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## **Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states**

### **Report**

Committee on Political Affairs and Democracy

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### *Summary*

The choice of electoral system is one of the most important institutional decisions for any democracy. The electoral system has an obvious impact on representativity and a profound effect on the whole political life of the country concerned. There is no unique model which could be recommended to all countries as the best one. The choice depends on a number of factors including historical background, as well as political and party systems.

The Assembly's objective is to establish a common understanding of principles which qualify elections as "fair and free" in compliance with democratic standards irrespective of the type of electoral system, and to ensure their implementation in all elections throughout the Council of Europe space, thus establishing the world's largest "free and fair" election zone.



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## A. Draft resolution

1. The Parliamentary Assembly refers to its previous work relating to the electoral process, and in particular to [Resolutions 1546 \(2007\)](#) on the Code of good practice for political parties; [1591 \(2007\)](#) on Distance voting; [1590 \(2007\)](#) on Secret ballot; [1547 \(2007\)](#) on the State of human rights and democracy in Europe; [1617 \(2008\)](#) on the State of democracy in Europe; [1653 \(2009\)](#) on Electronic Democracy as well as [Doc. 11628](#) on the functioning of democratic institutions in Europe and the progress of the Assembly's monitoring procedure.
2. Furthermore, the Assembly welcomes the *acquis* of other Council of Europe sectors in the electoral field, and in particular the work of the European Commission for Democracy through Law (the Venice Commission), including its Code of Good Practice in Electoral matters.
3. The Assembly commends the outcome of the 2009 Council of Europe Forum for the Future of Democracy, devoted to Electoral systems, which was held in Kiev (Ukraine).
4. The right of all citizens to be represented in the political decision-making process as well as the representativity of elected bodies are core principles of contemporary democracies. An elected assembly should reflect the political composition of the electorate as well as other important aspects like geography, gender, ethnicity or other group identities, including age or specific vulnerability. The legitimacy of a democratic system largely depends upon the conviction of all sections of society that they have adequate access to the decision-making institutions.
5. Free and fair elections constitute a necessary precondition for representative democracy, and are decisive for ensuring that the will of the people is respected in the shaping of the legislature and government at all levels.
6. The choice of electoral system is one of the most important institutional decisions for any democracy. The electoral system has an obvious impact on representativity and a profound effect on the whole political life of the country concerned. Different voting systems may give very different results. They determine to a great extent a number of administrative issues including the creation of a government.
7. There are a variety of types of electoral systems throughout Council of Europe member states, and each of them has advantages and disadvantages. There is no unique model which could be recommended to all countries as the best one. The choice depends on a number of factors including historical background, as well as political and party systems.
8. The Assembly's objective is to establish a common understanding of principles which qualify elections as "fair and free" in compliance with democratic standards irrespective of the type of electoral system, and to ensure their implementation in all elections throughout the Council of Europe space, thus establishing the world's largest free and fair election zone.
9. A precondition for any free and fair election is a healthy democratic environment including respect for basic freedoms such as the freedom of association, freedom of expression, free press, etc. Criteria for the assessment as to whether the elections are free and fair have been set out by the Assembly in its numerous reports on the observation of elections in Council of Europe member and non-member states.
10. In all democracies, it should be possible to express a maximum number of opinions. Excluding sections of the population from the right to be represented is detrimental to a democratic system.
11. Gender equality in the decision-making process is an important aspect of fair representation. The Assembly stresses the importance of guaranteeing to women an equal access to elected bodies. This may require the introduction of some transitory measures, including quotas.
12. All other forms of discrimination in the electoral process – be it towards persons belonging to minority groups or other vulnerable categories, is similarly detrimental to democracy.
13. Internal party democracy and procedures which lead to the pre-selection of candidates for the elections have a fundamental impact on the representativity of elected bodies and, consequently, on the legitimacy of the entire political system. These internal procedures vary considerably between parties, even within one country.

14. The voter's choice of a person to represent him or her from the list of candidates proposed by the party must have a real impact on the final outcome. This is a matter of concern particularly when it comes to the succession of a vacant seat. According to some parties' procedures, a successor is not necessarily the first runner-up who has received the most votes. Internal party procedures for succession should take into account individual voter's choice.
15. The Assembly recalls its [Resolution 1546 \(2007\)](#) on the Code of Good Practice in the field of Political Parties, and calls on political parties in Council of Europe member states to endorse its principles, in particular concerning intra-party transparency for the nomination of candidates, clear and fair rules for campaign financing, as well as for the replacement of vacant seats.
16. Rules governing electoral campaigns, and in particular funding, financial disclosure by parties and candidates, free media, access to media and information, and a complaints and appeals system which provides a speedy procedure to resolve disputes, should comply with democratic standards.
17. Voting procedures should be reviewed and improved in many Council of Europe member states. The use of information and communication technology tools (ICT) and the introduction of different forms of e-voting, including remote e-voting, should be considered.
18. Transparent and coherent rules governing the work of electoral commissions, the method of appointment, the need for balanced and impartial composition as well as the training of officials, should guarantee a high degree of impartiality, independence and professional competence.
19. Observation of elections is one of the important elements to inspire trust and confidence in an electoral system. Rules governing the observation process, the status of domestic and international observers, as well as an effective appeals procedure, should be based on the UN Declaration of Principles for international election observation and on the Code of conduct for international observers.
20. Increased trust and confidence in an electoral system may largely contribute to an enhanced interest of citizens in the political process as a whole and, in consequence, to overcoming the feeling of political discontent and disaffection among them.
21. The Assembly is of the opinion that the Council of Europe can considerably contribute to this objective and to further promote and implement these principles in its member states. Further regulatory action, sharing of good practices, improved control and follow-up is needed.
22. Therefore the Assembly calls on the Council of Europe member states to:
  - 22.1. to contribute to the establishment of a common understanding of principles which qualify elections as "fair and free" in compliance with democratic standards, irrespective of the type of electoral system, and to ensure their implementation;
  - 22.2. ensure a healthy democratic environment including full respect for basic freedoms such as freedom of association, freedom of expression or free press in compliance with the criteria for the assessment as to whether the elections are free and fair;
  - 22.3. consider decreasing legal thresholds that are higher than 3%, and removing other obstacles, including high financial deposits, which bar minor parties or independent candidates from being represented in elected bodies;
  - 22.4. strengthen national mechanisms to promote a balanced access to elected bodies of women and men, and to consider, when appropriate, the introduction of transitory measures such as quotas;
  - 22.5. eliminate obsolete provisions disenfranchising certain categories of population (such as certain categories of detainees)
  - 22.6. consider, if it has not yet been done, granting the right to vote to immigrants who are lawfully resident, in regional and local elections;
  - 22.7. ensure that the legislative framework promotes the implementation by political parties of internal party democracy principles;
  - 22.8. ensure that the rules governing electoral campaigns, and in particular funding, financial disclosure by parties and candidates, access to media and information, a complaints and appeals system which provides a speedy procedure to resolve disputes, all comply with democratic standards;

