



Doc. 12366

27 September 2010

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

Reply to Recommendation¹: Recommendation 1898 (2010)
Committee of Ministers

1. The Committee of Ministers has considered with interest Parliamentary Assembly [Recommendation 1898 \(2010\)](#) on "Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states". It has drawn the recommendation to the attention of its member states and transmitted it to the European Commission for Democracy through Law (Venice Commission) for information and possible comments. The Venice Commission's opinion is appended to this reply.
2. The Committee of Ministers welcomes the fact that [Recommendation 1898 \(2010\)](#) subscribes to an objective that is common to the whole of the Council of Europe, namely to establish a "free and fair" elections zone throughout Europe. The Committee of Ministers itself contributes to this objective by providing pre-electoral assistance to member states that wish to benefit from the Council of Europe's experience in the electoral field in order to ensure that their elections are conducted in accordance with European standards. Moreover, as part of its regular examinations of the progress made by certain member states in meeting their commitments and obligations, the Committee of Ministers attaches particular importance to the conditions in which elections are conducted in the countries in question.
3. As the Parliamentary Assembly is aware, the Venice Commission has already carried out important work on electoral thresholds and other issues raised in the recommendation, such as electoral commissions, voting procedures, election observation, the financing of election campaigns and the impact of electoral systems on women's access to elected bodies. The Committee of Ministers refers, in particular, to the Code of Good Practice in Electoral Matters, which it has recognised as a reference document for the Council of Europe's activities in the electoral field. Since most of the topics referred to in the recommendation are already the subject of guidelines drawn up or recognised by the Council of Europe, the Committee of Ministers does not see the need to prepare additional rules and standards on this subject.

1. adopted at the 1091st meeting of the Ministers' Deputies (16 September 2010)



Appendix to the reply

Comments by the European Commission for Democracy through Law (Venice Commission)

1. This document is a response by the Venice Commission to the request made by the Committee of Ministers at its 1077th meeting (24 February 2010), regarding Parliamentary Assembly [Recommendation 1898 \(2010\)](#) on “Thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states”.
2. This document was adopted by the Council for Democratic Elections at its 32nd meeting (Venice, 11 March 2010) and by the Commission at its 82nd plenary session (Venice, 12-13 March 2010).
3. The Venice Commission cannot but support the aim of ensuring that the Council of Europe area becomes the world’s largest “free and fair election zone”, in compliance with democratic standards (paragraph 3 of the recommendation). These standards are set out in the Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), which will be further referred to below.

On thresholds

4. The Venice Commission has already considered the question of thresholds and other features of electoral systems which have an impact on representativity of parliaments in Council of Europe member states in two documents:
 - The comparative report on thresholds and other features of electoral systems which bar parties from access to parliament, adopted by the Council for Democratic Elections at its 26th meeting (Venice, 18 October 2008) and by the Venice Commission at its 77th plenary session (Venice, 12-13 December 2008) (CDL-AD(2008)037).
 - The draft report on thresholds and other features of electoral systems which bar parties from access to Parliament (II), adopted by the Council for Democratic Elections at its 32nd meeting (Venice, 11 March 2010) and by the Venice Commission at its 82nd plenary session (Venice, 12-13 March 2010) (CDL-AD(2010)007).
5. Both these documents were forwarded to the Parliamentary Assembly of the Council of Europe prior to the debate on document 12107, which resulted in the adoption of [Recommendation 1898 \(2010\)](#).
6. The Commission noted that its own work leads it to consider that the issue of electoral thresholds comprises not only that of the explicit threshold but also those of implicit (natural) thresholds which electoral legislation comprises.
7. The Commission considers that the wide variety of national provisions makes the development of European standards other than very general ones extremely difficult. Nevertheless, it is willing to consider this possibility if the Assembly so wishes.

On electoral questions in general

8. The Venice Commission has drawn up key standards in the electoral field.
9. The Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev), adopted by the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, was the subject of a solemn declaration by the Committee of Ministers on 13 May 2004. In that declaration, the Committee of Ministers acknowledged:

“the importance of the Code of Good Practice in Electoral Matters, which reflects the principles of Europe’s electoral heritage, as a reference document for the Council of Europe in this area, and as a basis for possible further development of the legal framework of democratic elections in European countries”;

and called on:

“governments, parliaments and other relevant authorities in the member states to take account of the Code of Good Practice in Electoral Matters, to have regard to it, within their democratic national traditions, when drawing up and implementing electoral legislation and to make sustained efforts to disseminate it more widely in the relevant circles.”

10. The Code of Good Practice in Electoral Matters may be regarded as the Council of Europe reference document in this field and is regularly cited by the European Court of Human Rights. It is the most complete European text in the field of electoral standards.
11. The Code of Good Practice in Electoral Matters (CDL-AD(2002)023rev) contains a consolidated version of the principles governing the electoral process (see paragraph 4.2 of the recommendation). In particular, it deals with electoral commissions (CDL-AD(2002)023rev, II.3.1, see paragraph 4.1.1 of the recommendation); voting procedures (see CDL-AD(2002)023rev, I.3.2, and paragraph 4.1.6); election observation (CDL-AD(2002)023rev, II.3.2, see paragraph 4.1.7 of the recommendation). The question of electoral thresholds and comparable measures (paragraph 4.1.2 of the recommendation) has already been mentioned above.
12. The Venice Commission addressed the question of the international status of election observers in the Guidelines on an internationally recognised status of election observers adopted by the Council for Democratic Elections at its 31st meeting (Venice, 10 December 2009) and by the Venice Commission at its 81st plenary session (Venice, 11-12 December 2009) (CDL-AD(2009)059). The Parliamentary Assembly, the Congress of Local and Regional Authorities of the Council of Europe and the Venice Commission have endorsed the Declaration of principles for international election observation and the Code of conduct for international election observers drawn up by the United Nations Electoral Assistance Division (UNEAD), the National Democratic Institute for International Affairs (NDI) and the Carter Centre (TCC) (CDL-AD(2005)036).
13. Furthermore, the Venice Commission has studied the question of the impact of electoral systems on women's representation in politics (CDL-AD(2009)029).
14. The Commission has also adopted guidelines on the financing of political parties (CDL-INF(2001)008; cf. paragraph 4.1.5 of the recommendation).
15. Accordingly, it appears to the Commission that the majority of the issues referred to in the recommendation have already been covered by guidelines which it has drawn up or endorsed in co-operation, where appropriate, with other organisations. The representatives of the Parliamentary Assembly have been closely involved in the drafting of all the texts submitted to the Council for Democratic Elections.
16. The Venice Commission is at the disposal of the Committee of Ministers should it request the drafting of other standards in this field.