



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 11 August 2006

Study No. 335/2005

Restricted
CDL(2006)059
Or.fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

REPORT

ON SECOND CHAMBERS IN EUROPE

**"Parliamentary complexity
or democratic necessity?"**

by
Mr Patrice Gélard (Expert, France)

SECOND CHAMBERS IN EUROPE
PARLIAMENTARY COMPLEXITY OR DEMOCRATIC NECESSITY?

1. Nearly 70 countries in the world, including 17 in Europe, practise bicameralism¹. Bicameralism is closely bound up with federalism, of which it is one of the key features². Indeed, all six federal states in Europe are bicameral³. The same applies to countries that are highly decentralised or constitutionally regionalised, where, as in the case of federalism, the second chamber plays an essential balancing role between the centre and the state's geographical components. The main function of second chambers would therefore appear to be to represent sub-national authorities. At the same time, the trend is towards the disappearance of aristocratic chambers or a decline in their role, even though they still exist in certain countries, such as the Federation of the United Arab Emirates and Malaysia, or several African states with their councils of chiefs.

2. At the Forum of World Senates on 14 March 2000, about fifty delegations unanimously adopted a declaration that identified four functions of second chambers, which:

- consolidated and enhanced democratic regimes, through the diversification of representation and the integration of all the members of the nation;
- facilitated the process of decentralisation and helped to regulate relations between local and regional authorities and the central authorities;
- entrenched legal rules and standards and the rule of law and placed the separation of powers in a modern context;
- helped to publicise legislative and political debate and inform and shape public opinion⁴.

3. But although bicameralism seems to be in good health, it continues to face criticism and several countries have dispensed with it completely. This was the case with Sweden and Finland, while more recently second chambers have been abolished in Croatia, Kyrgyzstan and Senegal. The criticisms are well known: second chambers are expensive and they impose excessive delays on the work of first – elected – chambers. At a time when several European second chambers are undergoing reform and their role is the subject of wide-ranging debate in Europe, we first need to examine the current situation.

1. Composition and membership of second chambers in Europe

4. The following table summarises the composition of second chambers and their method of selection.

¹ Austria, Belgium, Belarus, Bosnia and Herzegovina, Czech Republic, France, Germany, Ireland, Italy, Netherlands, Poland, Romania, Russia, Slovenia, Spain, Switzerland and the United Kingdom.

² Six in Europe (see the following note); six in America: Canada, USA, Mexico, Brazil, Venezuela, Argentine; two in Africa: South Africa, Ethiopia; three in Asia: United Arab Emirates, India and Malaysia; and one in Oceania: Australia.

³ Austria, Belgium, Bosnia and Herzegovina, Germany, Russia and Switzerland. Serbia and Montenegro no longer exists as a state since its two components have separated and in practice the previous entity was a confederation.

⁴ Forum of World Senates: *Le Bicamérisme, une idée d'avenir*, Paris, Publications du Sénat, 2000, pp. 113 (in French).

Country	Name of the 2 nd chamber	No. of members	Method of selection	Term of office	Minimum age
Austria	<i>Bundesrat</i>	64	Indirect suffrage. Election by the <i>Land</i> council. Minimum 3 members per <i>Land</i> ; number depends on size of population	5 to 6 years, depending on the term of office of the relevant <i>Land</i> council (<i>Landtag</i>)	21 years
Belarus	Senate	64	- 56 elected by indirect suffrage in 7 constituencies (6 regions + Minsk) – 8 members per constituency; 8 appointed by the President of the Republic		
Belgium (federal state)	Senate	74	- 40 elected by universal suffrage (25 Dutch-speaking and 15 French-speaking, by proportional representation) - 21 elected by indirect suffrage by the community councils (10 Dutch-speaking, 10 French-speaking and 1 German-speaking); - 10 co-opted; - 3 members by right (the monarch's children)	4 years (dissolution possible)	21 years
Bosnia and Herzegovina (federal state)	House of Peoples	15	- 10 elected by the Chamber of Peoples (5 Croats, 5 Bosniaks) - 5 elected by the Assembly of the Republika Srpska	2 years (dissolution possible)	18 years
Czech Republic	Senate	81	Half elected by direct majority vote in two rounds every three years	6 years	40 years
France	Senate	346 (in 2011; 325 in 2004 and 334 in 2008)	Indirect suffrage; - 12 senators representing French persons living outside of France selected by the Assembly of French persons living abroad; - 334 senators elected in <i>départements</i> ; each <i>département</i> has at least one member. The number of senators varies according to population and they are elected by indirect suffrage by the 150 000 members of the electoral college (members of parliament, regional councillors, <i>département</i> councillors and representatives of municipalities), <i>départements</i> with 1 to 3 senators use the two-round majority vote system and the rest proportional representation	6 years (half renewable every three years; formerly 9 year term renewable by thirds)	30 years
Germany (federal state)	<i>Bundesrat</i>	69	3, 4, 5 or 6 members of the <i>Länder</i> governments, according to their population size	depends on their continued membership of whichever <i>Land</i> government they represent	18 years
Ireland	<i>Seanad Eireann</i>	60	- 49 elected (43 indirectly from vocational panels, using proportional representation with single transferable vote; 3 elected by the graduates of the national university of Ireland and 3 elected by the University of Dublin - Trinity College); - 11 appointed	5 years	21 years
Italy	Senate	323	- 232 (75%) elected directly by majority vote;	5 years	40 years