- 22.9. keep under review different forms of voting procedures with a view to improving them and to consider the use of ICT tools and the introduction of different forms of e-voting including remote e-voting if this has not yet been done;
  - 22.10. examine whether national procedures for replacing legislative positions remain democratically appropriate;
  - 22.11. ensure that the rules governing the work of electoral commissions, the method of their appointment, and their balanced and impartial composition comply with democratic standards;
  - 22.12. implement the provisions of the UN Declaration of Principles for international election observation.
23. It also calls on political parties in Council of Europe member states to:
- 23.1. comply with the principles of the Code of Good Practice in the field of Political Parties, in particular those referring to the intra-party democracy, transparency and accountability;
  - 23.2. adopt fair and transparent rules for the selection and nomination of candidates for elected bodies, and in particular encourage the nomination of members from under-represented groups such as young people, persons belonging to minorities, immigrants or the disabled;
  - 23.3. establish a long-term strategy including special projects and training, aimed at increasing assertiveness, knowledge and experience of under-represented groups;
  - 23.4. examine the experience of political parties that have introduced quotas for the selection and nomination of candidates for elections and consider such a possibility in their own practice;
  - 23.5. establish fair and transparent rules for campaign financing in compliance with relevant domestic law; develop internal rules which would complete and strengthen national legislation in particular regarding transparency and accountability;
  - 23.6. establish clear and fair rules for replacing vacant seats in elected bodies;
  - 23.7. observe the principles of “fair play” and set general standards for conduct during electoral campaign.
24. It invites members of parliamentary delegations to the Assembly to:
- 24.1. introduce the question of standards in different stages of the electoral process into the work of their national parliaments;
  - 24.2. initiate the reflection on the internal party procedures in the electoral field in their respective political parties;
  - 24.3. promote the Assembly’s work and documents in the area of electoral matters, and in particular the outcome of the Forum for the Future of Democracy.
25. The Assembly supports the Venice Commission in continuing its valuable work in the field of the electoral process.
26. The Assembly calls on the stakeholders of the Forum for the Future of democracy to take into account and translate into specific action the general conclusions of the Forum.
27. The Assembly resolves to follow the question of electoral systems in its different aspects, and to promote appropriate solutions at the parliamentary level in Council of Europe member states.

## **B. Draft recommendation**

1. The Parliamentary Assembly refers to its Resolution ... (2010) on the Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states. It also recalls its previous resolutions and recommendations addressing different aspects of the electoral process.
2. The Assembly recommends that the Committee of Ministers calls on Governments of member states to give appropriate follow-up to the issues raised in Resolution ... (2010).
3. The Assembly recommends that the Committee of Ministers, taking advantage of its unique position as a forum for pan-European co-operation, contribute to the establishment of the common understanding of principles which qualify elections as “fair and free” in compliance with democratic standards irrespective of the type of electoral system, and to ensuring their implementation in all elections throughout the Council of Europe space thus establishing the world’s largest “free and fair election zone”.
4. Furthermore, the Assembly invites the Committee of Ministers to:
  - 4.1. initiate further reflection and work on the regulatory framework and specific regulations governing the electoral process in Council of Europe member states, in particular in respect to:
    - 4.1.1. electoral commissions;
    - 4.1.2. thresholds and any matters that could disadvantage minor parties and independent candidates from access to elected bodies;
    - 4.1.3. impact of electoral system on women’s access to elected bodies;
    - 4.1.4. equal access to elected bodies for persons belonging to minorities and vulnerable groups;
    - 4.1.5. financing of electoral campaigns;
    - 4.1.6. voting procedures;
    - 4.1.7. election observation.
  - 4.2. Consider the elaboration of the consolidated version of the Principles governing the electoral process.

