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Relationship between the parliamentary majority and the opposition in a democracy

Report[1]
Committee on Political Affairs and Democracy
Rapporteur: Ms Elvira KOVÁCS, Serbia, Group of the European People's Party

Summary

The promotion and consolidation of pluralist democracy are amongst the main objectives of the Council of Europe and its Parliamentary Assembly. In all national parliaments, there are provisions acknowledging the role of the opposition or the parliamentary minority in their dimension as political groups or individual parliamentarians not supporting the government.

In June 2019, the European Commission for Democracy through Law (Venice Commission) adopted the Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist. The checklist focuses on matters including the establishment of majority and opposition groups in parliaments, parliamentary appointments, certain legislative processes and immunities of members of parliament.

The Assembly should welcome the elaboration of the checklist and recommend it to the parliaments of the Council of Europe member and observer States, as well as to the parliaments enjoying observer or partner for democracy status with the Assembly.

1. Reference to committee: Doc.15047, Reference 4499 of 6 March 2020.

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A. Draft resolution[2]

1. The promotion and consolidation of pluralist democracy are amongst the main objectives of the Council of Europe and its Parliamentary Assembly. The member States of the Council of Europe shall endeavour to develop common standards and practices aimed at promoting a free and pluralist parliamentary democracy and the means for their implementation in national parliaments.

2. In all national parliaments, there are provisions acknowledging the role of the opposition or the parliamentary minority in their dimension as political groups or individual parliamentarians not supporting the government.

3. The best way of ensuring that the opposition discharges its responsibilities is to extend and precisely define its rights. However, in only a few Council of Europe member States do the laws or constitution explicitly mention the role of the opposition. Some constitutions recognise the opposition only in outline, leaving much of the detail to be determined by ordinary legislation, statutory law or parliamentary rules of procedure, or by convention, custom and tradition.

4. While there are considerable differences in the political and institutional cultures and components of European States, it is however possible to identify certain general principles which govern the relationship between the parliamentary majority and its opposition and reflect the common European constitutional heritage.

5. One major objective in parliamentary democracies is to create a situation where there is a shared commitment to the essentials of democracy by the majority and minority and a common desire to make "their" parliament work properly for the public good. There is still a long way to go before this objective is reached in the wider Europe. A strengthened position of opposition in parliaments would be beneficial for the system of checks and balances in democracies.

6. More than any other forum, parliament is the place where democracy manifests itself, and in our societies there is hardly any debate that radically challenges the actual principle of representative democracy. Parliament is the institution that embodies society in the diversity of its composition and opinions and which relays and channels this diversity in the political process. Its vocation is to regulate tensions and maintain equilibrium between the competing claims of diversity and uniformity, individuality and collectivity, in order to enhance social cohesion and solidarity.

7. A democratic parliamentary system presumes an ethic of self-restraint on the part of the majority, with respect for the rights and interests of the minority. Not all possible advantages should be taken, nor are they taken in mature parliamentary systems. In parliaments where such a political culture exists, often with "unwritten" parliamentary conventions, the need for legal guarantees for the opposition and minority is less. In new democracies, without such democratic traditions, the need for formal rules protecting the opposition may often be stronger.

8. Opposition rights are considered as an institutionalised power possessed by the opposition in parliament that encompasses and goes beyond rights of individual legislators to speak and vote against government bills. Enshrining and clearly defining rights and guarantees in law is an effective tool for the functioning of the parliamentary opposition. Institutional procedures, recognition, legitimisation and institutionalisation of the parliamentary opposition are integral to the idea of constitutional democracy itself and integral part of the political culture.

9. The legitimisation of the parliamentary opposition in the constitution, laws as well as rules of procedure, provides, on the one hand, legal guarantees within government-opposition relations to limit the political influence of the parliamentary majority on the minority. On the other hand, by placing the opposition on an equal footing with the majority, it requires them to be jointly legally responsible for the exercise of power.

10. Effective opposition can help the government to avoid mistakes – or swiftly correct them – thereby improving governance outcomes. So, the existence of an effective parliamentary opposition able to scrutinise the policy of a governing majority is a visible symbol of the salvation of State political order and parliament itself.

11. The Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist ("Checklist") is the result of a long and careful work carried out by the European Commission for Democracy through Law (Venice Commission) which took its origin in Resolution 1601 (2008)

2. Draft resolution adopted unanimously by the committee on 5 March 2024.

"Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament" of the Assembly. The Venice Commission concluded that it is important to explore the ways and means by which the role of the parliamentary opposition can be formally better regulated and protected and that it is a worthy attempt to introduce soft regulations in an area which is essential for the proper functioning of parliamentary democracy. The use of the Checklist should be widely promoted amongst national parliaments, and the Assembly should contribute to this effort, directly and through its political groups.

12. In light of these considerations, the Assembly:

12.1. welcomes the elaboration of the Venice Commission Checklist on Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a Checklist, and endorses the Checklist as adopted;

12.2. disseminates and recommends the Checklist to the parliaments of the Council of Europe member and observer States, as well as to the parliaments enjoying observer or partner for democracy status with the Assembly;

12.3. encourages member States to ensure that their democratic mechanisms are given political legitimacy through integrity, as trust in parliaments shapes both the stability and quality of democracy; only together can parliamentary majority and opposition create inclusive, prosperous and sustainable societies;

12.4. invites the parliaments of the member States of the Council of Europe to promote the Checklist and to take it into account when revising the relevant national rules or developing best practices;

12.5. encourages the parliaments of the member States of the Council of Europe to enter into dialogue about how to improve the existing national rules on the relationship between the parliamentary majority and the opposition in a democracy;

13. As regards its own activities, the Assembly resolves to take into account the Checklist in its monitoring work. It also resolves to play a greater role in promoting the Checklist by:

13.1. inviting its political groups to revise their statutory rules and rules of procedure, including provisions specifying the procedure and requirements for, and consequences of, switches in political affiliation as well as the suspension, expulsion or resignation of members;

13.2. encouraging its political groups to enhance discussions on how to improve the relationship between the parliamentary majority and the opposition in a democracy;

13.3. holding debates on how to develop the legal, including the soft law, environment and the best practices determining the relationship between the parliamentary majority and the opposition in a democracy;

13.4. stepping up interparliamentary co-operation activities addressing the improvement of the relationship between the parliamentary majority and the opposition in a democracy;

13.5. continuing to review, in co-operation with the Venice Commission, the Checklist and the issues raised in it, with a view to developing it further if required.

B. Explanatory memorandum by Ms Elvira Kovács, rapporteur

1. Origin and aim of the report

1. In June 2019, the European Commission for Democracy through Law (Venice Commission) adopted the Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a checklist[3] ("Checklist").

