



Analysis report of the national legislation on elections from the perspective of inclusion of underrepresented groups.

Recommendations for improving the national legislation on elections from the perspective of inclusion of underrepresented groups.

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1. Introduction

The aim of the study is to provide a theoretical basis for the debates that take place in Moldovan society aimed at ensuring a better representation of population groups that are currently underrepresented in relation to their share in the population in parliament and other elected bodies.

In addition to analysing international standards and obligations regarding the rights of underrepresented groups in political and public life, as well as resolutions and recommendations adopted by international and regional bodies, the study also contains a comparative research of the legislation regulating these rights in the European Union countries and other European countries.

This research highlights similarities and differences in the way in which the subject of women's representation is approached, the way in which the representation of ethnic minorities is regulated, as well as the provisions on ensuring the right of persons with disabilities to participate in election.

The study does not only limit to reviewing and analysing legislation from the countries concerned, but also presents the effects that the legislation produced in different countries. For example, it compares the evolution of the level of representation of women in countries with legalized gender quotas with the evolution of countries where gender quotas exist only at the level of internal rules of political parties, in terms of nominating the candidates, and the countries where there is no gender quota at all. Also, the impact that different ways of regulating the establishment of parties and organizations by ethnic minorities have in terms of representation of the respective minorities is also emphasized in this study.

The electoral legislation of the Republic of Moldova from the perspective of inclusion of underrepresented groups is reported to international standards and obligations and compared to the legislation of the European countries included in this study.

At the same time, reports and opinions of various international bodies - European Commission for Democracy through Law (Venice Commission), OSCE / ODIHR, etc. issued either as a result of the monitoring of elections held in the Republic of Moldova or as a result of the Government's or other parties' request for opinions on certain laws or draft laws, were also analysed and considered.

Last but not least, the reports issued by non-governmental organizations from the Republic of Moldova, which refer to the political participation of underrepresented groups, have also been analysed.

Regarding the working methodology, besides studying the documents listed above, this research also included interviews with representatives of some of the main political parties in Moldova, as well as a "focus group" with the participation of representatives of non-governmental organizations, which are potentially / directly interested in the study. Their role was to validate preliminary conclusions, as well as to test hypotheses and solutions that would be subject to the recommendations made by the team of experts.

A series of recommendations for amending the legislative framework to ensure better representation in parliament and other elected bodies of groups recognized as underrepresented, especially women, ethnic minorities and people with disabilities have been made based on the findings resulted from the analysis of international standards and obligations, resolutions and recommendations, as well as examples of other European countries' legislation and its effects, but also taking into account the views expressed by various international and local organizations.

2. International standards and recommendations of international bodies to ensure the participation of minority and underrepresented groups in elections

2.1. Standards, obligations and general recommendations

A number of standards linked to ensuring the right to vote and to be elected for all categories of citizens over a certain age exist at international and European level. They are constituted from universal human rights, as they are recognized at European and world level, as well as from case-law and are politically or legally mandatory for the signatory states, while having implications for the way how states organize the election process.

The main international standards or obligations that form the basis of the elections around the world are those reflected in the provisions contained in the following documents:

- **The Universal Declaration of Human Rights** (1948) which stipulates in Article 21 that: *“Everyone has the right to take part in the government of his country, directly or through freely chosen representatives. Everyone has the right of equal access to public service in his country. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures”.*
- **The International Covenant on Civil and Political Rights** (ICCPR, 1966), which provides in Article 25 that: *“Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:*
 - a) *To take part in the conduct of public affairs, directly or through freely chosen representatives;*
 - b) *To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;*
 - c) *To have access, on general terms of equality, to public service in his country.*

Based on these two instruments, the fundamental freedoms and basic principles relevant to the conduct of elections can be deduced. Moreover, these two documents reveal the fundamental principle according to which elections must be organized in an environment that guarantees freedom of expression, association, assembly and movement, non-discrimination and effective remedies accessible to all actors involved. In addition, authentic elections must be universal and guarantee the equal right of people to vote and candidate. The vote must also be secret and expressed at regular intervals.

Other relevant international instruments extending the legal framework for equal participation and non-discrimination are: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, 1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, 1979), the Convention on the Rights of Persons with Disabilities (CRPD, 2006). It is also worth mentioning the UN Convention against Corruption (2003), which is particularly relevant when it comes to ensuring transparency and political and administrative openness around processes such as elections.

The freedoms and principles mentioned above are reiterated in the regional instruments relevant for the Republic of Moldova. Article 7 of the **1990 OSCE Copenhagen Document** obliges all OSCE member countries *“to hold free elections at reasonable intervals, as established by law”, “to guarantee universal and equal suffrage”, “to ensure that votes are cast by secret ballot or by equivalent free voting procedure”, “to respect the right of citizens to seek political or public office”* and also underlines the rights of individuals to associate, the parties’ rights to compete in elections (including campaigns) and access to the media.

Concerning the rights of minorities and underrepresented groups, the document highlights: *“... whatever the chosen system is, elections must lead to a legislative that represents the main political forces of the country”*. In other words, electoral systems must ensure adequate representation. As outlined in Section 2, representation can take many forms - for example, mathematical representation (or “fair” representation) of electoral competitors - an element that is related to the way in which votes are transformed into mandates, descriptive representation that recognizes the existence of different social groups (men / women, elders / young people, towns / villages, ethnic / religious groups, etc.) and geographical representation of territories of the country.