## C. Explanatory memorandum by Mr Daems, rapporteur

### 1. Introduction

1. Representative democracy is a core principle of a democratic system. It is preconditioned by free and fair elections. The right of all citizens to be represented as well as the representativity of elected bodies are major challenges for the whole democratic process.
2. Elections lie at the heart of representative democracy, and they constitute the ultimate symbol and act of modern democratic societies.
3. The choice of electoral system is one of the most important institutional decisions for any democracy. The electoral system has an obvious impact on representativity and, indeed, a profound effect on the whole political life of a country concerned. Different voting systems may give very different results. They determine to a great extent a number of administrative issues including the creation of a government.
4. This report examines different features of electoral systems for legislative bodies used in Council of Europe member states. It tries to evaluate their impact on the representativity of parliaments and, more generally, on the functioning of democratic institutions.
5. The aim behind this report is to create a comparative approach to this subject in order to enable further assessments, which would ideally lead to the potential elaboration of common standards in this area within the framework of the Council of Europe.
6. The first version of this report was conceived as the Parliamentary Assembly's contribution to the last session of the Forum for the Future of Democracy entitled "Electoral systems", which was held in Kyiv from 21 to 23 October 2009. As one of the three general rapporteurs of the forum, I have used its discussions and conclusions to enrich and develop the present report and to draw up a draft resolution and a draft recommendation which will be debated in the Assembly.
7. In my work I have focused on the electoral system itself rather than on the conditions in which it operates. Needless to say, a precondition for any free and fair election is a healthy democratic environment including respect for basic freedoms like freedom of association, freedom of expression, free press, etc. My report is based on the assumption that these conditions are met. Those interested in criteria for the assessment as to whether the elections are free and fair should refer to the relevant work of the Parliamentary Assembly, and its numerous reports following the observation of elections in Council of Europe member and non-member states.<sup>1</sup>
8. Similarly, I have not dwelled on the important problem of lack of equal opportunities for different vulnerable categories in the society (youth, elderly people, handicapped people, migrants) to be fairly represented in elected bodies. The same goes for the question of women's representation in elected bodies. I draw your attention to the work of relevant committees and, in particular, to the report adopted recently in the Committee on Equal Opportunities for Women and Men<sup>2</sup> on "Increasing women's representation in politics through the electoral system", which will be the subject of a joint debate with this report.
9. Moreover, this report should be seen in the context of a broader, ongoing reflection in the Parliamentary Assembly on democracy and the functioning of democratic institutions in Council of Europe member states. I refer to the debates on the state of democracy in Europe held every two years, as well as to the Assembly's active involvement in all sessions of the Forum for the Future of Democracy. Furthermore, a great deal of the work of the Political Affairs Committee has been devoted to different aspects of democracy, like the establishment of criteria to measure its quality, internal democracy in political parties, among others.
10. At this juncture, it is important to underline the fruitful co-operation between the Parliamentary Assembly and the European Commission for Democracy Through Law (Venice Commission). The Assembly systematically takes advantage of the commission's expertise in legal questions concerning the rule of law and the functioning of democratic institutions.

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1. See, for example, the most recent reports on the observation of elections in Albania, Bulgaria and Moldova.

2. See [Doc. 12097](#).

11. The present report is based, *inter alia*, on the information included in the comparative report on thresholds and other features of electoral systems that bar parties from access to parliament, which was prepared by the Council for Democratic Elections of the Venice Commission, as well as other documents elaborated by the Council. I also used an excellent comparative study prepared by the International Institute for Democracy and Electoral Assistance (IDEA).

12. In my view, this report should be considered as an invitation to engage in a broad debate and reflection on different elements having an impact on the representativity of our elected bodies, rather than as a set of ready-made conclusions. Indeed, I believe that this is a good opportunity to launch a much-needed exchange of views on the experiences, examples and practices in our respective countries.

## **2. Features of electoral systems**

### ***2.1. Type of electoral system and method of counting votes at the constituency level***

13. A voting system specifies the form of the ballot, the set of allowable votes and the tallying method, as well as the way of determining how voting power is distributed among the voters, and how voters are divided into constituencies whose votes are counted independently. Different voting systems may give very different results, particularly in cases where there is no clear majority preference.

14. Majority and plurality electoral systems, historically the oldest ones, are based on the principle that the winner is a candidate who receives the most votes in a constituency. In the majority electoral system, the representative is voted with 50% +1 vote, whereas, in the plurality system, a candidate may be elected with less than a majority of the vote. Indeed, the winning percentage can be quite low, depending on the number of candidates competing.

15. In the majority system, further stipulations are often established, aimed at avoiding a situation where there would be no winner, which may happen if there are more than two candidates running for the election. Thus the two-round system may be used. If the first election does not produce a winner with the absolute majority of the vote, a second round can decide between the competitors. The second round of voting will occur on a separate day, often a week or so apart.

16. Under a majority run-off system, if no candidate receives a majority in the first ballot, a second election is held; only the two candidates who received the highest number of votes in the first round are allowed to present themselves again in the second round. The winner is the one who gets the most votes in the second round.

17. Under the plurality system, there is no such reduction of the number of candidates. The winner of the second ballot is the one who receives the most votes, irrespective of whether a majority is obtained or not. In some applications of this system, though, thresholds are imposed for the candidates in order to be allowed to stand in the second round.

18. Under the alternative vote, the voters indicate their order of preference for the different candidates. To win, a candidate must obtain a majority of the votes. If no candidate receives the majority at first, the candidate with the fewest first preference votes is eliminated, and the second choice of these electors is taken into consideration. Their votes are distributed among the other candidates, and so on until one candidate obtains the majority.

19. In the plurality vote, the voters just have to place a mark next to their favourite candidate. The result is given by the number of votes: the candidate with the highest number of votes is the winner (first past the post rule).

20. In the single-member district, each constituency elects a representative, which creates a strong link between them; the representative is beholden to a specific geographically defined constituency. In the multi-member district, two solutions are possible – block vote: this system gives each elector as many votes as there are seats to be filled. The candidates who receive the highest number of votes win. The problem can be that this system allows the party with the majority of the votes to win all the seats in a district, which can lead to a distortion of seats in relation to the number of votes. Limited vote: in this system, each elector is given fewer votes than the number of seats, so that the majority will not be able to carry all of the seats in an electoral district.