2. The Checklist is the result of a long and careful work carried out by the Venice Commission which took its origin in Parliamentary Assembly Resolution 1601 (2008) "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament". The Venice Commission concluded that it is important to explore the ways and means by which the role of the parliamentary opposition can be formally better regulated and protected and that it is a worthy attempt to introduce soft regulations in an area which is essential for the proper functioning of parliamentary democracy.

3. The motion for a resolution which is at the origin of the present report recommended that the Assembly:

- welcomes the elaboration of the Checklist,

- disseminates and recommends it to the parliaments of the Council of Europe member and observer States, as well as to the parliaments enjoying observer or partner for democracy status with the Assembly.

4. The motion also recommended that, in line with the existing practice as regards a number of documents emanating from the Venice Commission, including the Codes of good practice in electoral matters and on referendums, and more recently the Rule of Law Checklist, the Assembly should formally endorse the Checklist Parameters and continue to review, in co-operation with the Venice Commission, the issues raised in the Checklist, with a view to developing it further if required.

5. I fully subscribe to the proposals set out in the motion for a resolution and, the political groups in the Assembly should also supplement their statutes or rules of procedure, including provisions specifying the procedure and requirements for, and consequences of, switches in political affiliation as well as the suspension, expulsion or resignation of members.

6. In the present document I shall describe the process which led to the adoption of the Checklist and its content.

2. Pluralism and role of the parliamentary opposition

7. The promotion and consolidation of pluralist democracy are amongst the main objectives of the Council of Europe and its Assembly. The member States of the Council of Europe shall endeavour to develop common standards and practices aimed at promoting a free and pluralist parliamentary democracy and the means for their implementation in national parliaments.

8. The term democracy covers a multitude of meanings, hence, talking about democracy means talking about a plurality of concepts. Political scientists enlist almost 11 types and 56 adjectives of democracy. Democracy has become, for the first time ever, a global political language and many drew from this conclusion that democracy and democratic ethos have become *de facto* the universal form of political legitimacy.[4]

9. Trust in political institutions represents a central component of democratic systems. Therefore it is important to recognise the role, powers and responsibilities of the opposition in democratic politics. This recognition reflects the principle of political pluralism (that power should not be permanently monopolised by one party) and shows a commitment to democratic dialogue – hearing the other side – in decision making.

10. Modern democracy is not merely crude majority rule. It is a political system in which parliamentary majority and the opposition share a joint responsibility in consolidating the citizens' trust in the political system and democratic institutions, ensuring their good functioning and offering the public an informed choice.[5]

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3. CDL-AD(2019)015, "Parameters on the relationship between the parliamentary majority and the opposition in a democracy: a Checklist", Strasbourg, 24 June 2019.
4. Further in: Podunavac, Milan. 2011. "State and Democracy", in: *State and Democracy*, ed. by Milan Podunavac, Belgrade: Official Gazette: Faculty of Political Sciences University of Belgrade.

11. Political and constitutional culture,[6] the principles of political pluralism as well as power dynamics between parliamentary majority and opposition influence the quality of democratic dialogue, inclusiveness, institutional confidence and consensus-building.

12. A capable and empowered opposition allows for democratic dialogue: namely a back-and-forth of arguments and counterarguments where the governing majority has the final authority to decide, but the presence of the opposition makes it necessary to hear the other side, to engage in public reasoning and to justify the decisions taken. Recognition of the opposition improves the legitimacy and resilience of the political system as a whole both by normalising the democratic transfer of power and by giving "consolation prizes" to the losers.

13. Political and constitutional culture provides a clue as to what extent the relationship between majority and opposition maximises the freedom of thought or expression, including opportunities for dissenting opposition to make their views known to citizens and policy makers; the opportunities for citizens to participate in political life; as well as the rationality in political discussion and decision making, in the sense of increasing understanding by citizens and leaders of the goals involved and the appropriate means.[7]

14. The democratic quality of a parliament is measured by the means available to the opposition or the parliamentary minority to accomplish its tasks. Establishing a fair legal and procedural framework and material conditions enabling the parliamentary minority to fulfil its role is a prerequisite for the good functioning of representative democracy.

3. Previous work of the Assembly

15. In absence of any explicit reference to the rights and responsibilities of the opposition in the major official texts of the Council of Europe,[8] the relationship between the parliamentary majority and the opposition has in the past mainly been dealt with at the level of the Assembly on the occasion of debates on democratic institutions. The Assembly's first annual debate on the state of human rights and democracy in Europe (2007) also offered an occasion to raise the rights of the opposition.[9]

16. The Assembly's Committee on Rules of Procedure, Immunities and Institutional Affairs organised a hearing on the role of the opposition in a democratic parliament. The conclusions of the hearing led to the preparation of a report which was debated in the Assembly followed by the adoption, on 23 January 2008, of Resolution 1601 (2008) "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament". Several national parliamentary administrations have followed up this work in the framework of the European Centre for Parliamentary Research and Documentation (ECPRD), which is managed jointly by the Secretariat of the European Parliament and the Assembly.

17. The Venice Commission in general endorsed Resolution 1601 (2008) as a ground breaking new soft law instrument on a subject of great importance for the development of democratic parliamentary procedures[10] and prepared a report "On the role of the opposition in a democratic Parliament" ("the 2010 Report"). The fact is that the Venice Commission had not previously given any general opinion on the role of the opposition.[11] It had however, dealt with the issue in a country-specific report, "On the Draft Law on the Parliamentary Opposition in Ukraine" from 2007.[12]

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5. Recommendations made by the European Conference of Presidents of Parliament (Limassol, Cyprus, 10-12 June 2010).
6. The essence of democratic political culture could be summarised by the following words by Cicero: "Hence liberty has no dwelling-place in any State except that in which the people's power is the greatest, and surely nothing can be sweeter than liberty; but if it is not the same for all, it does not deserve the name of liberty." Trans. Clinton Walker Keyes, Loeb Classical Library. Cambridge, Mass.: Harvard University Press, 1943.
7. More in: Dahl, A. Robert. 1966. *Political Oppositions in Western Democracies*. New Haven: Yale University Press.
8. It should be noted that the representatives of African Parliaments who met in Libreville (Gabon) on 17-19 May 1999 on the occasion of the Parliamentary Seminar on Relations Between Majority and Minority Parties in African Parliaments (organised by the Inter-Parliamentary Union in co-operation with the United Nations Development Programme and at the invitation of the Parliament of Gabon) have drawn Guidelines for the rights and duties of the opposition in parliament. Participants asked this document be brought to the attention of the Council of the Inter-Parliamentary Union on the occasion of the Berlin Inter-Parliamentary Meetings (10-16 October 1999).
9. See the debate on the annual report on the state of human rights and democracy in Europe (2007) and Recommendation 1791 (2007).
10. CDL-AD(2010)025, paragraph 10.
11. Ibid., paragraph 18.