When it comes to choosing an electoral system, the priority given to representation was further underlined by IDEA International: *“... although there are no legal provisions according to which a certain type of electoral system is preferable to another, there is an increasing recognition of the greater importance of the problems affecting electoral systems, such as the fair representation of all citizens, equality between women and men, minority rights, special attention for people with disabilities and so on”*.

Beyond these standards, obligations and recommendations that refer to respect of the right to representation of all categories of population, there are still many others specific to different groups or categories of citizens. The most important of these are presented in the following chapters.

2.2. Standards, obligations and recommendations concerning women’s representation

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) represents an important document and stipulates in Article 7 that:

“States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women the right:

- a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;*
- b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government”*.

Another important document detailing the measures that should be adopted by the signatory states for the elimination of discrimination against women in political life is **Resolution 2111 from 2016 of the Parliamentary Assembly of the Council of Europe**, a resolution which begins (in Art. 1) stating that: *“in spite of political commitments and legal obligations under international equality and non-discrimination standards, women are still vastly underrepresented in politics in most Council of Europe member States. In almost one third of them, the proportion of women among members of parliament does not reach 20%”*.

The same article states further that: *“it is time to step up efforts in order to address this issue. Whenever member States review their regulations governing elections, they should adopt measures to promote the participation of women that are able to have both a significant impact and be sustainable in the longer term”*.

Article 2 of the Resolution explicitly states that the most effective solution for increasing the presence of women in political life is the introduction of gender quotas in the selection of candidates: *“Electoral quotas (gender) are the most effective means of achieving significant, rapid progress, provided that they are correctly designed and consistently implemented. Quotas should be adapted to the electoral system in force, set ambitious targets and be coupled with stringent sanctions for non-compliance”*.

And Article 3 also covers other measures that should be adopted: *“Accompanying measures are also needed to help women overcome the hurdles they face in accessing and progressing in political life. They include training and awareness-raising activities, media time reserved for women politicians, policies to help reconcile private life and political activities and, last but not least, legislation and other measures in favour of more balanced sharing of family responsibilities between women and men”*.

This is how, therefore, through a resolution adopted by an important and representative forum for all the member countries of the Council of Europe - the Parliamentary Assembly, not only it is drawn attention to the question of the underrepresentation in politics of a category of people who are more than half of the population - women, but also there are indicated the main measures that member states should take into account to remedy the situation.

It should be stressed that the provisions of the CEDAW, which are more general, are mandatory for all the signatory states, while the texts contained in the Resolution 2111 of the Parliamentary Assembly of the Council of Europe carry a recommendation character.

2.3. Standards, obligations and recommendations concerning ethnic minorities' representation

Regarding the participation of ethnic minorities in particular, **the United Nations Declaration on Minority Rights** (national, ethnic, linguistic) (UNDMR) states that *“persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life” (Article 2, Paragraph 2)* as well as these persons have *“the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live” (Article 2, Paragraph 3)*

The Declaration is a binding legal instrument for the Human Rights Committee acting as a monitoring body and also a tool for individual complaints. On the other hand, UN declarations are resolutions adopted by the General Assembly of the Organization and therefore do not have legal force over the states. But they have a moral and political force.

The right of persons belonging to national minorities to participate effectively in cultural, social and economic life, as well as in the adoption of public decisions, especially those that concern them directly, is also provided in Article 15 of **the Framework Convention for the Protection of National Minorities** (FCPNM): *“The Parties shall create the conditions*

necessary for the effective participation of persons belonging to national minorities in cultural, social and economic life and in public affairs, in particular those affecting them”.

According to the FCPNM Advisory Committee, participation in public affairs involves participation in elected bodies, specialized government bodies and all local and decentralized government institutions.

Also in connection with the Framework Convention for the Protection of National Minorities, in the paper **“A Guide to Minorities and Political Participation in South-East Europe”**¹ the authors point out that *“although there is nothing to say about autonomy, various types of autonomy, including territorial autonomy, have come to be considered solutions that facilitate the effective participation of minorities and the promotion of their rights”.*

Paragraph 7 of the OSCE Copenhagen Document (1990) states that, in order to ensure that the will of the people serves as the basis of the authority of government, the participating states will: *“(7.5) - respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination; (7.6) - respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”.*

And Paragraph 35 states that: *“The participating states will respect the right of persons belonging to national minorities to effective participation in public affairs, including participation in the affairs relating to the protection and promotion of the identity of such minorities”.*

2.4. Standards, obligations and recommendations concerning electoral rights of people with disabilities

If regarding the women and persons belonging to ethnic minorities we have emphasized the provisions to facilitate their access to the chosen decision-making bodies (parliaments, in particular) and to ensure a level of representation close to their share in the population, in the case of people with disabilities we are still in a position to talk about ensuring their right to vote and be elected.

When discussing the rights of people with disabilities to participate in the elections, the first document we report is **the UN Convention on the Rights of Persons with Disabilities**, which was ratified by the Republic of Moldova in 2010 and which, in Article 29 - Participation in political and public life states that: *“States Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, and shall undertake to:*

- a) *Ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:*

¹ A Guide to Minorities and Political Participation in South-East Europe - A joint publication of the King Baudouin Foundation, Brussels, Belgium and Common Values, Skopje, Macedonia, 2009.