21. The majority/plurality electoral system is one of the most frequently used voting systems, usually in combination with single-member districts. As this voting system tends to produce a disproportionately large number of seats for the majority party, the result is a strong single-party government which contributes to a stable political system and which does not need to appeal to coalition governments.
22. Both majority and plurality systems have all the advantages of simplicity, stability and constituency representation. They are easy for the voter to understand. They tend to produce strong and stable governments.
23. As each territorial constituency is represented by its own, single legislator, the majority and plurality systems embrace the idea that each representative has the support of a majority of his or her constituents. There is also a strong relationship between a representative and his or her constituency as a whole.
24. The fact that smaller groups are not effectively represented in majority and plurality systems can be seen to have some advantages, as it encourages minority groups to integrate into the larger groups, which is desirable both for the minority group, which can gain political support for some or all of its interests, and for the larger group, which thus gains the electoral support of the minority.
25. On the other hand, these systems may encourage citizens to “vote tactically”, which means support for a party which does not necessarily correspond exactly to voters’ expectations but has better chances of acceding to an elected body than their favourite party.
26. It is also sometimes argued that these systems narrow the political choice: minor parties are not a real option as in any case they have no chance to get into parliament.
27. Some critics argue that a strong executive is not necessarily an asset, as it gives the government such a comfortable majority that it does not feel obliged to make compromises or engage in a debate on important issues.
28. These systems may also produce undesirable results. In the United Kingdom, twice since the Second World War, in 1951 and 1974, the party with fewest popular votes actually came out with the largest number of seats. One reason is that if there are several parties, which is the case in Britain, it is possible to win an individual constituency with less than 50% due to the opposition votes being divided. Another reason is the unequal number of voters in different constituencies.
29. The delimitation of the electoral district plays an important part here as its partisan, racial, ethnic, religious or linguistic composition may influence the election. It must be redrawn periodically to remain relatively equal in terms of the population.
30. Proportional systems are currently the most widely used in Europe. Their focus is on the creation of a parliamentary chamber which accurately reflects the diverse composition of an electorate. The size of the constituencies is decisive, as the greater the number of constituencies, the harder it is to ensure complete proportionality.
31. Here again, different specific solutions are envisaged – party list system: proportional representation ensures that political parties gain representation in proportion to their share of the vote. To be elected, a party must obtain a quota of the votes. The quota is obtained by dividing the total number of formal votes by one more than the number of candidates to be elected, and adding one to the result. Only the prescribed number of candidates to be elected can reach the quota. If a party has been elected, it can send its candidates to the parliament following the list determined beforehand, in descending order. This system does not need a delimitation of electoral districts. Mostly, they are relatively large multi-member districts whose boundaries generally correspond to administrative delimitations.
32. Preferential party list system: in this system, the voter has the ability to influence the party list. Preferential voting permits voters to decide their own order of priority, which may be different from the one indicated by the party.
33. Single transferable vote: for this type of electoral system, small multi-member districts are delimited. Therefore, electoral district boundaries must be redrawn regularly. The electors rank the candidates in their order of preference. The votes given to the last candidate are transferred to the other candidates, according to the second preference of these electors, so that their votes will not be wasted.
34. Under mixed/combined electoral system the number of seats allocated is calculated on the basis of different formulas. The elector casts two votes, one for a candidate and one for a party. There are variations between different mixed electoral systems, as the voting schemes, the proportion of seats elected by district

representative and by party lists have a great influence on the result of the election. Furthermore, the relationship between the district seats and the party list seats is essential and differs between mixed electoral systems.

35. Mixed member proportional systems: here the final seat number is calculated by subtracting the number of district seats that each party wins from the total number of party list seats to which it is entitled. The party list seats are used therefore to correct any disproportionality. The results are indeed proportional, provided that a party surpasses any threshold vote percentage that may have been imposed.

36. Parallel systems: in this system, the two sets of seats are rather added one to another. Both lists are independent, so that the party list seats do not correct any disproportionalities caused by the single-member district seats. These systems are called parallel systems.

37. In conclusion, we can point out that, whereas the majority/plurality system privileges party dualism and elimination of minor parties, proportional representation tends to encourage multi-partyism and benefits small parties. In other words, party systems will be more competitive and fragmented in proportional systems.

38. Proportional systems often produce coalition governments, and even if, as a result of legal thresholds, they may be quite stable, they may not be able to deliver the electoral promises, because there has to be consensus on policy with other coalition partners.

39. Furthermore, coalitions could give small parties a disproportionate amount of power. This is a question of concern, particularly in light of the rise of extremism.

40. Another criticism relates to the generally weaker link between an elected representative and his constituency.

41. It is important to stress that sometimes, significant disparities exist within one and the same system family. Nonetheless, the choice of a type of electoral system (majority/plurality, combined, proportional) is an important general threshold; it is itself a mechanism with an important general impact on minor party exclusion/inclusion and, consequently, party fragmentation.

## **2.2. Legal thresholds**

42. No electoral system, be it majority, proportional or combined – whatever the manner of calculation of votes – can ensure that all candidates who have received votes will be elected. In other words, there is no system perfectly proportional in practice. Thus, a certain minimum of votes will always be necessary to qualify a candidate (a party) for representation in parliament (allocation of a seat). The minimum percentage of votes needed for election is called the threshold of exclusion. Natural thresholds exist in every electoral system.

43. However, some states particularly those which have a proportional or combined system have established thresholds artificially by law. Candidates (parties) who do not obtain the legally prescribed minimum number of votes do not get any seats in the parliament.

44. The percentage of the threshold differs from one country to another. It may be very low (as for example 0.67% in the Netherlands) or very high (10% in Turkey, 8% in Georgia, 7% in Russia, 6% in Moldova). The majority of the Council of Europe member states with combined systems have a legal threshold between 4% and 5%, whereas countries using the proportional system have one between 3% and 5%.

45. A number of Council of Europe member states which have a proportional electoral system, including Bosnia and Herzegovina, Finland, Iceland, Ireland, Luxembourg, Portugal, Switzerland and “the former Yugoslav Republic of Macedonia”, do not apply any legal threshold.

