



Strasbourg, 9 December 2002

**Opinion no. 226/2002**

Restricted  
**CDL (2002) 156**  
English only

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

**COMMENTS ON  
THE ELECTION LAW  
OF THE REPUBLIC OF MOLDOVA**

**by**

**Mr Richard ROSE (Expert, United Kingdom)**

## I. GENERAL POINTS

1. The English translation leaves something to be desired, and occasionally is technically misleading: for example, Article 1, p.1. “Any citizen of the Republic of Moldova with the right to vote”. The definition given is that of an Elector; only by exercising this right does an elector become a voter.

2. Substantively, the Representation Threshold (RT) – 6 percent for a single party; 9 percent for a two-party bloc; and 12 percent for blocs of three or more parties (Article 86) – is high by absolute and comparative standards. The system asks voters to endorse a single candidate rather than a party list, and then allocating seats in proportion to the electoral strength of parties (that is, blocs of candidates). It also makes it possible for an independent candidate to be elected, if he or she wins three percent of the vote.

3. In eight of the ten post-Communist countries now seeking admission to the European Union it is 5 percent, and also in the Russian Federation. In Bulgaria the threshold is 4 percent and in Slovenia, 3 percent. A higher threshold for blocs or coalitions of parties is frequently found in the region – but not at the levels specified here. For example, in Romania a two-party bloc has a threshold of 8 percent, with 1 percent added for each additional member of the bloc. In the Czech and in the Slovak Republics, a two or three-party bloc has a threshold of 7 percent; and for four or more parties it is 10 percent. Minority ethnic groups are sometimes catered for by establishing different and lower thresholds or by reserving a small number of seats (Table 1).

**Table 1.- PROPORTIONAL REPRESENTATION THRESHOLDS**

Year	Country	Threshold for seats (%)			PR Index (%)
		1	2	3+ parties	
2000	Slovenia	3-a	3	3	97
2001	Poland	5-b	8	8	91
1999	Estonia	5	5	5	90
2002	Hungary	5	5	5	89
2001	Bulgaria	4	4	4	86
2002	Czech R	5-c	10	15	85
2002	Latvia	5	5	5	84
2001	Slovakia	5-d	7	7	82
2000	Romania	5-e	8	9	82
2000	Lithuania	5	7	7	78
1999	Russia	5	5	5	78
	<b>MOLDOVA</b>	<b>6</b>	<b>9</b>	<b>12</b>	<b>72</b>

*(Proportionality Index: 100% equals exact match share of votes and seats)*

- a. Two seats reserved for ethnic minorities.
- b. No threshold for minority parties.
- c. And 20% for four parties.
- d. For a coalition of four or more parties, 10 percent.

e. Guaranteed representation for minority parties

*Source: Calculated from official electoral data to be reported in Richard Rose and Neil Munro, Elections and Parties in New European Democracies. Washington DC: Congressional Quarterly Press, forthcoming, spring, 2003.*

4. In Moldova the high threshold to qualify for seats in Parliament has resulted in only three parties winning seats there in the election of 25 February 2001. No independent was able to clear the three percent barrier for election.

Collectively, the three parties secured 72 percent of the vote; the remaining 28 percent was cast for parties or independents. The result is a degree of disproportional representation virtually unheard of in established democracies.

Whilst the 1994 Moldovan election was not so disproportional (Index: 82 percent), it too was below the median country in Table 1.

5. The fact that no proportional representation election produces an exactly proportional result is not a justification for maintaining a grossly disproportional election law. If a straight 5 percent threshold had been applied in the most recent Moldovan election and all electors had behaved the same, the relative size of parties would have been maintained and the Communist Party would still had an absolute majority of seats in Parliament (Table 2). However, there would have been five rather than three parties in Parliament, and the Opposition would have had 40 rather than 30 seats, thus enabling it to operate more effectively (Table 2). A one percent reduction in the threshold would have produced, *ceteris paribus*, an increase of 10 percentage points in the Index of Proportionality, raising it to 82, well within the range of countries negotiating European Union membership. Therefore, I would recommend a maximum threshold of five percent for the representation of single parties. Given the limited number of parties currently contesting elections in Moldova, there would appear no reason to raise the threshold higher for coalitions of parties.

**Table 2.- SIMULATED EFFECTS OF A 5 PER CENT THRESHOLD IN MOLDOVA**

	Actual threshold: 6%		If threshold 5%:
	2001 vote	Seats	Seats
Communists	50.1	71	61
Braghis Alliance	13.4	19	17
Christian Dem People's	8.2	11	10
Rebirth & Conciliation	5.9	0	7
Democratic Party	5.0	0	6
All others	17.4	0	0

*Source: "Election Results", OSCE/ODIHR Final Report Moldova Election (Warsaw, 3 April 2001), p. 13.*

6. Allowing votes to be cast for individual candidates to allow independents to win seats in a PR system is acceptable in situations of weak and unstable party formations. However, the threshold of 3 percent specified in Article 87.3 is unreasonably high. To take an extreme example, if 33 independents each qualified for a seat, not a single party would pass the five percent threshold in a 101 seat Parliament. A strictly proportional quota for independent candidates would set the threshold for being awarded a seat at one percent. If 10 independents won seats by taking at least 3 percent of the vote, then a party would need to win 7.1 percent of the vote for party blocs (that is 5/70ths) to pass the election threshold. Hence, I would recommend lowering the threshold for the representation of independents to one percent, a point specially relevant to ethnic minorities.