- I. *Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;*
 - II. *Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;*
 - III. *Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice;*
- b) *Promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs, including:*
- I. *Participation in non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties;*
 - II. *Forming and joining organizations of persons with disabilities to represent persons with disabilities at international, national, regional and local levels”.*

These provisions are added by the ones contained in the **(Revised) Interpretative Declaration of the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections**², adopted by the Council for Democratic Elections and the Venice Commission (Venice, 15 December 2011), and which complements the Code of Good Practice in Electoral Matters, which was adopted by the Venice Commission in October 2002:

1. *“Universal suffrage*

- *Universal suffrage is a fundamental principle of the European Electoral Heritage. People with disabilities may not be discriminated against in this regard, in conformity with Article 29 of the Convention of the United Nations on the Rights of Persons with Disabilities and the case-law of the European Court of Human Rights.*
- *Voting procedures and facilities should be accessible to people with disabilities so that they are able to exercise their democratic rights, and allow, where necessary, the provision of assistance in voting, with respect to the principle that voting must be individual (the Code, item I.4.b).*
- *The application of Universal Design principles³ and direct and/or indirect participation of the user in all design stages are effective means for improving the accessibility of polling stations and election procedures to cast one’s vote and for getting access to information on elections.*

² <http://www.cec.md/index.php?pag=news&id=1004&rid=597&l=ro>

2. Equal suffrage

- *The principle of “equality of opportunity must be guaranteed for parties and candidates alike” (The Code, item I.2.3.a). The application of this principle should be extended to include equality of opportunity for people with disabilities who stand for elections.*

3. Free suffrage

- *In the duty to “enable voters to know the lists and candidates standing for elections” (The Code, item I.3.1.b.ii), the public authorities must ensure that the above information is available and accessible, to the greatest extent possible and taking due account of the principle of reasonable accommodation, in all necessary alternative formats under restriction of commensurability, legal regulation and realistic feasibility. The information provided shall be easy to read and to understand.*

4. Secret suffrage

- *The right of people with disabilities to vote by secret ballot should be protected, inter alia, by “guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing them to use assistance technologies and/or to be assisted in voting by a person of their own choice” in conditions which ensure that the chosen person does not exercise undue influence”.*

In addition it worth mentioning the **Recommendation Rec (2006) 5 of the Committee of Ministers to Member States on the Council of Europe** on the Action Plan to Promote the Rights and Full Participation of People with Disabilities in Society: Improving the Quality of Life of People with Disabilities in Europe 2006-2015, in the field of *Participation in political and public life*. According to this recommendation, member states should carry out the following specific actions:

- *To ensure that voting procedures and facilities are appropriate and accessible to people with disabilities and allow, where necessary, the provision of assistance in voting;*
- *To protect the right of people with disabilities to vote by secret ballot and, where necessary, upon their request, allow assistance in voting by a person of their choice;*
- *To ensure that no person with a disability is excluded from the right to vote or to stand for election on the basis of her/his disability;*
- *To ensure that election information is available and accessible in all necessary alternative formats, and easy to understand;*
- *To encourage political parties and other civil society organisations to provide their information and organise their public meetings in an accessible way;*
- *To encourage people with disabilities (in particular women and young people) to form and join representative disability organisations at local, regional and national level for the purpose of contributing to and influencing policy at all levels;*

3. Models of promoting minority groups in political life in the legislation of other countries

3.1. Ensuring balanced representation between men and women

3.1.1. Models of promoting women in politics

There are numerous international, European or country-specific studies demonstrating that women's access to political positions is affected by the type of dominant culture in society and stereotyped views on the distinct roles that women and men should assume. In more conservative societies, there is a widespread view that men have more responsibility than women for activities in the public sphere - economics and political life, while women have the primary responsibility for the private sphere - home and family. Most sociological studies show that this mentality does not characterize only the majority of men, but also the majority of women from the societies we refer to.

Thus, in many countries, in order to be able to consider the idea of candidating, women should first overcome their own stereotypes and prejudices and then fight against the biases of those who select and nominate candidates. Ultimately, they should convince citizens, who vote, many of whom may think that politics is not the appropriate place for women.

Prejudices and stereotypes can be offset by decisions that can be taken at political level, at least temporarily, in support of the increase of the number of women candidates and the reduction or cancellation of the handicap with which they enter the electoral race due to stereotypes and prejudices.

The electoral system represents the first important element in the democratic play that can contribute to a fair representation of women in elected fora or which, on the contrary, can prevent it. In the report on the impact of electoral systems on women's representation in politics developed by the Venice Commission³, it is stated that:

"One of the most well-established findings is that countries applying proportional representation systems have a higher proportion of women in their parliaments than those with majority or plurality systems [...]. Both the British First-Past-the-Post system and the French Two-Round system tend to work against women. Consequently, the electoral system has been considered to be partly responsible for low levels of women's representation there"

The report also states that: *"During the last three decades, there has been a significant increase in women's parliamentary representation where proportional representation systems exist, whereas only modest advances have been made through plurality or majority systems"*

Finally, in relation to proportional mixed systems (with compensation), known in the English-language specialized literature as "Mixed Member Proportional" (MMP), it is also stated that:

³ Report on the Impact of Electoral Systems on Women's Representation in Politics, 2009, on the basis of a contribution by Mr. Michael Krennerich (expert, Germany).