46. Any comparison of thresholds between countries requires utmost caution. Some states apply a threshold at the constituency/district level (for example, Spain), some do so only at the national level (for example, Poland), whereas others apply it at both levels (for example, Sweden). Furthermore, there are differences as to the stage of the electoral process at which thresholds are applied, be it the first, second, or any subsequent rounds of seat allocation. Another element to be taken into account is whether thresholds apply to parties or party coalitions. Last but not least, the magnitude of the districts and other features of the electoral system may have an important impact on the degree of inclusiveness of the system.

47. The Parliamentary Assembly has on several occasions expressed its position on the question of legal thresholds. In [Resolution 1547 \(2007\)](#) on the state of human rights and democracy in Europe, it stated that, in well-established democracies, thresholds higher than 3% during the parliamentary elections have no justification. In a democracy, it should be possible to express a maximum number of opinions. Excluding

numerous groups of people from the right to be represented is detrimental to a democratic system. In consequence, in [Resolution 1547 \(2007\)](#), it called on the member states to consider decreasing thresholds higher than 3% for parliamentary elections. The Monitoring Committee, in its progress report for 2008, also made specific recommendations for some countries to lower the legal threshold.<sup>3</sup>

### **2.3. Natural thresholds**

48. The so-called natural (or hidden, or effective, or informal) threshold is present in all electoral systems, regardless of whether there is or is not any legal threshold. This is reflected by the percentage of votes needed to get one seat at a district level.

49. The natural threshold is mainly dependent on the average number of elected representatives per constituency, but there are other factors which affect it like the seat allocation formula (d'Hondt, Saint-Laguë, Hare), the number of political parties competing against each other and the size of the assembly. In general, a constituency with a small number of seats to be filled requires a relatively high percentage of votes per constituency to elect a representative. On the contrary, the more seats there are to fill in the constituency, the lower the natural threshold is.

50. Although there is no universal formula enabling an exact assessment of the natural threshold in each electoral system, it is possible to estimate it if one knows the number of seats per constituency.

51. According to these estimates, natural thresholds in majority/plurality systems may be as high as 50% (France) or 35% (UK). They are lower in combined systems (11.3% in Hungary), and even more so in proportional systems (Finland 5%, Belgium 9.2%, Iceland 10.8%, Ireland 15%, Luxembourg 4.8%, Portugal 6.7%, Spain 9.7%, Switzerland 9%).

52. While the natural threshold may be an important general factor of the threshold at the district level, it cannot be equated with a nationwide natural threshold, or the nationwide legal threshold.

53. However, natural thresholds deprive minor/new parties of accurate or any representation just as effectively as legal thresholds.

54. Moreover, if there is a legal threshold, for example of 5%, it can be quite irrelevant; indeed, a party with fewer votes than 5% cannot get a seat regardless of whether or not there is a legal threshold.

55. The level of the natural threshold depends heavily upon the particular distribution of party support, the size and number of districts, as well as the number of legislators returned with each district.

56. Whereas natural thresholds tend to widen the proportionality gap between the share of votes and seats, which obviously benefits the biggest parts, the legal threshold tends to lean to a more proportional distribution of seats among the different parties that manage to exceed it.

### **2.4. Thresholds in a broader sense**

57. There exist other mechanisms preventing small parties from being on an equal footing with bigger parties. This set of mechanisms flows from statutory or constitutional provisions designed to limit or prevent parties from either registering, nominating candidates for office, or otherwise gaining official ballot access, as well as to unequally restrict access to campaign funds and media airtime. On the one hand, minor parties seeking to break into office are generally expected to perform well in political systems which facilitate more egalitarian conditions of party competition, that is to say, systems in which all parties are equally entitled to ballot access, free campaign media, direct public funds and indirect state subsidies. On the other hand, minor parties face a harsher environment where such public resources are allocated in a "cartel" arrangement biased towards established parties already in the legislature, thereby protecting incumbent politicians.

58. Minor challengers face even more serious limitations in regimes holding manipulated elections, where the rules for the allocation of public resources are grossly biased towards the ruling party.

59. Many electoral systems foresee different forms of restriction on ballot. These may take the form of an electoral deposit – seen mostly in African countries such as Senegal and Mali, but also in European states, as for example in Slovakia (at least for the elections to the European Parliament in 2009).

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3. See [Doc. 11628](#).

60. Another barrier can be related to the registration: the deposit of the candidature can sometimes be disproportionately expensive, and it may bar minor parties or individual candidates from access to elected bodies.

61. Signatures: in some countries one needs to obtain a certain amount of signatures to be able to present oneself. These signatures can stem either from “normal” electors (in Finland, the candidate needs 100 signatures of electors in order to be able to present himself/herself at the election), or from elected persons (as in France, *grands électeurs*), or a mixed system can be applied (as in Austria, where the signature of three members of the parliament replace hundreds of votes from “ordinary” electors).

62. Furthermore, funding constitutes another element which has an impact on the final outcome of the elections. In particular, public funding including direct public funding and indirect public funding.

63. Fair media access is another precondition for fair and free elections.

## **2.5. Case law of the European Court of Human Rights: judgment of 8 July 2008, Yumak and Sadak v. Turkey**

64. In the aforementioned case, the applicant complained about the legal threshold of 10% in the Turkish electoral law which, in 2002, prevented him from being elected to the National Assembly. As a result of the threshold, approximately 45% of the voters’ voted for the candidates who did not pass the threshold.

65. The Court considered that the electoral threshold of 10% imposed nationally for the representation of political parties in parliament constituted interference with the applicants’ electoral rights. The legal threshold pursued, however, a legitimate aim of avoiding excessive and debilitating parliamentary fragmentation and thus of strengthening governmental stability.