			- 83 elected by proportional representation on a regional basis with at least 7 senators per region, other than Valle d'Aosta (1) and Molise (2); - 3 former presidents (for life); - 5 members appointed for life		
Netherlands	First Chamber of the Estates General	75	Elected indirectly by the provincial estates using proportional representation	4 years (unless the second chamber is dissolved)	18 years
Poland	Senate	100	Elected by direct suffrage and majority vote in one round in 40 voivodie, which are represented by 2 to 4 senators, according to population	4 years (unless the second chamber is dissolved)	30 years
Romania	Senate	143	Elected by direct suffrage and proportional representation in 42 constituencies that elect 2 to 13 senators	4 years (dissolution possible)	35 years
Russia	Council of the Federation	178	- 1 senator appointed by each of the Assemblies of the 89 subjects of the Federation; - 1 senator appointed by the governor, president or mayor of each of the 89 subjects of the Federation;	Depends on the term of office of those who have appointed them	30 years
Slovenia	National Council	40	- 22 selected by indirect election by the local assemblies; - 4 employer representatives; - 4 employee representatives; - 4 representatives of craftsmen, agricultural workers and the liberal professions; - 6 representatives of non-economic activities	5 years	18 years
Spain	Senate	259	- 208 elected by direct suffrage and majority vote (within each province) - 51 elected by indirect suffrage and proportional representation by the councils of the autonomous communities	4 years (dissolution possible)	18 years
Switzerland	Council of States	46	2 members per canton (one per half canton) elected by majority vote (except in one canton)	4 years	20 years
United Kingdom	House of Lords	About 730	- about 600 life peers - 92 former hereditary peers ; most of them elected by their fellow hereditary peers - 26 lords spiritual (bishops and archbishops) - 12 law lords	for life	21 years

1.1. The title of the second chamber

5. The most common name is "senate", and even when another title is used the members often call themselves senators.

1.2. Number of senators

6. This varies between 15 (Bosnia and Herzegovina) and 346 (France). The average is about 70 to 100 but there are always fewer senators than members of parliament and the number is to a certain extent linked to the size of population. Federal states are to some extent a special case and an exception to this rule. The same naturally applies to the totally atypical House of Lords.

1.3. Method of selection

7. Generally speaking, second chambers are elected by indirect suffrage by the assemblies of the countries' provinces, regions or other administrative entities. However, Italian, Polish, Romanian and Czech senators are elected by direct suffrage using a different voting system to the lower house. Belgium and Spain use mixed voting systems with some senators elected by direct universal suffrage and the rest indirectly. Aside from the specific case of the United Kingdom, two exceptions should be mentioned, those of Ireland, where university graduates elect six senators, and Slovenia, where alongside the local authority representatives there are representatives of employers, employees, craftsmen, agricultural workers and the liberal professions and non-economic activities (as in the French economic and social council).

8. There is no particular significance to the fact that senators are generally selected on a regional basis, except in the case of federal states. Here a distinction must be drawn between senators who are selected by local authorities (Germany, Austria, Bosnia and Herzegovina, Russia) and those elected by direct suffrage, who are thus more representative of the inhabitants of the component parts of the federation (Switzerland, Belgium).

9. Under the French system, senators are much more the representatives of municipalities than of *départements* and regions, since of the 150 000 members of the electoral college, 142 000 represent municipal councils, 4 000 *département* councils, 1 870 regional councils and 577 members of parliament (i.e. members of the lower house).