“... appear to be more conducive to women’s parliamentary representation than plurality or majority systems, but less favourable to women’s election than traditional proportional representation systems. Not surprisingly, women’s parliamentary representation in New Zealand increased significantly, from 21.2% in 1993 to 29.2% in 1996, after the country changed its electoral system from the plurality system in single-member districts to a Mixed Member Proportional System. In the 2008 elections, the highest proportion of female representatives to date (34%) was reached there. Recent data on women’s representation in Germany (32%) is similar to that for New Zealand

[...] Comparing both parts of combined systems (MMP and parallels), it can be seen that on average, women have been more successful in both nomination and election on the party list than in single-member constituencies. This finding corresponds with what previous research on female representation in PR systems and plurality systems found out. With the Mixed Member Proportional System (MMP) in Germany, for instance, the proportion of women elected to the Bundestag is significantly lower in single-member districts than on the party lists. The same can be said of at least some New Zealand elections, most evidently in 1996 when only 15.4% of female representatives were elected in single-member districts, compared to 45.5% of female representatives elected on the lists. Also with Hungary’s compensatory system (MMP), women seem to have higher success rates from lists than from single-member constituencies.

A similar effect can be seen in countries applying a parallel mixed system. A case in point is Lithuania where the percentage of women elected in single-member districts (1992: 7%, 1996: 16.2%, 2000: 8.4%, 2004: 18.3) is lower than the women’s share of representatives elected on the party lists (7.1% in 1992, 20% in 1996, 12.8% in 2000, 22.9% in 2004).“

Initiatives have been launched to introduce gender quotas in elections, at least temporarily, in societies where a strong enough trend has been formed in favour of ensuring a fairer representation of women in elected fora, in addition to the choice of electoral systems with proportional representation or even outside this option, in some cases.

Gender quotas have become part of the electoral process since more than four decades ago. Before 1985, four countries introduced quotas. Between 1985 and 1994, another 21 countries joined them, and between 1995 and 2005, more than 55 countries adopted gender quotas. Since 2006, more than 84 countries have some form of quota to improve the chances of women candidates.

The idea of introducing gender quotas to ensure a better presence of women in parliaments and other decision-making bodies has opened and still opens discussions on their need and their beneficial role versus the negative effects it generates. Here are the main pros and cons, as they are seen by Drude Dahlerup⁴, professor of political science at Stockholm University, Sweden:

⁴ Drude Dahlerup, *Women, Quotas and Politics*, Routledge Research and Comparative Studies, 2006.

FOR	AGAINST
<ul style="list-style-type: none"> • Women’s quotas do not discriminate, but compensate the barriers that prevent women from having fair access to political functions. • Women are entitled, as citizens, to equal representation. • Women’s experiences are necessary in political life. • The choice is about representation, not about qualifications. • Women are as skilled as men, but women’s qualifications are underestimated and ignored in a male-dominated political system. • In fact, it is about the political parties that control the nominations, not the voters who decide, first, who is elected; therefore, quotas are not violations of voters’ rights. • The introduction of quotas can cause conflicts, but this may only be temporary. • Quotas can contribute to a process of democratization, making the nomination process more transparent and formalized. 	<ul style="list-style-type: none"> • Quotas are against the principle of equal opportunities for all because it favours women to the detriment of men. • Quotas are undemocratic because voters should be the only ones to decide who is elected. • Quotas imply that politicians are elected due to their gender, not because of their qualifications, and that many qualified candidates can be left out of the chosen fora. • Many women do not want to be chosen just because they are women. • Introduction of quotas creates significant conflicts within the party organization. • Quotas violate the principles of liberal democracy.

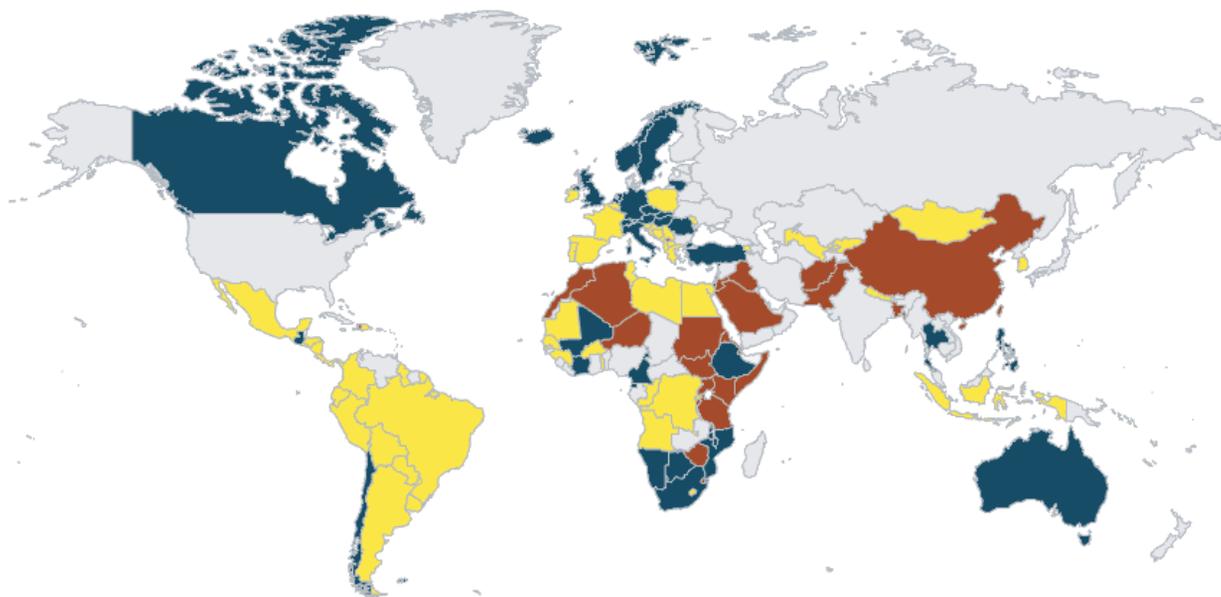
As will be shown further, in the last decades, more and more countries in the democratic world, especially in Europe and North America, but also South Africa, Oceania, Southeast Asia, have leaned the balance in favour of the pro arguments, to the detriment of those who support the opposition to gender quotas.