18. Through its mechanism for monitoring compliance with the obligations and commitments entered into by the Council of Europe member States, the Assembly has for decades ensured smooth functioning of the political dialogue between the majority and the opposition, recognition of the opposition's institutional role and respect for the rights of the parliamentary opposition. It assists parliaments encountering serious difficulties by seeking ways of overcoming a political crisis.

19. In June 2010, the European Conference of Presidents of Parliament devoted one of its two working sessions to the rights and responsibilities of the opposition in a parliament. Furthermore, in September 2014, the third session of the European Conference of Presidents of Parliament[13] dealt with the question of how to strike a balance between the majority and the opposition.[14]

4. The process leading to the adoption of the Checklist

20. In Resolution 1601 (2008), the Assembly stated that "a political opposition in and outside parliament is an essential component of a well-functioning democracy".

21. In the past decade, the Venice Commission observed a worrying political trend in a growing number of countries, which is sometimes described by the formula "the winner takes it all". Following this trend, checks and balances restraining the power of the parliamentary majority are dismantled. Rushed adoption of laws without genuine political debate has become more frequent. Top judges and officials of independent agencies are appointed or dismissed single-handedly by the majority. "In its relevant opinions, the Venice Commission has warned against reducing democracy to simple majoritarianism. The 2010 Report was still optimistic when stating that 'democracy is today stronger in Europe than ever before in history'. It may be that this is not the case anymore, as demonstrated by more tense relations between the majority and the opposition".[15]

22. According to the survey, "Global State of Democracy 2022", the problems facing democracy in Europe today include, among others, low level of public participation and low support for political representation; many citizens lack trust in government and political parties, almost half of all democracies – a total of 17 countries – have suffered erosion in the last five years and these declines affect 46% of the high-performing European democracies. Global democracy's decline includes undermining of credible election results, restrictions on online freedoms and rights, youth disillusionment with political parties as well as out-of-touch leaders, intractable corruption and the rise of extreme right parties that has polarised politics.[16]

23. The political landscapes have been dramatically modified over the last decade: in the face of the changes in the relationships between the executive and the legislative (presidentialisation of politics, change or decline of the parliament's roles) as well as in terms of the roles played by the parties (decline of party membership, decline of the traditional functions of the political parties), the time has come to rethink the basic notions of parliamentary majority and opposition.

24. Both, political theory and practice proved that constitutional rules on governance also serve to protect the political opposition, by laying down procedures that the majority cannot easily change, ensuring representation and voice, and thereby guaranteeing the opportunity for the opposition to compete for majority power in future elections.[17]

25. These worrying trends were also noted by the Secretary General of the Council of Europe in his 2016 annual report.[18] The Secretary General asked the Venice Commission to formulate guidelines on the relations between the majority and the opposition. Following his call, the Venice Commission tasked a group of rapporteurs[19] with the update of the 2010 Report.

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12. See CDL-AD(2007)019 and also the earlier preliminary opinion of March 2007, CDL-AD(2007)015. In 2007, the Venice Commission also received, from the Spanish substitute member, Mr Sanchez Navarro, a report "On the role and legal protection of the opposition", CDL-DEM(2007)002rev.
13. Conclusions of the conference, Limassol, Cyprus, 10-12 June 2010.
14. Conclusions of the conference, Oslo, Norway, 11-12 September 2014.
15. CDL-AD(2019)15, paragraph 2.
16. "The Global State of Democracy Report 2022 – Forging Social Contracts in a Time of Discontent", the International Institute for Democracy and Electoral Assistance (IDEA).
17. "Report on constitutional amendment", CDL-AD(2010)001, paragraph 78.
18. https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680646af8.
19. Including B. Aurescu (substitute member, Romania), R. Kiener (member, Switzerland), H. Suchocka (Honorary President, former member, Poland), K. Tuori (member, Finland), and B. Vermeulen (member, the Netherlands).

26. The rapporteurs agreed that the 2010 Report needed to be updated, in the light of the observations of the Venice Commission, and that it should also be supplemented with a new part – a Checklist. This checklist was scrutinised by the Sub-Commission on Democratic Institutions on two occasions[20] and adopted by the Venice Commission at its 119th Plenary Session, in Venice, on 21 June 2019.

5. The Checklist

27. As noted in the 2010 Report, there is no common model defining the respective roles of the parliamentary opposition and majority. It is impossible to devise a comprehensive set of precise standards in this area, which would be valid for all democratic political regimes.

28. The focus of the Checklist is not on autocratic regimes but rather on "vulnerable democracies", where political pluralism exists but is nevertheless fragile. Therefore, the Checklist is supposed to help legislators in those vulnerable democracies to formulate legal rules and develop unwritten "constitutional conventions" and best practices which would preserve the role of parliamentary opposition as a countervailing power and a viable alternative to the government in place.

29. The Checklist consists of 10 sections on matters including the establishment of majority and opposition groups in parliaments, parliamentary appointments, certain legislative processes and immunities of members of parliament. The structure of the Checklist allows it to be supplemented and adjusted in the future, in the light of the political and legal developments in the European and non-European democracies. The Checklist is intended to be a living instrument.

30. The 2010 Report focused on the role of the opposition in parliament. It did not deal with the political opposition in society in general, with the level of human rights and freedoms or with basic constitutional choices. The Checklist remains essentially within the same scope; it deals with the rules and principles pertinent to the functioning of the parliamentary opposition and to its interaction with the majority, and with other State institutions.

6. The opposition – the term, its rights and obligations

31. The term opposition does not lend itself to a short definition. The position of the opposition and its functioning differ in various political systems. It works differently in a multi-party parliamentary regime than in a (semi) presidential regime. Therefore, the issue of rights of the parliamentary opposition is first and foremost a question of political minority rights. This may typically include procedural rights of information, representation and participation, speaking and voting rights, the right to table bills and motions, rights of supervision and scrutiny of the executive, and protection against mistreatment by the majority.[21]

32. A comprehensive rethinking should embrace the whole range of roles that the opposition entails, taking into account a larger range of actors and types of relations. From these premises, the following working definition of political opposition could be considered: an organised actor expressing its stance in the public sphere that permanently or punctually checks, informs and criticises the current state of affairs, through different non-violent modalities (legislative processes, parliamentary questions, press releases, mobilisation of the media) while the targets of its critiques being the government and its policies or the political regime as a whole.[22]

33. It is impossible to separate the opposition's rights from its responsibilities. Overseeing the government and carefully scrutinising the work of other frontline bodies, initiating and taking part in the legislative process and being involved in the operation of the parliament are rights that have to be protected. However, they also constitute duties that have to be discharged in a way that ensures that the common good takes precedence over the parties' short-term interests and political differences.