66. The Court observed that the national 10% threshold was the highest of all the thresholds applied in the member states of the Council of Europe. Only three other member states had opted for high thresholds (7% or 8%). A third of the states imposed a 5% threshold and 13 of them had chosen a lower figure.

67. However, the Court considered that, in the present case, having regard to the specific political context of those particular elections and to the correctives and other safeguards which had limited its effects in practice, the impugned 10% threshold had not had the effect of impairing the essence of the applicants’ rights under Article 3 of Protocol No. 1. Therefore, this legal threshold of 10% was thus not in violation of the electoral rights.

## **2.6. General remarks**

68. The content of Chapter II entitled “Features of electoral systems” is meant to provide readers with information on which further reflection may be based. It is by no means my intention to draw any kind of conclusions or decide which system is “better” or “worse”.

69. Indeed, there is no unique system which could be recommended to all countries as the best one. Each of them has got its advantages and disadvantages and they are all dependent to a large extent on historical background as well as political and party systems.

70. The electoral system is a fundamentally political process, rather than a question to which independent technical experts can produce a single “correct” answer. Indeed, the political context is one of the most important criteria for the evaluation of the system.

71. What is important is to make sure that the different stages of the electoral system, irrespective of its type, are based on democratic principles and comply with democratic standards and here I can see an important role for the Council of Europe, and for the Parliamentary Assembly. I will expand on it in a further part of my memorandum.

## **3. Internal party procedure for selection and nomination of candidates**

72. Nomination of candidates for elections is of crucial importance for the credibility and legitimacy of the electoral process, and, indeed, for the whole political system. It has an obvious impact on the representativity of an elected body.

73. Modern democracies rely on political parties as one of the principal means of channelling different views and securing a variety of interests in political decision making. Political parties have the ability to integrate and mobilise citizens, aggregate and articulate interests and demands, facilitate compromise, offer a programme proposing answers to those demands, recruit political leaders and candidates for elected offices, formulate policies and implement them or control their implementation and organise parliament and government.

74. In the national legislation of democratic countries, parties are regarded as private associations which should freely determine their own internal rules, procedures, and structures, much like other interest groups in civil society. Excessive intervention or regulation by the state in this respect might be perceived as threatening the basic principles of civil liberties.

75. Internal party democracy and procedures which lead to the preselection of candidates for the elections have a fundamental impact on the representativity of elected bodies and, consequently, on the legitimacy of the entire political system. These internal procedures vary considerably between parties even within a single country.

76. The Parliamentary Assembly has shown interest in this important question. In his report on "The code of good practice for political parties", Mr Van der Brande has stressed that good practices in selecting and nominating candidates should promote democratic principles at all levels, including national, regional and local. The process should be initiated from the bottom-up with great respect for the local party level. The specific problem of one national list for the parliamentary elections and the threat of abuse of power by party leaders should be addressed. This implies full transparency and equality.

77. There is a variety of intra-party candidate selection procedures in European countries. This can be explained by the complex interactions between national law, intra-party decision making, as well as the historical context. However, one can observe a tendency according to which the more parties are weakened by the loss of members and/or votes, the more ready they are to open up the process of candidate election. The recent debate in the French Socialist Party on the introduction of primaries in the presidential election constitutes a good illustration of the question.

78. Primaries have traditionally been more important in English-speaking countries than in western Europe as a whole. But since the 1990s, it has been an increasingly visible feature of western European party politics (see the examples of Denmark, Finland and Belgium). Furthermore, numerous parties have also voluntarily undertaken important reforms to promote internal democracy (for example, in Germany, Norway and the United Kingdom).

79. It is clear that the electoral system itself exercises an influence on the party's role in the selection and nomination of candidates. For example, a candidate-based, "first past the post" electoral system hardly requires any party involvement in any other issues than the candidate's political backing and contribution to the campaign financing. On the contrary, in proportional systems with closed party lists, a party has very important prerogatives in defining, among other issues, the place of each candidate on the list.

80. Another important question concerns the succession of elected candidates. It happens quite often that a person who takes up a vacant seat has no electoral legitimacy. National legislation does not often regulate this question in a satisfactory way, yet, it is of the utmost importance for the legitimacy and representativity of elected bodies. It would be interesting to exchange information and share practices in our Council of Europe member states on this point.

81. The final point I want to raise in this section concerns the consequences of internal democratisation for the overall functioning of political parties. There are many different forms of democratising candidate selection. The moderate forms tend to have beneficial effects on party organisations (for example, higher levels of membership participation), but this effect is not certain. Radical forms, on the other hand, are more likely to distort party cohesiveness and weaken the quality of representative democracy. Moreover, this may lead to undermining the loyalty of candidates to a party, as they become more and more independent.

82. All these questions are extremely important for the representativity of parliaments and for the democratic legitimacy of the political system as a whole. I have no doubt that they deserve careful examination and detailed analysis based on examples and good practices from our member countries. I hope that I will provoke an interesting discussion and I count on the members of the committee to share their experiences and thoughts during the discussion on this paper with a view to formulating recommendations and proposals.

#### 4. Electoral systems and their impact on the creation of the executive

83. The prospects for a stable and efficient government are not determined by the electoral system alone, but the choice of an electoral system has an important impact on the creation of the executive.

84. As I have already stated, as a general rule, plurality/majority systems are more likely to produce legislatures where one party can create an executive and outvote a combined opposition, whereas proportional systems are more likely to produce a coalition government. However, it is possible that proportional systems can produce a one party majority, and plurality/majority systems can leave no one party with a working majority. Much depends on other elements like the structure of the party system, historical context and the nature of the society itself.