Gender electoral quotas vary from legal quotas introduced through constitutional changes or through the modification of electoral laws or other laws, to “voluntary” quotas introduced by political parties in the internal rules of nomination of candidates in elections.

IDEA International has identified the most common types of quotas used to solve underrepresentation of women in parliament, as follows:

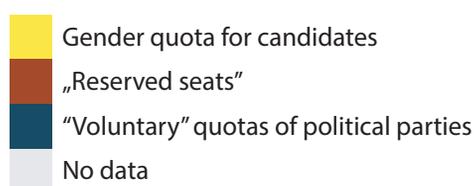
- quotas established by legislative provisions. They can also be divided into two large categories: (1) “reserved seats” - quotas established by legislation, by reserving a certain number of parliamentary mandates for certain categories of candidates (women in this case); this model is met in African countries such as **Kenya, Burundi, Rwanda, Uganda, Senegal, Zimbabwe**. (2) *gender quota for candidates* - the law imposes political parties or stimulates parties (by rewards, usually consisting in increasing budget allocations) to nominate female candidates to a certain percentage of the total number of candidates, although it does not guarantee the choice of the concerned candidates.

- voluntary quotas are those adopted on a voluntary basis by political parties and do not have legal status. Parties may adopt internal rules requiring women to account a certain proportion of nominees or preselected candidates to represent them in the elections. It is a model promoted at the beginning, especially in the Scandinavian countries, after which it was taken over by many other countries.



Gender electoral quota in the world

(source: <https://www.idea.int/data-tools/data/gender-quotas>)



Gender quota established by legislative provisions

Since different electoral systems are used in the countries of the European Union, it is interesting to look at how gender-based quotas have been designed according to the voting system.

We observe that of the two countries where the majority system is used - **France** and the **United Kingdom** - only the first introduced by law mandatory provisions to ensure a balanced representation of the two genders. Thus, starting with 2000, for each political party, the difference between the two genders in terms of the number of nominees can not be more than 2% of the total number of candidates proposed. Failure to comply with this rule would entail sanctioning the party by reducing the funds it receives from the state budget (depending on the number of votes received) by a sum in relation to the size of the deviation from the 2% limit.

As regards the group of countries where proportional systems are used, either with a semi-open, closed party-list or with single transferable vote⁵, where gender quotas are introduced, the general rule is represented by the minimum percentage to be held by the candidates of each of the two genders in the total number of candidates in a constituency, respectively at the national level. There are, however, some countries in which the list election is used, where the law provides a better gender equality than in others, by adding another rule – the one of alternating women and men on the list of candidates, so that avoids placing all candidates of the same gender at the bottom of the list (i.e. in ineligible places). These are: **Belgium** (to a small extent), **Portugal, Spain**, as well as **Macedonia** and **Serbia**, among the non-EU countries. The other countries where there is only a minimum mandatory threshold for the presence of women and men on the candidate list are: **Croatia, Greece, Poland and Slovenia**.

Italy represents a special case, where the gender quota is imposed only if the voter who votes a party's list expresses two preferential votes - for two candidates other than the one at the top of the list. In this case, the two preferential votes must be divided between the two genders, otherwise they will be cancelled.

It is also worth mentioning the case of **Ireland** - a country where a proportionate system is used, but not with a list ballot, but with a single transferable vote. In this country, for each party, the candidates representing each of the two genders must account at least 30% of the number of candidates proposed. Starting with 2020, the threshold will be raised to 40%.

Another classification of countries that have introduced gender quotas by law divides those countries according to the "hardness" of the legal provisions:

- countries where non-compliance with gender quota for a list of candidates leads to the rejection of that list - **Belgium, Greece, Poland, Slovenia, Spain, Macedonia, Serbia**;
- countries where only financial leverage is used, either to promote the acceptance of the gender quota provided by law, by supplementing the funds allocated from the public budget to the accepting parties, or for sanctioning the parties which does not respect the gender quota by reducing the allocated funds from the budget - **Croatia, France, Ireland, Portugal**.