10. It should also be pointed out that when the two chambers are both directly elected – even with different voting systems – it is then somewhat anomalous to grant fewer powers to the second chamber, since they have the same democratic legitimacy. We shall return to this question.

1.4. Terms of office

11. As a rule, and leaving aside as usual the British case, second and lower chambers have similar terms of office. The shortest term is that in Bosnia and Herzegovina, which is much too brief. In contrast, the former nine-year term of French senators was excessive. The 2004 reform has reduced their term to six years, which is closer to the European average.

1.5. Age

12. Although there is a trend towards harmonising the age of eligibility for the two chambers (18 in the majority of cases), some countries remain attached to the idea that second chambers should be reserved for persons of experience (40 years in Italy and the Czech Republic, 35 years in Romania and 30 years in France, Poland and Russia).

13. A more detailed study would reveal other distinctive features of the membership of second chambers, such as their representation of women or social or occupational groups that are un- or under-represented in the lower house.

14. Finally, we should note the very special case of British peers, who perform their duties unpaid, though this also applies to the Swiss Council of States, whose members are only entitled to claim expenses.

2. Functions and powers of second chambers

2.1. Equal bicameralism

15. In a certain number of cases, second chambers have exactly the same powers and responsibilities as their counterpart first chambers. This applies particularly to Italy, where the Senate has the same powers as the lower house to legislate and monitor government action. This situation reflects the method of electing the second chamber, which as with the lower house is by direct universal suffrage. This was also the case in Romania until the last constitutional revision. However, as in Russia, it is no longer possible to speak of equal bicameralism although each chamber has specific powers.

16. Bosnia and Herzegovina also practises equal bicameralism in both the legislative field – initiating legislation and the right of amendment – and monitoring government activities. This is more surprising than in Italy as the Chamber of Peoples is elected by indirect suffrage, but is justified by the requirements of federalism. Switzerland also has an equal bicameral system, reflecting its federal structure.

2.2. Unequal bicameralism

17. In all the other bicameral states, the bicameralism is unequal, with the second chamber exercising fewer powers than the first, even if it has been elected by direct universal suffrage.

2.2.1. Restricted financial powers

18. Second chambers often have fewer financial powers than their lower house equivalents. The Austrian *Bundesrat*, for example, has no budgetary responsibilities. The Spanish Senate has no power to amend the budget, unless the government agrees. The Irish Senate, the Czech Senate and the British House of Lords have no budgetary powers. Moreover, the budget is always presented first in the lower house.

2.2.2. Restricted legislative powers

	Equal bicameralism	Unequal bicameralism	Specific powers of the second chamber
Austria		X	X
Belgium		X	X
Bosnia and Herzegovina	X		
Czech Republic		X	X
France		X	X
Germany		X	X
Ireland		X	
Italy	X		
Netherlands		X	X
Poland		X	X
Romania		X	X
Russia		X	X

Slovenia		X	
Spain		X	X
Switzerland	X		
United Kingdom		X	X

2.2.2.1. No power to initiate legislation

19. This is the case in the Netherlands, where the First Chamber of the Estates General (the upper house) has no power to initiate or amend legislation. Its legislative powers are confined to approving or rejecting legislation passed by the other chamber⁵. However, the two have equal powers concerning the status of the monarchy, war and states of emergency. It is rare for legislation initiated by a senate to be adopted and the French system of parliamentary legislative windows is far from general.

2.2.2.2. No right of amendment

20. The Austrian *Bundesrat*, like the First Chamber of the Netherlands Estates General, has no right of amendment. In most countries, amendments tabled by senators are rarely approved, France being an exception in this regard.

2.2.2.3. Specific legislative powers

21. In the case of unequal bicameralism, first chambers always have the last word on legislation. However, as the following table shows, there are certain cases where the two chambers are on an equal footing.

DISTINCTIVE POWERS OF SECOND CHAMBERS

Country	Special or equal powers of second chamber
Austria	- Treaties affecting the <i>Länder</i> - Constitutional laws affecting the <i>Länder</i>
Belgium	- Constitutional revision - Status of the monarchy - Important legislation (international treaties, internal agreements on co-operation, courts, nationality)
Czech Republic	Equal powers concerning electoral law, the functioning of the chambers and the Senate's rules of procedure. Otherwise, the Senate can only oppose the will of the first chamber in the short term. The Senate has a constitutional veto over all treaties and all legislation concerning human rights.
France	- Constitutional revision - Status of the Senate
Germany	- Constitutional revision - Tax receipts of <i>Länder</i> - Administrative sovereignty of <i>Länder</i> - Transfer of sovereignty to the European Union
Ireland	- Constitutional revision - International relations - Status of the President } => Special powers

⁵ Please note that the First Chamber of the Dutch Estates General is a second chamber within the meaning of the present report, and vice versa.