34. There are at least two main forms of abuses or dysfunction of the role of the opposition. Either the opposition completely blocks effective governmental work and/or effective parliamentary work, or the opposition does not offer any alternatives to the work of the government and/or to the proposals of the parliamentary majority and is therefore not visible in the political debate.[23]

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20. On 14 March and 20 June 2019.
21. 2010 Report, paragraph 11.
22. More in: Nathalie, Brack, & Sharon, Weinblum. 2009. "What do we mean by "political opposition": a theoretical perspective".
23. 2010 Report, paragraph 149.

35. Opposition function implies scrupulous control, scrutiny and checks on authorities' and officials' behaviour and policies.[24] However, good governance advises that parties in opposition (as well as ruling parties) refrain from practices that may erode the democratic debate and which could eventually undermine the trust of citizens in politicians and parties.[25]

36. In practically all national parliaments, there are provisions acknowledging the role of the opposition or the parliamentary minority in their dimension as political groups or individual parliamentarians not supporting the government. While in parliamentary law the notion of minority rights is generally more frequently used than opposition rights, the society, particularly political circles, the media or the interested public, usually speak of the opposition.

37. The best way of ensuring that the opposition discharges its responsibilities is to extend and precisely define its rights. However, in only a few Council of Europe member States do the laws or constitution explicitly mention the role of the opposition. Some constitutions recognise the opposition only in outline, leaving much of the detail to be determined by ordinary legislation, statutory law or parliamentary rules of procedure, or by convention, custom and tradition.

38. Analysing regimes of opposition rights, theorists consider three components: first, an opposition team is created through provisions that encourage collective and co-ordinated actions; second, the regime of opposition rights confer rights that further one or both of the key functions of opposition parties: (a) to scrutinise the conduct of the executive and hold it accountable through powers of oversight; and (b) to provide a government-in-waiting through agenda-setting powers; third, the regime of opposition rights contains an enforcement mechanism, consisting of constitutional court referrals and/or speakers of the legislature.[26]

39. The Venice Commission advised against adopting a special law on the opposition considering that it could be very difficult – and in some cases problematic from the non-discrimination viewpoint – to introduce rigid rules, especially when they tend to give specific powers to some political actors to the detriment of others, equally legitimate to speak as representatives of the citizens.[27]

40. In the vast majority of countries, the opposition's rights and responsibilities derive from parliamentary procedures or practice and, in some cases, from agreements between the political groups represented in parliament. It is therefore desirable to improve the consistency and fairness of this system and ensure that it no longer depends on political negotiations, in order to turn it into a set of clear legal rules.

41. Subconstitutional provisions may thus be adequate where a strong sense of fair play and mutual respect between the government and the opposition prevails. In the absence of favourable conditions, subconstitutional rules might easily be evaded or amended by the government to weaken the opposition and to prevent effective scrutiny.

7. Degree of institutionalisation of rights and responsibilities of the opposition in a democratic parliament: comparative perspective

42. A state of democracy ensures that the processes by which power is acceded to, wielded and alternates allow for free political competition and are the product of open, free and non-discriminatory participation by the people, exercised in accordance with the rule of law, in both letter and spirit. The key element in the exercise of democracy is the holding of free and fair elections at regular intervals enabling the people's will to be expressed.[28] Consequently, democracy is not just about winning elections, but equally so about losing them.

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24. According to Drago Zajc, in post-socialist countries, the traditional functions of the parliamentary opposition: to propose, oppose, expose, are often highly politicised and used to block the government's proposals and delegitimise the coalition government. More in: Zajc, Drago. 2016. "Role of opposition in contemporary parliamentary democracies – the case of Slovenia." *Journal of Comparative Politics*, Vol. 9 No. 1: pp. 19-35.

25. Venice Commission 2009, "Code of Good Practice in the Field of Political Parties", CDL-AD(2009)021.

26. Choudhry, Sujit. 2020. "Opposition Rights in Parliamentary Democracies". The Global Constitution Programme of the International Institute for Democracy and Electoral Assistance. WZB Berlin: Social Science Center.

27. In its opinion on the draft law on the parliamentary opposition in Ukraine of June 2007, the Venice Commission argued that this did not correspond to the constitutional and political context in the Ukrainian Parliament.

28. Articles 5 and 12, Universal Declaration on Democracy, adopted by the Council of the Inter-Parliamentary Union at its 161st session, Cairo, 16 September 1997.

43. Constitution provides a framework for bounded, partisan, pluralist contestation among political parties that track major economic and social cleavages of a political community, through regular, periodic elections. The legitimacy of the procedures enables political disagreements to be channelled into them and yields institutional settlement by designing a regime of opposition rights.[29] In a word: "every country has a government; only democracies have an opposition".[30]

44. Democracy is as much about opposition as it is about government. In pluralistic constitutional systems, the legal framework of the opposition in general is laid down (status of the parties, MPs' rights, freedom of expression, freedom of association, etc.) and the parliamentary opposition in particular enjoys legislative or regulatory rights or rights handed down by custom and practice and even constitutional recognition so that it can freely express its views and act effectively as a counterweight to the majority within an institutional environment. It is clear that the nature and strength of the opposition primarily depend on the electoral and voting systems employed. Differences exist in the degree of institutionalisation of the opposition in the parliaments of Council of Europe member States, ranging from informal recognition in the parliamentary rules of procedure when granting rights to the parliamentary minority to formal recognition of the opposition in the constitution of the State.

45. Hence, opposition is not just a defining feature of democratic governance but of politics more generally. Beyond diversity of parliamentary systems in Europe, all parliaments of the member States grant rights to the parliamentary minority, whether organised around political groups or not. The guarantee of a democratic balance is a cornerstone of the political stability. If the opposition is not guaranteed sufficient basic rights, then this may weaken or destroy the democratic functioning and legitimacy of the system. On the other hand, if the opposition is given broad rights and powers, then this may weaken or destroy the possibility of the majority and the government to effectively run the country.

46. Regimes differ fundamentally in the extent to which the electoral and parliamentary arenas provide space for voicing opposition to power holders.[31] But it goes beyond any doubt that parliamentary majority and opposition compose united political and constitutional order, and more precisely, "opposition is a dependent" concept. This means that the character of the opposition is tied to the character of the government."[32]

47. The opposition has the natural potential to become tomorrow's majority. Accordingly, in an ideal situation it is expected to be jointly responsible for the good governance of the State, for institutional continuity and for the transparency of the legislative process, in the pursuit of the public interest. To put it briefly, this means a constructive, responsible opposition that demonstrates its maturity and does not systematically seek to impede the work of the majority or, on the contrary, adopt a passive stance or is not a "mere decoration". There is also a right to expect that an opposition endowed with appropriate procedural rights will resort less to blocking the parliamentary process.

