukraine - Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine

"3. 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.

(...)

53. The calculation for the allocation of seats in this House can be seen from two different perspectives: (1) from the perspective of an individual canton of the Federation or of an individual citizen – either could arguably see it as disproportionate and lacking in equality; or (2) from the perspective of the Federation and the State of BiH – which can arguably see it as not arbitrary. In any case, it is designed to provide for a disproportionate reflection of mandates as across the 10 cantons. As a whole, the relevant provisions of the Election Law of BiH (i.e. Articles 10.10, 10.12, 10.15, 10.16 and 20.16A), create a system of indirect election that could be described as so circumscribed as to constitute a form of selection, respectively allocating seats to constituent peoples and cantons. The overall result is already dictated by the Constitution of the Federation as amended to comply with the Constitutional Court decision of 2002 on constituent peoples.

54. The societal value of ensuring representation of different components of society in second chambers, particularly in multi-ethnic democracies, has been recognised. Arend Lijphart recommends a federalized system in multi-ethnic countries and notes that a second chamber that is not proportionate to the population of the sub-national authority works well when groups are geographically concentrated. 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."

[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

"34. Another form of political division is found in bicameral parliaments in which the two chambers are elected or chosen on 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. This also reflects a form of separation of powers, with “checks and balances”, rather than the dichotomy of position/opposition. (...)."

[CDL-AD\(2010\)025](#), Report on the role of the opposition in a democratic Parliament

"30. One of the proposed amendments to the Constitution of Kyrgyzstan is the substitution of the currently existing bicameral parliament for a unicameral one. Kyrgyzstan is not the first State to make this type of change. A bicameral parliament was introduced in some States in the initial phase of their transition, as one of the initial steps to democratization, and in any case as a severance of ties with the former system. Indeed, the communist system did not accept the concept of a bicameral parliament. It was believed that there was a reason for a bicameral parliament to exist only in States with a complex nationality structure where a multicameral parliament would constitute a guarantee that the various nationalities would be represented in parliament. In practice, therefore, bicameral parliaments existed only in those states that embraced a federal structure. That is why the challenge of this principle was treated as a kind of symbol of severing ties with the previous political system."

[CDL-AD\(2002\)033](#), Kyrgyzstan - Opinion on the Draft Amendments to the Constitution of Kyrgyzstan

"19. Art. 6 provides for a bicameral parliament with two chambers of 18 and 12 deputies. The need for a bi-cameral parliament in an autonomous region is not obvious and all these rules could be left to the Adjara Constitution."

[CDL-AD\(2004\)018](#), Georgia - Opinion on the Draft Constitutional Law of Georgia on the Status of the Autonomous Republic of Adjara

III. Principles governing the selection and distribution of powers of second chambers

A. The composition and selection of members of second chambers

"35. Art. IV of the Constitution provides for a bicameral system with a House of Representatives and a House of Peoples both having the same powers. Bicameral systems are typical for federal states and it is therefore not surprising that the BiH Constitution opts for two chambers. However, the usual purpose of the second chamber in federal states is to ensure a stronger representation of the smaller entities. One chamber is composed on the basis of population figures while in the other either all entities have the same number of seats (Switzerland, USA) or at least smaller entities are overrepresented (Germany)."

[CDL-AD\(2005\)004](#), Bosnia and Herzegovina - Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative

"56. Therefore, the democratic legitimacy of the method of election should not be evaluated by reference to the comparative ballot value of voters or imbalance within or between cantons. The institutional and structural imbalance within the BiH electoral system might clash with principles of European electoral heritage if the election was for a directly elected part of the legislature, such as the Presidency or the different Houses of Representatives."

[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

"38. The principle of direct suffrage is prominently dealt with in Article 4, although direct suffrage is not enumerated explicitly in Article 1, paragraph 2 of the Convention. According to this provision, direct suffrage should be applied to at least one of the chambers of the national parliament. However it does not contain any provision for regional or local assemblies (see European Charter of Local self-government, ETS No. 122). The 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. If in a bicameral system, the other chamber is not elected by direct elections, this does not contradict the provisions of the Convention (Article 4, paragraph 3)."

[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

B. Types of powers

"97. In bicameral parliamentary systems there is usually the requirement that a constitutional amendment be passed in both chambers, either by ordinary or qualified majority. If the two chambers are elected and composed by different criteria (which is usually the case), then even the requirement of ordinary majority in both will in effect have to reflect a broader underlying political consensus. Along the same line, if a qualified majority is necessary in both chambers, as for example in the German

parliament, then this may in effect be a stricter requirement than 2/3 in a unicameral system. In the Netherlands, both chambers must agree to the amendment twice, before and after elections, with simple majority in the first round and 2/3 in the second. In Ireland the requirement is simple majority in both houses followed by simple majority in a popular referendum, but even this in effect will have to reflect broader consensus."

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

"35. Art. IV of the Constitution provides for a bicameral system with a House of Representatives and a House of Peoples both having the same powers. Bicameral systems are typical for federal states and it is therefore not surprising that the BiH Constitution opts for two chambers. However, the usual purpose of the second chamber in federal states is to ensure a stronger representation of the smaller entities. One chamber is composed on the basis of population figures while in the other either all entities have the same number of seats (Switzerland, USA) or at least smaller entities are overrepresented (Germany)."

[CDL-AD\(2005\)004](#), Bosnia and Herzegovina - Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative

"20. As a consequence of and compared to the powers of the President Parliament seems quite weak. No reason is provided for the choice of a bicameral Parliament which seems questionable in a federated entity and threatens to further weaken the weight of the chambers with respect to the President. Article 5.3.e of the "Federal Law on General Principles of the Organisation of the legislative and representative organs of State power of the subjects of the Russian Federation" provides for the possibility that the Parliament of a federated entity may exercise a vote of no confidence not only with respect to the President but also with respect to the Government or individual ministers. This possibility should be included in the Constitution of the Republic."

[CDL-AD\(2003\)002](#), Chechen Republic - Opinion on the Draft Constitution of the Chechen Republic

IV. Reference documents

[CDL-AD\(2022\)004](#), Chile - Opinion on the drafting and adoption of a new Constitution of Chile

[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

[CDL-AD\(2005\)004](#), Bosnia and Herzegovina - Opinion on the Constitutional Situation in Bosnia and Herzegovina and the Powers of the High Representative

[CDL-AD\(2010\)001](#), Report on Constitutional Amendment

[CDL-AD\(2010\)025](#), Report on the role of the opposition in a democratic Parliament

[CDL-AD\(2009\)024](#), Ukraine - Opinion on the Draft Law of Ukraine amending the Constitution presented by the President of Ukraine)

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[CDL-AD\(2003\)002](#), Chechen Republic - Opinion on the Draft Constitution of the Chechen Republic

[CDL-AD\(2002\)033](#), Kyrgyzstan - Opinion on the Draft Amendments to the Constitution of Kyrgyzstan