85. Practice shows, however, that proportional systems result in parliaments which are more fragmented. Governments may often be coalition governments and sometimes minority governments. This is often seen as a disadvantage. However, in countries used to such a situation, the proportional system may already have induced parties to compromises during the electoral campaign, and this is often perceived as an advantage.

#### 5. Electoral systems and representativity of elected bodies

86. As I have shown above, there are a variety of electoral systems throughout Council of Europe member states, and each of them has got its advantages and disadvantages. Indeed, it would be difficult or even impossible to choose one of them as a perfect model to be recommended to the others. They are usually the result of historical and political events, and are highly dependent on the political and party system and culture.

87. The question which remains essential to the whole debate on electoral systems is the representativity of the elected body, and what follows logically – its legitimacy. In other terms, a party running in an election should get a number of seats in the elected body which corresponds approximately to its proportional share of the vote.

88. An elected assembly should reflect, in the first place, the political composition of the electorate. It should also guarantee, however, that it takes into account other important aspects like geography, gender, ethnicity or other group identities (age, particular vulnerability, etc.).

89. The representativity of elected bodies is a necessary condition for their legitimacy and the consequent confidence of citizens in the political process. Indeed, the only way to overcome the growing indifference of citizens towards politics, which may be observed in some countries in recent years, and which is reflected, *inter alia*, by a low turnout in the elections, is to increase citizens' trust in the role they may play in the political decision-making process.

90. Thresholds, both legal and natural, as well as thresholds in a broader sense, have a significant impact on the representativity of an elected body. This question of utmost importance has already been discussed in the Assembly on several occasions and the Assembly's position is clear: in stable democracies legal thresholds over 3% are hardly justifiable. There is no reason to bar certain groups of citizens (minor parties) from access to parliaments. There are many countries among Council of Europe member states which have different kinds of thresholds largely exceeding 3% and they should be invited to review their regulations with a view to better comply with democratic standards.

91. A flagrant example of another form of barrier having an impact on access of candidates to elected bodies are the deposits required of candidates. Whereas nobody questions their utility, in some countries they are unjustifiably disproportionate and should be reviewed.

92. As I mentioned in my introduction, I left it to my colleague from the Committee on Equal Opportunities for Women and Men to look closer at the impact of the electoral system on women's access to elected bodies. I have to stress, however, that women continue to be under-represented at all stages of the electoral process, and measures aimed at remedying this situation should be taken at different levels including national legislation and party level. Transitory measures like the introduction of quotas should be considered.

93. The same goes for persons from other under-represented groups such as young people, persons from minorities, migrants or the disabled. The electoral process should be inclusive, and if it is not always possible to impose certain rules at the level of national legislation (for example, as regards the selection and nomination of candidates), the principle of inclusiveness should be promoted, and parties should be encouraged to introduce such rules voluntarily.

94. This is also the right moment to recall previous Assembly's recommendations concerning the participation of foreigners in the political decision-making process. The Assembly has always been in favour of granting lawfully resident foreigners voting rights, at least at the local/regional level.

95. Here, we come to another crucial question which has a very important impact on the final composition, and what follows, representativity of elected bodies, namely intra-party procedures. I have elaborated on one aspect of this subject, selection and nomination of candidates, but there are other key issues which need to be addressed: transparency at all stages of the electoral process, clear and fair rules for campaign financing, replacement of vacant seats.

96. Intra-party democracy is only to a certain extent an internal party affair and the state can and should ensure that national legislation imposes certain intra-party regulations. This is particularly important when it comes to funding electoral campaigns. Rules and regulations governing transparency, accountability, financing and financial disclosure should be particularly clear and accurate.

97. Here again, I refer to the code of good practice for political parties adopted by the Assembly. The members of the Parliamentary Assembly should contribute to the promotion of the principles of this code by initiating debates in their respective parties on different aspects of their functioning.

98. Fairness in the electoral campaign is an important factor establishing citizens' confidence in the electoral process. Equitable access by all competing political forces to the media, balanced coverage of electoral campaigns, non-interference of public authorities in the activities of journalists, their access to information, independence and impartiality – all these principles should be reflected in an appropriate regulatory framework.

99. Voting procedures are never perfect and they should be kept under continuous review with a view to improving and adapting them to new technological possibilities. The use of ICT, different forms of distance voting including e-voting – these are some of the challenges with which electoral systems are faced today. The Council of Europe is a good platform for sharing practices and exchanging information. Its work in the field of e-democracy, including the outcome of the Council of Europe Forum for the Future of Democracy held in 2008 in Madrid and devoted to this subject, is a good example of the role that our Organisation can play.

100. An effective appeals system is fundamental for the establishment of confidence in the electoral system.

101. The compliance of the electoral process with democratic standards should be ensured by electoral commissions. In order to play their role properly, they should be impartial, independent and competent. Therefore, coherent and clear rules governing the method of appointment of their members, and balanced composition are of crucial importance for the fairness of the electoral process.

102. Observers, both domestic and international, play an important role in monitoring the fairness of the process. Regrettably, in some countries, regulations governing the status and ensuring the rights of observers are unsatisfactory. This situation should be remedied.

103. On 27 October 2005, in New York, over 20 international organisations and institutions, including the Council of Europe, approved the Declaration of Principles for International Election Observation and the Code of Conduct for International Observers. Both these documents should be fully promoted and implemented.

## 6. Conclusions

104. As I have already said, there is no perfect electoral system which could be recommended to the others. But what needs to be done is to establish a common understanding about all the principles which qualify elections as being "free and fair" in compliance with democratic standards.

105. If these principles were to be fully implemented in all elections throughout the Council of Europe space and in those states aspiring to join the Organisation or engage in a privileged relationship, the Council of Europe space would become the world's largest "free and fair" election zone. This target must be achieved in the near future.