Voluntary gender quotas

Voluntary gender quotas have come to a fairly wide spread, being implemented by political parties in a large number of countries in Europe and beyond. Two Scandinavian countries, **Sweden and Norway**, were among the first in which the political environment adopted voluntary quotas, with a remarkable impact. Sweden is on the second place in the world (after Rwanda) and on the first in Europe in terms of the percentage of women's parliament members - 44%, while Norway is very close, with 41%.

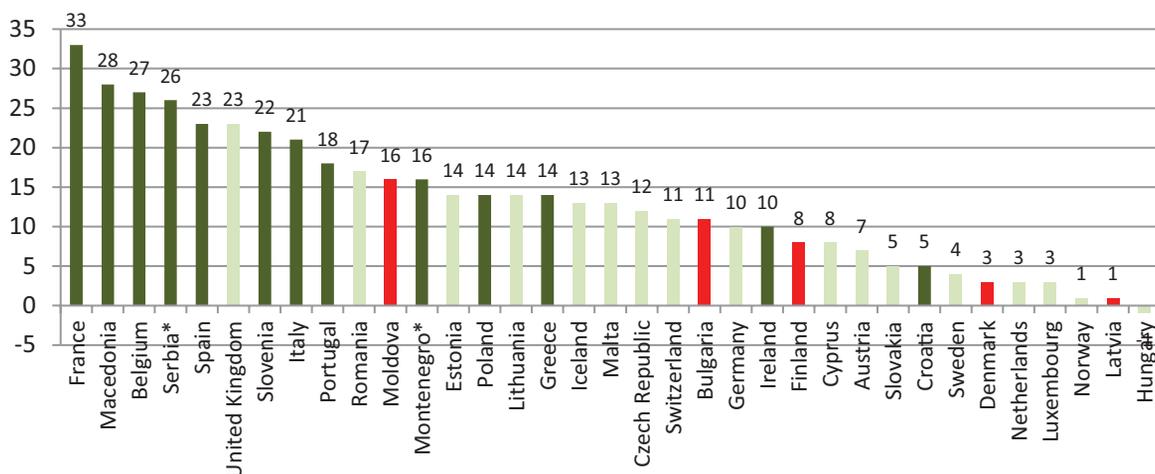
At present, we are seeing political parties that have adopted voluntary gender quotas in the process of nominating candidates in countries such as: **Austria, Czech Republic, Cyprus, Estonia, France, Germany, Lithuania, Luxembourg, Malta, the Netherlands, the United Kingdom, Romania, Slovakia, Hungary** and **Iceland**.

⁵ "Designing the electoral system in the Republic of Moldova", by Mette Bakken and Adrian Sorescu, Promo-Lex, 2017

3.1.2. The impact of gender quota legalization on women’s representation in politics

Obviously, the largest increases in women’s parliamentary representation have taken place in those countries where quotas are used, whether being introduced by law or voluntarily adopted by political parties. This is all the more prominent if we disregard the Scandinavian countries that represent special cases.

Evolution of percents regarding the representation of women in parliament, 1995 - 2017



Legend



In Europe, nine of the ten countries with the largest increase in the number of women deputies (in the lower chambers) over the last 20 years have the gender electoral quota established in the legislation. The following graph reflects the differences between the situation existing in 2017 and the situation from 1995 regarding the representation of women.

When analysing the impact of gender quotas on the level of representation of women, we must not omit the fact that it is influenced by various factors, including the nature of the political system, the type of electoral or voting system, the type of the adopted quota system, cultural attitudes towards the role of women in society and the nature of the parliamentary environment.

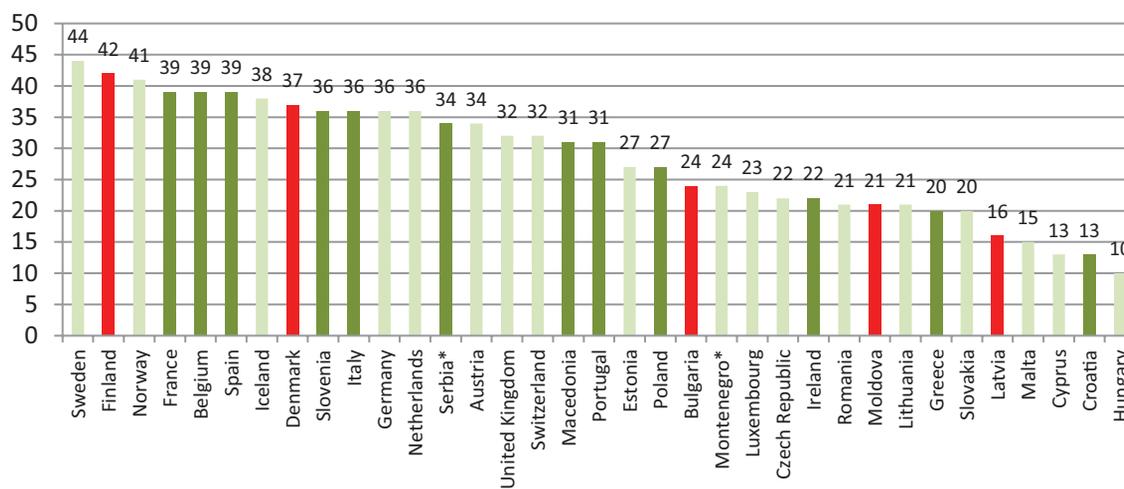
It is easy to see, even with no available data, that introduction of gender quotas in countries has had the effect of increasing the percentage of women in the parliaments of the respective countries.