48. Several Council of Europe member States have sought, to varying degrees, to promote the institutional role of the political opposition by establishing a number of specific rights on a constitutional or legislative basis or by introducing good practices.[33] Those rights are translated into more specific legal mechanisms and standards which are examined in the Checklist.

7.1. Proportional representation

49. In its Checklist the Venice Commission endorses the principle of proportional representation in the positions of responsibility as an important instrument for ensuring opposition rights. In order to avoid that the opposition is entirely excluded from the governing bodies of parliament, it recommends to formulate a rule ensuring the opposition fair access to the positions of responsibility in parliament as well as proportional representation for the composition of delegations of the national parliaments to the international parliamentary associations and other similar bodies.[34]

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29. Choudhry, Sujit. 2018. "Resisting democratic backsliding: An essay on Weimar, self-enforcing constitutions, and the Frankfurt School" *Global Constitutionalism Volume 7, Issue 1:* pp. 54-74.

30. Assembly report entitled "Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament" (Doc. 11465), rapporteur: Mr Karim Van Overmeire (Belgium, NR).

31. Helms, Ludger. 2021. "Introduction: The nature of political opposition in contemporary electoral democracies and autocracies." *European Political Science* 20: pp.569-579. https://doi.org/10.1057/s41304-021-00323-z.

32. Blondel, Jean. 1997. "Political opposition in the contemporary world", *Government and Opposition* 32 (4): pp. 462-486.

33. A seminar was held by the Norwegian Parliament, on 20-21 May 2010, on the rights and responsibilities of the opposition in parliament, enabling the question to be reviewed on the basis of the 39 replies to the questionnaire sent to the national correspondents of the ECPRD (Request No. 1394 of 24 February 2010).

50. There is a great variety as to how the principle of proportional representation is formally recognised. In a few countries it is explicitly regulated in the constitution. This includes Article 52 of the Constitution of Denmark[35] and Article 95.2 of the Constitution of Türkiye[36] according to which "[t]he provisions of the Rules of Procedure shall be drawn up in such a way as to ensure the participation of each political party group in all the activities of the [Grand National Assembly] in proportion to its number of members". Article 178.2 of the Constitution of Portugal states that "[c]ommittees shall be composed in proportion to the number of seats each party holds in the Assembly of the Republic."

7.2. Leader of the opposition

51. In some countries, there exists the institution of the leader of parliamentary opposition – the leader of the largest opposition faction or coalition of opposition factions – and the opposition is an institution in its own right whose key role is ensuring the day-to-day exercise of parliamentary democracy. For example, the United Kingdom has made leader of the opposition an official position ("Leader of His Majesty's Most Loyal Opposition").[37] It is a position that sometimes has genuine constitutional or legislative status. In those parliamentary democracies where a leader of the opposition is recognised, the rules governing how the leader of the opposition is chosen vary in detail.

7.3. Stages of the policy-making process

52. Three stages of the policy-making process are considered: initiation, debate and parliamentary supervision. At the stage of initiating policies, bill introduction and agenda setting are envisaged. Amendments, the committee structure and the committee procedures represent the stage of debate power. Finally, parliamentary supervision of the executive[38] including different forms of qualified minority rights, interpellation, no confidence vote, measure the veto power of opposition players.

53. Parliament grants weak opposition power if only the executive and MPs can introduce bills while MPs face restrictions and possible veto players. More opposition power exists in parliaments in which at least one further actor (committees, parties, subnational entities, or citizens) can introduce bills but is also faced with restrictions and/or veto players. Opposition players are granted strong power if MPs do not face restrictions or veto players. Strongest opposition power is granted in parliaments in which at least one other actor than the executive and MPs can introduce bills without restrictions or veto. An additional obstacle to overcome, however, are the actors who decide on the plenary legislative agenda which might be dominated by the government.

7.3.1. Committees

54. Much of the work of parliament – especially the detailed legislative and policy scrutiny work – is done in committees. It is usual for parliamentary committees to broadly reflect the partisan composition of the given house (for example with a government majority and other committee positions distributed among the opposition parties according to their strength). While the composition of committees is often determined subconstitutionally, by ordinary statute or by parliamentary standing orders, some constitutions do prescribe general rules ensuring a balance between the government and the opposition.

55. In Resolution 1601 (2008), the Assembly recommended that the opposition should chair all "committees responsible for monitoring government action, such as the committee on budget and finance, the committee on audit, or the committee supervising security and intelligence services". This is an example of the resolution going quite far, as compared to what is usual in national parliaments. In many countries, the parliamentary committees responsible for budget and finance would not be considered (merely) as "monitoring" committees.

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34. Paragraphs 83-86 of the Checklist.
35. www.ft.dk/-/media/sites/ft/pdf/publikationer/engelske-publikationer-pdf/grundloven_samlet_2018_uk_web.ashx, 5 June 1953.
36. www.constituteproject.org/constitution/Turkey_2017.pdf?lang=en.
37. Term "His Majesty's Opposition" was coined during a British debate in 1826 and has been in use ever since. More in: Gerald Schmitz.1988. "The opposition in a parliamentary system: Political and Social Affairs Division".
38. Yamamoto considers as a working definition of parliamentary oversight: "The review, monitoring and supervision of government and public agencies, including the implementation of policy and legislation". Hironori, Yamamoto. 2007. "Tools for parliamentary oversight. A comparative study of 88 national parliaments". Inter-Parliamentary Union.

7.3.2. Setting the agenda

56. The opposition should have, at some regular intervals, a reasonable opportunity to influence the agenda as concerns not only legislative proposals but also other issues related to the control of government actions and evaluation of public policies and spending, for example by proposing items for the inclusion in the agenda at the request of a qualified minority.[39]

57. It is vital to allow the opposition to formulate an agenda. Control of the plenary timetable links to the control of determining what will be debated and decided. Hence, being able to define this timetable and setting the order of the day imply considerable power.[40]

58. Some parliaments set aside certain sitting days where the opposition can determine the agenda (opposition days). This is a longstanding feature of some (if not all) Westminster-model parliaments.[41] Most of these opposition days are allocated to the official opposition (the largest opposition party); the others are shared between the other opposition parties.

7.3.3. Allocation of the speaking time

59. In its Checklist, the Venice Commission stressed that it is possible to give the opposition a bigger share of speaking time, especially as regards bills introduced by the government or private bills sponsored by majority MPs, and that the allocation of an equal speaking time between majority and opposition, irrespective of their strength, should be privileged under certain circumstances.[42]

60. The Venice Commission recommends introducing more transparent rules for equal time distribution for debates between the parliamentary majority and the opposition. This issue is partially regulated by the Statute of the Lithuanian Parliament which stipulates in Article 105.2 that the Speaker of the Seimas may change the order of speeches to provide more proportional representation of factions, committees, arguments for and against in the debates.[43]

61. There are suggestions that the principle of giving the opposition parties an appropriate share of parliamentary time can be written into a constitution.[44]

7.3.4. Participation of the opposition in the parliamentary supervision of the executive

7.3.4.1. Qualified minorities

62. Qualified minority rights may be found in the general parliamentary procedures or in special procedures for particular issues, most commonly in procedures for parliamentary oversight and scrutiny of the executive.