Italy	Dissolution of a regional council => Special powers
Netherlands	- Status of the monarchy - State of war - State of emergency
Poland	- Organisation of referendums - Applications to the Constitutional Court
Romania	<ul style="list-style-type: none"> ■ Equal power; constitutional revision - joint sessions, for example: <ul style="list-style-type: none"> ■ Motion of censure ■ Membership of the EU and NATO - Generally speaking, each chamber has its own specific powers. The Senate has the final say on: <ul style="list-style-type: none"> ■ Ratification and implementation of international treaties and agreements ■ Most organic laws
Russia	Each chamber has a number of specific powers The Duma has the last word, except in the case of the most important legislation, for which it requires a special majority to override the veto of the Council of the Federation.
Slovenia	Second chamber has very restricted powers, in the form of the right to make proposals, table amendments, request second readings and request referendums.
Spain	- Constitutional revision - Local administration and autonomous communities (but the lower house may have the last word)

22. Apart from these examples, in certain cases second chambers have special powers that amount to rights of veto. For example, certain laws cannot be enacted without their agreement or require qualified majorities in the relevant first chamber.

2.3. Powers of oversight

2.3.1. Power to dismiss governments

23. Generally speaking, this option only exists in the countries - Bosnia and Herzegovina and Italy – with equal bicameral systems. In Romania, motions of censure are voted on in joint sessions of the two chambers. The issue does not arise in Switzerland, where the system is theoretically not a parliamentary one.

2.3.2. Extended right of oversight

24. Most second chambers have wide-ranging powers to monitor the activities of government, in the form of inquiries, questions, proposals and referrals to a constitutional court. However, in the Polish and Slovenian upper houses these powers are fairly restricted.

25. European integration has led to a major extension of second chambers' functions. The upper houses of the EU member states have all established committees or their equivalents to monitor activities connected with Europe. Chambers such as the House of Lords and the German and Austrian upper houses have carried out some exceptional work in this area. Spain has a joint European committee of the two chambers, which thus places them on an equal footing.

2.4. Other specific powers

2.4.1. Interim heads of state

26. In several bicameral states, the president/speaker of the second chamber acts as interim head of state. This is traditional practice in France, but also applies to Germany, Romania, the Czech Republic, Poland and Italy.

2.4.2. Other functions

27. Other functions include the decision to commit the armed forces to serving abroad (Germany), the right to indict the head of state and, more generally, the power to appoint members of courts or of judicial service commissions (Russia, Italy, Czech Republic, Germany, Austria, Belgium).

28. Thus, most second chambers have fewer powers than their counterpart lower houses. Nevertheless, they make key contributions to legislation, overseeing government activity and, more recently, the process of European integration.

3. Issues and future prospects

3.1. The justification for second chambers

29. The arguments against second chambers are well known. They are a burden on tax payers, are undemocratic in their method of selection and impede the parliamentary process by delaying legislation approved by the lower house.

3.1.1. The cost of second chambers

30. In practice, these arguments are over-simplified and deserve closer analysis. The so-called high cost of second chambers is actually very relative. In theory, for example, the functions of the House of Lords are performed free of charge, as are those of the Swiss Council of States. Moreover, 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.

3.1.2. The value of second chambers in small countries

31. 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. It should be noted that some of them (Sweden, Finland, Hungary, Bulgaria) have had bicameral systems during certain periods of their history, and (Hungary, Bulgaria) regularly discuss the re-establishment of a senate, or in the case of Ukraine its establishment for the first time. Indeed, with 50 million inhabitants, the last-named country must be considered to be well suited to a bicameral system. 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.

3.1.3. The importance of second chambers in federal and highly decentralised states

32. As already noted, federal states in Europe and elsewhere in the world all have bicameral systems. Popular representation has to be accompanied by representation of the constituent geographical entities, particularly when the federal state has been formed by a process of merger. There are (at least currently) no exceptions to this situation, which has become a key rule of federalism.