7. The existence of numerous ethnic minorities, e.g. Ukrainians, Russians and Gagauz, raises additional questions of principle, which would increase in importance if the predominantly non-Moldova ethnic population in the Transnistria region were to be incorporated in Moldovan elections. The reduction in the electoral threshold to five percent would allow large minorities, e.g. Russians and Ukrainians, to be represented in Parliament – if a substantial portion of the ethnic group wished to be represented by an ethnic party. The Gagauz minority does not appear to be large enough to clear a five percent threshold but because it is spatially concentrated, it can enjoy power in local government in its special region.

8. In Romania 19 of the 346 seats in Parliament are allocated to minorities, equivalent to 5 or 6 seats in a 101 – seat Moldovan Parliament. To follow the Romanian practice would, however, create difficulties in determining which ethnic minorities should receive scheduled seats--and five seats would under-represent the larger minorities. Moreover, it would institutional divisions in a political system where the integration of diverse ethnic groups is a sine qua non for the maintenance of the state.

9. Lowering the threshold for PR to five percent would enable larger minorities to win a significant bloc of seats in Parliament, if their nominal members voted along ethnic lines. Lowering the threshold to one percent would allow smaller minorities to get at least one voice in Parliament, if there was a significant degree of cohesive voting along ethnic lines. Making such provisions would also avoid the normatively and empirically contentious issues of deciding whether or not Moldovan citizens ought to be represented on ethnic grounds or in terms of other cleavages of income, urban/rural residence, etc. That decision should not be taken by legislation but by the electorate.

## II. SPECIFIC DETAILS

10. Officers of the Central Elections Commission (CEC). Article 16.2 appears to vet the choice of the President of the Commission in a majority in Parliament, and Article 17.1. vests the choice of the Vice President and Secretary in a majority of the Commission members. Thus, all three posts could be in the hands of a single political party. To avoid this happening, either all three officers of the Commission could be elected by its members by Single Transferable Vote Proportional Representation (PR), or at least the Vice President and Secretary so elected.

11. Article 25.1. The right to call a meeting should not require a majority of the CEC. It should require no more than four and preferably three members to request a meeting.

12. Article 29.12. The Electoral Committee's officers should be elected by Single Transferable Vote Proportional Representation to prevent one party or clique dominating it.

13. Article 37. Loans. The purpose and operation is not clear. Perhaps the translation has gone wrong? Clause 3 indicates that the value of the loan relates to the candidate's vote, which can only be known after the campaign is finished. Alternatively, IF the value of the loan is related to the vote for the candidate at a previous election, then this distorts competition because it favours incumbents and, to a lesser extent, career politicians, and discourages new entrants to the parliament race.

14. Many countries do make such cash payments to candidates who receive a pre-established % of the vote – but this is a non-returnable grant rather than a repayable loan, as appears to be required in clause 4. A non-returnable grant to candidates/ parties with a specified amount of votes would appear to be justifiable state support for competitive elections.

15. Article 44.1. e. Financial declaration of candidate. Information should be required about other members of the candidate's family too; the Russian Federation's law could be used as a template.

16. Article 48.3. The order of candidates should be determined by lot rather than the time of registration.

17. Article 49.1. There should be added a clause to the effect that the paper used should be opaque, so that the voter's mark cannot be read or, if this is not done, then voters' should be given an envelope in which to seal the ballot they present for dropping in the ballot box.

18. Article 55.4. Mobile voting boxes. This practice from the Soviet era is not followed in established democracy where allegations of fraud or political pressure are far rarer than in the Commonwealth of Independent States. The objections are that it removes the act of voting from full scrutiny of the election committee; it opens up the opportunity for impersonation of the elector and/or intimidation; and it also takes officials away from their duty at the polling station. Postal voting provisions could eliminate the use of mobile ballot boxes.

19. Article 61.3. There should be a minimum period for retaining electoral documents, such as one year from the date of the election, or a fixed number of months from the expiry of the legal right to mount a challenge – and there should certainly be a clause that all documents must be retained indefinitely as long as there is a legal challenge being heard by the appropriate authorities.

20. Article 64.4. A high threshold in a PR election makes it desirable for electors to have an idea which parties are likely to pass the threshold and which are not, in order to avoid wasting votes. Reputable public opinion polls conducted according to scientific standards provide such information and WAPOR (World Association of Public Opinion Research) is therefore justified in arguing against a ban. Moreover, a ban encourages rumours about "secret" polls, which may be non-existent, falsely reported or mis-reported.

21. If there is a concern with the reporting of fraudulent results, then the law could stipulate that no results of opinion polls may be published without a statement of the number of persons interviewed, the dates of interviewing, an estimate of the margin of sampling error and that details of the sample be lodged with the Central Election Commission at the time of publication by the organization responsible for the survey.

22. Further safeguards against “last minute” announcements of fraudulent results would include a ban on publication of any poll within 48 hours of the opening of election day. That would give critics of last minute polls an opportunity to inspect the sample details filed with the CEC and challenge the reliability of results through the media before votes were cast.

Professor Rose is the author of more than two dozen books on parties and elections, including most recently, INTERNATIONAL ENCYCLOPEDIA OF ELECTIONS (2000); ELECTIONS WITHOUT ORDER: RUSSIA’S CHALLENGE TO VLADIMIR PUTIN (2001); and PARTIES AND ELECTIONS IN NEW EUROPEAN DEMOCRACIES (forthcoming, 2003). He is a Fellow of the British Academy, an honorary Fellow of the American Academy of Arts & Sciences and holds lifetime achievement awards from academic societies in both the United Kingdom and the United States. He is the founder and director of the Centre for the Study of Public Policy, University of Strathclyde, Glasgow, Scotland.