63. Following recommendations of Resolution 1601 (2008) that a qualified minority of one fourth of the representatives should have the legal competence to demand the following measures: a plenary sitting (2.2.5); a debate on a specific issue (2.2.7); the setting-up of "a committee of inquiry or a parliamentary mission of information and to become members thereof" (2.2.8); an extraordinary session (2.3.2) and committee hearings (2.5.4), the Venice Commission – in principle, taking into account tradition and political context – endorses the idea of giving a qualified minority of MPs special powers of inquiry with regard to the oversight function of parliament.

64. There are some political systems in which the parliamentary opposition, usually in the form of a certain qualified minority, has been granted not only rights of procedural participation, but also the legal competence to adopt decisions to initiate inquiries, demand information, set up special committees or commissions.

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39. Paragraph 97 of the Checklist.
40. Laver, Michael & Shepsle, Kenneth A. 1994. "Cabinet ministers and government formation in parliamentary democracies." In: M. Laver, & K. A. Shepsle (Eds.), *Cabinet Ministers and Parliamentary Government,* Cambridge University Press.
41. In the United Kingdom, there are about 20 opposition days in each annual session.
42. Paragraph 102 of the Checklist.
43. Kovalchuk, Vitalii & Sofinska, Iryna. 2022. "Parliamentary Opposition and Democratic Transformation Issues – Central and Eastern Europe in Focus." *Studia Iuridica Lublinensia*, Vol. 31, No 5: pp.219-231. DOI: http://dx.doi.org/10.17951/sil.2022.31.5.219-231.
44. Bulmer, Elliot. 2021. "Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition". p. 27. International IDEA Constitution-Building Primer 22.

65. There are two mechanisms that are designed not to prevent majoritarian decision making but to provide the minority with opportunities to scrutinise proposals, to voice their opposition to them and to mobilise public opinion: minority delay mechanisms (where the veto is limited to a delay) and minority referendum mechanisms (where the veto can be overridden by an appeal from the parliamentary minority to the general public).

7.3.4.2. Minority delay mechanisms

66. In some parliaments a qualified minority may have the right to delay majority decisions, for example, by calling for extra hearings or periods of reflection. Some constitutions allow the legislative minority to delay legislation pending further review and scrutiny.

7.3.4.3. Questions, interpellations, no confidence vote and impeachment

67. In its Checklist, the Venice Commission confirmed recommendations of Resolution 1601 (2008) that the opposition should have the right to open question time with the government and to ask more questions than members of the majority.

68. During a regularly scheduled time (in some systems, several days a week), the opposition may pose written or verbal questions to the government. These arrangements can be constitutionalised in the form of an opposition right, however in most countries this is regulated in the Rules of Procedure.

69. As the Venice Commission stated in its Checklist, the strongest political tool in the hand of the opposition members is the right of interpellation (accompanied by a debate), which is often connected with the right to move a motion of no confidence.

70. Theoretically speaking, the consequences of an interpellation are not necessarily identical or even similar in the different countries that apply this system. In some countries, the interpellation is close to the most significant means of control – a proposal for a vote of no confidence – while in others it is difficult to draw a sharp border between the interpellation and the "ordinary" parliamentary question in written form, and in that sense interpellation is often defined as a qualified parliamentary question.

71. The Venice Commission recommended separating the interpellation procedure (which may lead to the vote of no confidence) from a simple inquiry, in order to avoid the danger of artificial escalation of conflicts.[45] Further, in order to reduce the risk of abuse of the right of interpellation by minority MPs, a threshold requirement may be introduced for such motions and expectingly, threshold for interpellation varies in different countries: thus, for example, under Article 61 of the Constitution of Lithuania, one-fifth of the members of the Seimas may direct an interpellation to the ministers (29 deputies out of 141). In Finland, 20 legislators may address an interpellation to the government, which it must respond to in plenary within 15 days; in North Macedonia, according to Article 72 of the Constitution, interpellation of a member of government may be triggered by a motion of five MPs or more (out of 120)[46]; in the Netherlands 30 out of 150 members are required.[47]

72. In the Checklist, the Venice Commission stated[48] that it is essential in a parliamentary regime that the opposition should be able to trigger the vote of no confidence in the government as a whole; however, political context should be considered, due to fact that this mechanism can be abused and may make the government more fragile.[49] Further, the Venice Commission suggested that a no confidence vote should be a collective rather than an individual initiative of MPs[50] and that a motion of no confidence may be tabled by 10 or 20 MPs. In practice, a number of constitutions of the Council of Europe member States allow parliament to dismiss individual ministers through votes of no confidence.

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45. Paragraph 127 of the Checklist.
46. https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspx.
47. In the German Bundestag, there is a system of major and minor interpellations, whereby only an official opposition group or 5% of the membership can issue major interpellations. In the Belgian House of Representatives the submission of an interpellation by individual parliamentarians requires the approval of the parliamentary political groups they belong to. Hironori, Yamamoto. 2007. *Tools for parliamentary oversight A comparative study of 88 national parliaments,* op. cit.
48. Paragraph 128.
49. The vote of no confidence in respect of individual ministers was not recommended by the Venice Commission in the particular Ukrainian political context (CDL-AD(2009)024, paragraph 59).
50. Paragraph 129 of the Checklist.

7.3.4.4. Parliamentary inquiry committees

73. Considering the issue of the number of MPs required for establishing a committee of inquiry, the Venice Commission, in its Checklist, accepted Recommendation III.3 of the Inter-Parliamentary Union Guidelines that "each parliamentary group shall be entitled, at intervals fixed following consultations, to have a commission of inquiry established on the subject of its choice. In this case, the opposition shall be represented thereon".[51]

74. Analysing the issue of threshold from the point of strengthening the opposition parties, the Venice Commission observed on the one hand that the threshold of one fourth in most political systems would be regarded as rather low[52] while on the other hand "the reduction of the number of MPs required for establishing a parliamentary commission to one fifth of MPs might help to strengthen the role of smaller opposition parties and is therefore to be welcomed."[53]

75. Some constitutions allow a certain minimum number of the members of the legislature to establish a committee of inquiry.This is a potentially powerful tool in the hands of the opposition enabling it to scrutinise and probe policy decisions.