There are significant differences between these countries in terms of the impact of legally regulated quotas, which that can be explained in particular by the following two issues:

Existence or non-existence of rules regarding the placement of candidates belonging to the two genders on the lists of candidates. Setting a gender quota represents an important step, but if it is not accompanied by such rules, it may not produce effects.

One example that reflects this state of affairs is the comparison between ex-Yugoslav countries - countries with a common history of several decades, representing cultural spaces with many similarities (even if with a number of differences) and which at the time of separation have practically started from the same point. All six countries that have separated from the former Yugoslavia have the gender quota provided by legislation. But only four of them - Bosnia-Herzegovina, Macedonia, Serbia and Slovenia - have also rules on alternating candidates of the both genders on lists, while the other two - Croatia and Montenegro - do not.

Level of women representation in parliament in 2017 (%)



Legend



The difference between Macedonia, Serbia and Slovenia, with representation percentage of women between 31% and 36%, on the one hand, and Croatia and Montenegro - 13% and 23%, respectively, on the other hand, is obvious.

A more particular and very interesting case is Bosnia and Herzegovina, where the electoral law provides for rules for the placement of candidates of the two genders on lists so as to ensure their alternation, to a certain degree. However, the percentage of women in parliament accounts for only 21%, being one of the lowest in Europe. The explanation is found in the electoral system and in the gender stereotypes that are found in the mentality of a good part of the Bosnian population. According to a survey conducted in 2016, about half of male respondents and just little over 30% of Bosnian - Herzegovina women consider that men are better political leaders and they should be elected. Under an electoral system with a preferential vote, even if women occupy an important share on the lists of candidates and are placed in eligible positions almost to the same extent as men, they do not get to be elected. The preferential votes that men receive to a much greater extent than women alter the order of the candidates on the lists so that the latter fall into ineligible positions. In 2016, the electoral law was amended to the effect that a candidate, in order to be in a position superior to the one in which he/she was originally placed, must obtain a number of preferential votes equal to at least 20% of the votes expressed for the candidate list on which he/she is. It

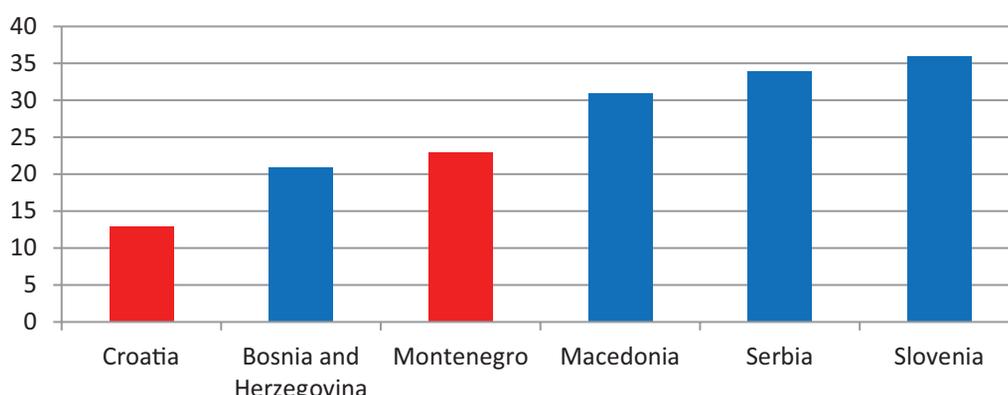
is estimated that this new rule will protect more women candidates and that starting with the next elections, more women will be in the parliament.

The way of sanctioning non-compliance with gender quotas. In most countries where gender quotas are provided by law, non-compliance leads to the rejection of candidates lists. There are countries where only financial penalties are foreseen:

- in **Croatia**, for example, the party that does not respect the gender quota is sanctioned with a fine of 20,000 - 40,000 HRK. In addition, there is also an incentive for parties to promote women candidates, consisting of a 10% bonus from the funds they receive from the public budget for each elected candidate (depending on the number of elected candidates).
- in **France**, non-compliance with this rule leads to sanctioning the party by reducing the funds it receives from the state budget (depending on the number of votes received) by an amount in proportion to the size of the deviation from the 2% limit representing the difference between the number of female candidates and the number of male candidates.
- in **Ireland**, the party that does not respect the gender quota is sanctioned with 50% of the funds it receives annually from the state budget.
- in **Portugal**, financial penalties are applied in the form of a reduction in the public funds provided for the conduct of the electoral campaign, in relation to the level of list inequality.

We can observe that between these countries, Croatia and Ireland have relatively low representation rates of women in the parliament, below the average for the analysed countries: 13% in the case of Croatia, 22% in the case of Ireland, while in France the percentage is 39% and in Portugal - 31%. As shown above, the situation in Croatia and Ireland is influenced by several issues, not only by this one, so it is difficult to assess the impact of this mode of sanctioning the non-compliance with gender quotas.