33. The recent development of constitutionally enshrined regionalisation or decentralisation points to the same outcome. Any highly decentralised state needs a second chamber to ensure dialogue between the centre and the periphery. Since the Council of Europe considers decentralisation, or more precisely local self-government, to be an essential component of democracy, second chambers clearly have a bright future.

3.2. The selection of members of second chambers

3.2.1. The ambiguities of selection by direct universal suffrage

34. Outside of federal states, direct universal suffrage to select members of both chambers of bicameral parliaments, even with different voting systems, creates a constitutional anomaly that either necessitates equality between the two or, if the second chamber has fewer powers than the first, infringes the principle of popular sovereignty. Both situations create certain ambiguities. In the former case, one may question the value of a system where the selection of both chambers by direct universal suffrage creates constitutional clones. Both then represent the population at large, which may impede the efficient conduct of parliamentary business. Italy falls into this category, with the collapse of the constitutional initiative designed to turn the Senate into the representative of the regions. On the other hand, under Romania's 2003 constitutional revision the final say on ratification and implementation of treaties and most organic laws lies with the Senate, whereas in other cases the Chamber of Deputies retains this prerogative.

35. It is even harder to understand cases where both chambers are elected but one has fewer powers than the other, as in Spain, Poland and the Czech Republic. Problems arise when, as is now the case in Spain, the opposition has a majority in the upper house. In Poland senators find it difficult to justify their status and in the Czech Republic the Senate has failed to make an impact on the public, leading to very high abstention rates at elections.

3.2.2. The need for a fundamentally different but still democratic system of selection

36. Most second chambers in Europe are selected by indirect suffrage. This leads to criticisms that such voting systems are undemocratic and tend to result in very restricted turnover of representatives. Even though such criticisms are exaggerated, the complex nature of the voting methods used tends to make it difficult to assess just how representative the members are. 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. Again, however, these methods must be simple and easily understood in order to abide by the rules. In other words, it has to be asked what purpose the second chamber serves. The method of selection should flow quite naturally from the answer to this question. If experienced men and women are required, an age limit is justified, as well as possibly other conditions. If the aim is to represent local authorities, it is only reasonable that the authorities themselves should choose their representatives.

37. It is also extraordinarily difficult to strike a reasonable balance between democratic requirements and the weight of tradition. House of Lords reform has currently reached an impasse because the British are still very attached to an appointed rather than elected chamber, given its well-established past record of effectiveness, expertise and receptiveness to new ideas. It is by no means clear that some form of regional representation would be able to offer the same attributes.

3.3. Representation of otherwise under- or unrepresented groups

38. In considering the composition of second chambers, insufficient attention has been paid to the possibility they offer of representing groups whose presence in the lower house is limited or non-existent.

39. In France, for example, the Senate includes representatives of nationals living abroad. Representatives of graduates of Ireland's two great universities occupy six seats in its upper house (and it is also worth noting that senators in Kazakhstan must have higher educational qualifications). In Slovenia, representatives of economic, cultural and social interests sit alongside local authority representatives in the National Council. There are many more examples of seats that are set aside for particular categories of the population, such as women, visible minorities and so on.

3.4. Other roles of second chambers

40. Second chambers are often characterised 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.

41. It is true that when second chambers are not subject to the risk of dissolution, they enjoy a freedom to think and act that is not always shared by lower houses, which are permanently under pressure from public opinion and the media.

42. 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. Hence in particular their important role in the process of European integration. The same applies to international interparliamentary co-operation.

*

* *

43. Europe's second chambers, which are too often the butt of criticism and frequently misunderstood, merit more consideration. Of course 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 federal states and ones that are constitutionally regionalised or heavily decentralised, where second chambers represent geographical areas whereas first chambers represent peoples.

44. Unlike lower houses, second chambers should not be elected by direct universal suffrage, thus enabling the former – other than in exceptional circumstances – to have the final word in the adoption of legislation and sole power to overturn governments.

45. Rules of selection should be clear and precise, and enable second chambers to perform their different representative functions or recruit the desired quality of members, in order to guarantee their legitimacy.

46. Above all, though, senators themselves must be convinced of their *raison d'être*, their special role and their ability to carry out their tasks. It is they who have the greatest responsibility for defending, adapting and modernising their institutions. If they act in this spirit, there is no doubt that second chambers will become increasingly important factors in the modernisation of democracy.

Patrice Gélard
French senator
Professor Emeritus of Constitutional Law
Honorary President of the International
Association of Constitutional Law
Honorary President of the French
Association of Constitutional Law