76. In its Checklist, the Venice Commission recommends that if the decisions of the inquiry committee are to be made by a majority of votes, it is important to reserve certain procedural rights to the members of the inquiry committee representing the opposition, and provide for the possibility to be co-rapporteurs or to submit an alternative "minority report".[54]

7.4. Constitutional review of laws

77. According to the Venice Commission's Checklist, availability of the review of constitutionality of laws and bills is a matter of political choice, but where this choice is made, there are good reasons to give the power to trigger such a review also to a minority group in parliament. Submitting a bill to a Constitutional Court should be possible at the request of "one third or one quarter of the members" but the threshold may be even lower, especially where the legislature is much fragmented (for example, one fifth of all MPs).[55]

78. A widespread model in Europe is that a parliamentary minority can demand constitutional review of laws, either before or after adoption, usually from the Constitutional Court. This competence gives the opposition (of a certain size) the chance to bring the laws and other acts of the parliamentary majority before an independent judicial authority. It can in itself give the minority a certain political leverage, and may slow down the adoption or enactment of new (majority) legislation. Whether it actually stops such legislation depends on the contents of the law, the strictness of the constitution, and the will, composition and traditions of the national Constitutional Court.[56]

7.5. Parliamentary leadership and administration

79. The opposition may have guaranteed representation and participation in the leadership and internal administration of parliament. Control over not only the organisation of the legislature's proceedings but also over its physical assets – its buildings, office space, libraries, archives and even parking spaces – can be a political tool. Having an opposition voice in such matters is vital to ensuring that parliament works for the benefit of its members as a whole, and that the proper institutional balance between the government and opposition is maintained.

8. Changes in political affiliation

80. The question of post-electoral changes in MPs' political affiliations during their term of office deserves serious consideration. This phenomenon is known to many parliaments in Council of Europe member States and the move of MPs from one political group to another or their withdrawal from a party to sit as independents – whether for ideological considerations, out of political or electoral opportunism or in the pursuit of personal advantage – is likely to have an impact on the balance between the majority and the opposition in parliaments.

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51. http://archive.ipu.org/dem-e/opposition.pdf.
52. CDL-AD(2010)025, paragraph 123.
53. CDL-AD(2010)028, paragraph 25.
54. Paragraph 138.
55. Paragraph 117.
56. 2010 Report, paragraph 132.

81. For parliaments, this phenomenon may undermine the opposition's exercise of its rights, so it is worth examining the rules governing the rights afforded to political opposition groups: are they granted at the beginning of each legislative period or every year at the beginning of the ordinary session?

82. In a 2009 opinion, the Venice Commission emphasised the importance of a free and independent mandate for members of parliament, and held that "losing the condition of representative because of crossing the floor or switching party is contrary to the principle of a free and independent mandate." Even though the aim pursued by this kind of measures (preventing the "sale" of mandates to the top payer) can be sympathetically contemplated, the basic constitutional principle which prohibits imperative mandate or any other form of politically depriving representatives of their mandates must prevail as a cornerstone of European democratic constitutionalism.[57]

83. In Council of Europe member States, imperative mandates are prohibited and parliamentarians are free to exercise their mandates as they see fit. Nevertheless, the mandates are moral contracts between voters and parliamentarians, based on the principles, values and opinions defended in their election manifestos. Switches in political affiliation after elections therefore raise questions and criticisms – in particular in ethical and moral terms – relating to political opportunism, potential threats to public confidence in the political class and the internal discipline of political parties. Apart from these general criticisms, parliamentarians switching from one group to another after elections or withdrawing from a group to sit as independents have an impact on the functioning of the parliamentary institutions concerned. In the case of members of the Assembly, switching of this kind may influence the balance of political representation within the national delegations to the Assembly.

84. The Assembly report entitled "Post-electoral shifting in members' political affiliation and its repercussions on the composition of national delegations"[58] which was based on the replies to a questionnaire sent to the national ECPRD correspondents (Request No. 2417 of 8 November 2013) stated that political groups affected by defections may be confronted with several difficulties depending on the scale of the phenomenon. The main effects include a risk of under-representation or even dissolution, a reduction in financial contributions and allowances and the loss of political influence in parliamentary bodies. Under-representation affects those groups which, under rules of procedure, are required to have a minimum number of members to exist. The Assembly therefore invited national parliaments to:

> "- look in depth at the switching of political affiliation by members so as to determine whether measures should, or should not, be taken to restrict switching between political groups, by prohibiting switches to another parliamentary group – for the remainder of a parliamentary term or for a certain period of time – and requiring the members concerned to sit as non-registered/independents, or depriving them of certain participation and representation rights;
>
> - revise their internal regulations if they do not already include provisions providing for or prohibiting the switching of political affiliation, as well as the requirements for, and consequences of, switches in political affiliation and the suspension, expulsion or resignation of members from their political groups."[59]

85. Furthermore, the Assembly invited the political groups in the Assembly to supplement their statutes or rules of procedure, as appropriate, so that they set out more clearly the values and principles on which the group is based and the objectives it pursues and include provisions specifying the procedure and requirements for, and consequences of, switches in political affiliation as well as the suspension, expulsion or resignation of members.[60]

9. Immunities of the MPs

86. The purpose of immunity, as emphasised in Assembly Resolution 1325 (2003) "Immunities of Members of the Parliamentary Assembly" is to preserve the integrity and independence of parliaments by providing specific protection against the accusations to which parliamentarians are more exposed than other citizens.

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57. "Report on the imperative mandate and similar practices", CDL-AD(2009)027, paragraph 39.
58. Doc. 13666.
59. See Resolution 2037 (2015), paragraph 8.
60. Ibid., paragraph 9.

87. The Assembly was the first international parliamentary institution in Europe to incorporate provisions in its Rules of Procedure for waiving the immunity of its members, giving practical expression to Article 40 of the Statute of the Council of Europe (ETS No. 1) and the General Agreement on Privileges and Immunities of the Council of Europe (ETS No. 2, 1949) and its additional protocol (ETS No. 10, 1952).

88. In its Checklist the Venice Commission underlined that although immunity is a general safeguard for all MPs, it has a specific meaning for the opposition, especially in countries where law-enforcement bodies may be subservient to the majority. It is important to define, in the law, the scope of any immunities enjoyed by the MPs and devise procedural safeguards which would make lifting of the immunity and subsequent prosecution harder.[61]

89. As the Venice Commission stressed, today's rules on parliamentary immunity for MPs are to be found in various forms in the parliaments of all the member States of the Council of Europe, usually regulated in the constitutions themselves.[62] Such rules may serve both as collective protection of parliament as an institution (against the executive) and as protection of the individual MPs against both the executive and the parliamentary majority.