106. Numerous Council of Europe core activities such as monitoring the commitments entered into by member states upon their accession to the Council of Europe, or parliamentary observation of elections, have obviously contributed and will continue to contribute to this ambitious challenge.

107. The last session of the Forum for the Future of Democracy held in Kyiv between 21 and 23 October 2009, and devoted to electoral systems, is an excellent example of the Council's contribution to the reflection on this important question. Discussions were extremely interesting, and the general conclusions set out pointers for the issues which should be pursued.

108. It is now of the utmost importance that all stakeholders of the forum – the Parliamentary Assembly, the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe and civil society – follow up and translate into concrete action the recommendations included in these conclusions.

109. For my part, I have already undertaken a commitment to introduce the conclusions into the work of my parliament, and I call on all other members of the Assembly to follow my example if the rules of procedure of their respective assemblies provide for such a possibility.

110. The Parliamentary Assembly is also a perfect forum for further political reflection on different aspects and concerns of the electoral process which have been raised in this report and in the conclusions, such as funding of political campaigns, or selection and nomination of candidates, as well as their succession. These questions should be dealt with in accordance with our rules of procedure by means of tabled motions for a recommendation.

111. The Committee of Ministers, taking advantage of its unique position as a forum for pan-European co-operation, should also contribute to the establishment of the common understanding of principles which qualify elections to be “fair and free”. In particular, it should be invited to initiate further reflection and work on the regulatory framework and specific regulations governing the electoral process in Council of Europe member states, in particular in respect to the aspects which raise some concerns.

112. This reflection might result perhaps in the elaboration of guidelines on the principles governing the electoral process, which could be recommended to all our member states.

113. The Venice Commission, which has so far done excellent work in this field, should be encouraged to continue.

114. In conclusion, it is clear that the work and the reflection on the impact of electoral systems on the representativity of parliaments is far from being accomplished and much has still to be done. I hope that this report will contribute to raising awareness on the situation.

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*Reporting committee:* Political Affairs Committee

*Reference to committee:* [Doc. 11481](#), Reference 3432 of 14 April 2008

*Draft resolution and draft recommendation* unanimously adopted by the committee on 15 December 2009

Members of the committee: Mr Göran **Lindblad** (Chairman), Mr David **Wilshire** (Vice-Chairman), Mr Björn Von Sydow (Vice-Chairman) (alternate: Mrs Kerstin **Lundgren**), Mrs Fátima Aburto Baselga, Mr Francis Agius (alternate: Mr Joseph **Debono Grech**), Mr Alexander Babakov (alternate: Mr Sergey **Markov**), Mr Viorel Badea, Mr Denis **Badré**, Mr Andris Bērziņš, Mr Mevlüt **Çavuşoğlu**, Mr Lorenzo Cesa, Mr Titus **Corlăţean**, Ms Anna **Čurdová**, Mr Rick **Daems**, Mrs Maria Damanaki (alternate: Mr Konstantinos **Vrettos**), Mr Dumitru Diacov, Mr Pol van den Driessche, Ms Josette Durrieu, Mr Frank Fahey, Mr Piero **Fassino**, Mr György **Frunda**, Mr Jean-Charles Gardetto, Mr Marco Gatti, Mr Andreas **Gross**, Mr Michael **Hancock**, Mr Davit **Harutyunyan**, Mr Norbert **Hauptert**, Mr Joachim Hörster, Mrs Sinikka **Hurskainen**, Mr Tadeusz **Iwiński**, Mr Bakir Izetbegović (alternate: Mr Mladen **Ivanić**), Mr Michael Aastrup **Jensen**, Mr Miloš Jevtić, Mrs Birgen **Keleş**, Mr Victor Kolesnikov (alternate: Mrs Olha **Herasym'yuk**), Mr Konstantin Kosachev, Mr Jean-Pierre **Kucheida**, Ms Darja Lavtižar-Bebler, Mr René van der Linden, Mr Dariusz Lipiński, Mr Gennaro Malgieri, Mr Dick **Marty**, Mr Frano Matušić, Mr Silver **Meikar**, Mr Evangelos **Meimarakis**, Mr Dragoljub Mićunović, Mr Jean-Claude Mignon, Mr Aydin Mirzazada, Mr Juan Moscoso del Prado Hernández, Ms Lilja Mósesdóttir, Mr João Bosco **Mota Amaral**, Mrs Olga Nachtmannová, Mr Gebhard Negele, Mrs Miroslava **Nemcová**, Mr Zsolt Németh, Mr Fritz Neugebauer (alternate: Mr Franz Eduard **Kühnel**), Mr Aleksandar Nikoloski, Mr Hryhoriy **Omelchenko**, Mr Maciej Orzechowski, Mr Ivan **Popescu**, Mr Christos Pourgourides, Mr John Prescott (alternate: Mr John **Austin**), Mr Gabino **Puche**, Mr Amadeu Rossell Tarradellas, Mr Ilir Rusmali, Mr Ingo Schmitt (alternate: Mr Eduard **Lintner**), Mr Predrag Sekulić, Mr Samad Seyidov, Mr Leonid **Slutsky**, Mr Rainer Steenblock, Mr Zoltán Szabó (alternate: Mr Mátyás **Eörsi**), Mr Mehmet **Tekelioğlu**, Mr Han Ten Broeke, Mr Zhivko Todorov, Lord Tomlinson (alternate: Mr Rudi **Vis**), Mr Latchezar **Toshev**, Mr Petré **Tsiskarishvili**, Mr Mihai Tudose, Mr Ilyas Umakhanov, Mr José Vera Jardim, Mr Luigi Vitali, Mr Wolfgang Wodarg, Mrs Karin S. Woldseth, Ms Gisela **Wurm**, Mr Emanuelis **Zingeris**

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NB: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the committee:* Mrs Nachilo, Mr Chevtchenko, Mrs Sirtori-Milner