



Strasbourg, 18 September 2006

Study No. 387/2006

Restricted
CDL-EL(2006)029
Or. Fr.

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

**DUAL VOTING FOR PERSONS BELONGING
TO NATIONAL MINORITIES**

Observations
on the document of the Office of the OSCE High Commissioner
on National Minorities

by
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It is proposed that the conclusions be amended as follows:

CONCLUSIONS

Entitlement to a dual vote for persons belonging to national minorities with a view to the election of representatives of these minorities and to enabling them to participate effectively in public affairs (in accordance with Article 15 of the Framework Convention) gives such persons both the right to vote for non-reserved seats (allocated, for instance, to lists of political parties or, in single-member constituencies, to those parties' individual candidates) and the right to vote for special representatives of these minorities.

These mechanisms are in fact rarely used, and it is more usual in practice for "alternative mechanisms" to be set up.

The problems which arise with dual voting in respect of principles and the law may be summed up in the following terms:

1. **How to guarantee the "free expression of the opinion of the people"** (Article 3 of the First Protocol to the European Convention on Human Rights).
There is no obligation for states to use a specific electoral system (proportional representation, simple majority voting, majority after two rounds, etc).

However, is "any election system whatsoever" allowed? Entitlement to dual voting, for example?

2. **How to guarantee "equal suffrage" and the "one man one vote" principle** (right to vote and right to be elected)

It is no longer just the electoral system that is being appraised here, but an "**additional method of suffrage**".

The principle of **equal suffrage** as defined in the Code of Good Practice in Electoral Matters¹ includes equal voting rights as well as equal voting power.

Where the requirement for equal voting power is concerned, according to which greater effect may not be given to certain votes without infringing the **principle of equality**, a relatively high level of flexibility is left to states as to their methods of translating votes into seats.

On the other hand, there can be no exceptions to the principle of equal voting rights, i.e. the "one man one vote" principle.

Thus dual voting raises the problem of compatibility or incompatibility with the "principle of equality" and the principle of non-discrimination.

¹ CDL-AD(2002)023 rev, para. I.2.

3. How to ensure for national minorities representation on the legislative body which is "compatible" and fulfils a "legitimate aim" that is "necessary", through "proportionate means" that are "permitted"

Possibilities do exist (see the Venice Commission's Code of Good Practice, para. I.2.4.b), and the answers lie in "**special electoral systems**", although case-law based on the European Convention on Human Rights affirms that measures in favour of minorities which provide for "**differential treatment**" must remain "**reasonable**", and that the general principle of strictly equal suffrage must be complied with.

These possibilities, which are "**deviations**", exist:

- **specific rules for "reserved seats";**
- **exceptions to the usual seat allocation criteria:** exemption from the quorum or threshold for minorities' parties, for instance;
- a restriction of the **status of parliamentary representatives** of minorities, possibly elected by a second vote, to "**issues**" relevant to national minorities;
- a restriction of the status of parliamentary representatives elected in these conditions to "**observer status**";
- a **dual majority** for "**issues**" affecting the interests of minorities, or a right of veto.

Thus states have less flexibility for deviating from the general "one man one vote" principle of equality than for adapting their electoral system.

There are **alternatives to dual voting** in order to ensure effective participation by minorities in public affairs, and dual voting is not required by Article 15 of the Framework Convention.

Other comments:

- A reference could be made to paragraph 183 of document CDL-AD(2006)018, according to which " the notion of setting aside seats reserved for minorities is debatable [...]. While reserved seats might be a short-term mechanism to secure the representation of minorities in a transitional period, in the long term the interest of the minorities and the country itself might be better served by representation through the 'ordinary' electoral system". In other words, the idea of a time limit on such measures should be mentioned, in the context of the evaluation of their "necessity".

- In paragraph 9, note 2, it would be more correct to refer to the "absence", rather than "lack", of a specific article on minorities in the European Convention on Human Rights.