90. The Venice Commission considered that two separate categories of immunity have emerged: non-liability (which essentially means that an MP may not be brought to liability in connection to the votes and opinions related to the exercise of his/her mandate) and non-violability (which means that an MP cannot be subjected to certain coercive measures, like, for example, arrest, without permission of parliament or a body of parliament).[63]

91. Researches proved that fear of losing immunity could cause following consequences: it pacifies the MPs of the opposition parties; they become less diligent in the parliament (drafting fewer pieces of legislation, initiating fewer investigation inquiries, delivering fewer and shorter speeches) and become less aggressive (interrupting other MPs less frequently).[64] They also reduce their tendency to cast dissenting votes against the government. Reduction in the intensity of the opposition activities decreases citizens' trust in the parliament.

10. Resolution of disputes related to the rights of the opposition

92. The independence of parliamentarians is important not only in the face of the executive branch but also inside of parliament as it relates to their interactions with political parties and other MPs. It is essential that rights of parliamentary opposition – freedoms of association, expression and assembly – are guaranteed by the constitution, by the country's legislation and by the rules of procedure of parliament, and they should not be undermined by the code of conduct. MPs in the opposition should not be criminalised, harassed or disadvantaged in any way.[65]

93. As the Venice Commission stated in its Checklist, beside the need to maintain good order in parliament and resolve disputes related to the rights and behaviour of individual MPs or groups, it is important to take into account that internal bodies dealing with disciplinary and other procedural matters should not become a tool of political manipulations in the hands of the majority.[66]

94. According to the Venice Commission, it belongs in the first place to parliament itself or to its designated bodies to decide what speech or behaviour are inadmissible within parliament. Since not everything can be clearly regulated in the codes of behaviour, it is important to ensure foreseeability of any sanction imposed and show respect to the tradition and the precedent. Thus, for example, in countries where "filibustering" was customarily regarded as a legitimate practice, it would be wrong to punish minority MPs for using this tool just because the current majority does not like to be constrained by it.[67]

95. Further, the Inter-Parliamentary Union recommends that the adoption procedure for codes of conduct should be inclusive, transparent and consultative and that members of opposition should therefore be involved in the process of developing the code of conduct from the beginning.[68] By inclusive, the concern is with the

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61. Paragraph 147 of the Checklist.
62. 2010 Report, paragraph 139.
63. Paragraph 148 of the Checklist.
64. Altindag, Duha T., Mocan, Naci & Jie Zhang. 2021. "Freedom of Speech, Deterrence, and Compellence in the Parliament". Bonn: IZA – Institute of Labor Economics.
65. "Opposition and Legislative Minorities: Constitutional Roles, Rights and Recognition", op. cit.
66. Paragraph 153 of the Checklist.
67. Paragraph 158 of the Checklist.

assurance that the code was not solely developed by a few parliamentarians or by the majority party. This would lead to increased concerns about the possible weaponisation of the code of conduct to target minority members or to restrict the independence of legislators.[69]

96. It is recommended that in order to gain and maintain legitimacy, the composition of parliamentary ethics committees should be representative of parliament in terms of political party balance and gender and ethnic balance, while their members should be appointed in a transparent and fair manner. Such committees are often chaired by a member of the opposition, although this can be controversial in societies with a highly adversarial political culture or divided political elite.

11. General principles as basis for the Checklist

97. The parliamentary majority is often but not always the governing majority, in the sense that it supports the government. The 2010 Report primarily described "the main situation, in which the opposition parties are in minority, and therefore in need of some level of protection in order to fulfil the basic legitimate opposition functions that are necessary in order to ensure effective and sustainable democracy". The Checklist has the same focus.

98. In addition to the rules of the Constitution and the legislation, certain overarching principles should be respected. The Venice Commission identified the following constitutional principles as the most important principles of parliamentary functioning: "freedom, pluralism, checks and balances, loyal co-operation and respect for institutions, solidarity towards the society, possibility of political change, and effective decision making".

– ***Pluralism***: A democratic State should respect values of pluralism and freedom and therefore in a democratic society, the criticism by the opposition cannot be seen as a destructive element or voice against the country and cannot be interpreted as a lack of acceptance of the results of democratic elections.

– ***Checks and balances***: A democratic State cannot exist without checks and balances amongst its different institutions. The checks and balances in the wider sense include also non-State actors (such as civil society, or a free press) which contribute to preventing an excessive concentration of power in one institution.

– ***Loyal co-operation and respect for institutions***: Checks and balances require constructive co-operation in order to achieve the public interest, they require mutual respect between State institutions belonging to different powers, as well as an appropriate balance and mutual control amongst them.

– ***Political solidarity towards the society***: The principle of political solidarity requires a shared responsibility of the majority and opposition towards society. In the exercise of power, the majority, precisely because it is a majority, has to act with self-restraint and with respect towards the opposition, in an inclusive and transparent manner. At the same time, the opposition should not abuse procedural rights either, and, in criticising the policies of the majority, should not call for violence or get involved in violent acts, or in the physical obstruction of the parliament's work.

– ***Possibility of alternation in power***: Measures taken by the majority should not affect the rule of law and should not be aimed at changing the rules of the democratic "game", which ultimately means the possibility of alternation in power through free and fair elections. The majority should not abuse its powers to make it impossible (or very difficult) for the minority to become the majority.

– ***Efficient decision making***: The majority should be able to pursue its political agenda and the opposition, on its side, should not indulge in a deliberate obstruction of the normal work of parliament. The interaction between the majority and the opposition should always respect the imperative of ensuring a fair balance between the legitimate interests of the majority and those of the opposition, with both having a political duty of loyal and constructive co-operation.

99. The functioning of parliament has unquestionable democratic legitimacy if it complies with these principles. Both the majority and the opposition must act on the basis of the same common and responsible commitment to the public interest of citizens, who are the legitimate source of democratic power. This commitment must be paramount, overriding the stakes of any political confrontation, although such confrontations are normal and indispensable in a democracy.

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68. Inter-Parliamentary Union. 2022. "Indicators for democratic parliaments – Sub-target 2: accountable parliament".
69. Guilherme France. 2022. "Codes of conduct for parliamentarians". Transparency International.

100. The circle of general principles as listed in the Checklist is far from being exhaustive, and those principles can be specified differently, depending on the political regime, the constitutional culture and historical traditions. These principles are well inter-connected. The regular change of political forces in power strengthens the culture of self-restraint on the part of the majority and more constructive attitude of the opposition towards the majority. By contrast, if the majority abuses its dominant position in order to prevent the opposition from taking the power, there is a danger of general radicalisation of the opposition.

101. The Checklist is based on questions which permit to identify weak points in the domestic regulations. Many of these questions are open-ended, but each question is followed by a commentary which explains general principles, mentions best (or bad) practices and points at possible solutions. The structure of the Checklist allows it to be supplemented and adjusted in the future, in the light of the political and legal developments in the European and non-European democracies.