Representation of women in parliament (%)



Legend:

- With rules on alternating men and women candidates
- No rules on alternating men and women candidates

3.2. Ensuring representation of ethnic minorities

3.2.1. General considerations on the practical aspects of political participation of ethnic minorities

The practical aspects of political participation have been set up by the treaty monitoring bodies such as the Human Rights Committee and the Advisory Committee of the Framework Convention for the Protection of National Minorities.

In addition, a panel of experts convened under the auspices of the OSCE High Commissioner on National Minorities has developed the so-called “Lund Recommendations” on the effective participation of national minorities in public life.

According to this set of recommendations, political participation involves parliamentary representation at the national level, as well as representation in regional and local assemblies. Involvement in decision-making processes is also essential, including in terms of providing opportunities for minorities, but it is just as important that their contributions produce a real effect.

One of the issues that most often arise in debates on the practical aspects of political participation of national minorities is the one related to the obstacles faced by persons belonging to minorities in exercising their rights. In a general comment, the Human Rights Committee underlines the importance of states to take positive measures to overcome possible obstacles such as lack of knowledge of the majority language, illiteracy, extreme poverty that can make the voter belonging to a minority unable to move in order to exercise his/her rights. The same commentary includes the recommendation that information and all voting material should be printed in the languages of national minorities.

Referring also to the language, the Advisory Committee draws attention to the fact that the requirement imposed on applicants for knowledge of a particular language (such as the official language) is incompatible with the provisions of Article 15 of the Framework Convention on the Rights of National Minorities.

The electoral threshold that parties and other electoral competitors have to overcome in order to join the parliament represents another obstacle for the political participation of national minorities. The Lund recommendations provide that a lower electoral threshold may facilitate the inclusion of national minorities in the governing act; either it is a threshold available for all competitors or a low threshold that only minorities would benefit of.

The democratic world has a variety of mechanisms to ensure minority participation in politics. There are countries where, for example, national minorities have reserved seats in parliament. There are cases where minorities even have a right of veto over the law that directly affects them. The challenge for any democratic state that wants to improve its democracy is to develop a legislation whereby state authorities and institutions come to reflect on the diversity of society and thus ensure the representation of minority groups.

In the Eastern Europe countries there are similarities and differences in the representation of national minorities in the legislative fora. Experience and best practices are, however, rarely shared, and for this reason, there are only few similarities.

Firstly, in most cases (but not all) there are political parties or organizations participating in elections representing minorities, and for them, ethnic mobilization represents the main agent of the organization campaign. Such parties and organizations ensure the participation of minority groups, but tend to be mono-ethnic, attracting support only from the ethnic group they represent. In general, they are a stronger factor in local politics than in the national one, due to their electoral base. They often have representatives in the national parliament and some of them even participate in national governmental coalitions. The influence exercised by parties representing minorities in the political process depends on the weight they occupy in the decision-making bodies, and this is often the effect of the weight that the ethnic minority holds at the level of the entire population. From here, differences usually occur.

3.2.2. Facilities granted to ethnic minorities to ensure their representation in the elected bodies

A fairly high percentage of European states have adopted policies to support the representation of ethnic minorities, consisting of facilities granted to them to ensure their presence in parliament and other elected bodies.

The Venice Commission, in its report from 2000 on “Electoral Law and National Minorities⁶” states that only a few states in Europe prohibit or make virtually impossible the existence of political parties representing ethnic minorities. Among these are Albania, Bulgaria, Georgia and Turkey.

However, the same report also shows that in most countries that prohibit parties representing ethnic minority, such prohibition is ineffective. In Albania, the party called Union for Human Rights includes, above all, the political organisation of the Greek minority “OMONIA”. In Bulgaria, the “Movement for Rights and Freedoms” is the political party of the Turkish ethnic minority. During the years, both these parties have had deputies in the respective parliaments. Even in Turkey there is a political party that represents the Kurdish minority and works legally, even if it is not represented in the parliament (because it did not exceed the 10% electoral threshold).

In conclusion, the Venice Commission report states “it is highly unusual for political parties representing national minorities to be prohibited. As this would be a restriction upon the freedom of association, which is a fundamental part of the common constitutional heritage across the continent, it can be justified only in very special and individual cases, and not in a general manner. The principle of proportionality must always be fully respected”.

It should be noted that the prohibition on using minority themes and messages in an electoral campaign can lead, in fact, to a prohibition on participating in parliamentary life, even if minority parties as such are not formally prohibited.

On the other hand, countries where political parties representing ethnic minorities are not forbidden could be classified into two categories: 1) countries where, as a rule, there are no provisions and where such parties can exist and compete in

⁶ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF\(2000\)004-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2000)004-e)

elections just like any other party and 2) countries that have provided for facilities for the parties and organizations representing ethnic minorities in the legislation, starting with the conditions they have to fulfil in order to register the elections (a smaller number of collected signatures, restricted constituencies / candidatures, low electoral threshold, etc.). The first category includes countries such as Finland.

Belgium

According to Constitution, Belgium is a “federal state, composed of communities (Flemish, French-German) and regions (Flanders, Wallonia and the Brussels capital)” (Articles 1-3) and defines 4 regions from a linguistic point of view (Dutch speakers, French, bilingual in the Brussels capital region and German).

Neither the Constitution (revised in 2014) nor the electoral legislation impose restrictions or barriers of a regional nature, but the constitution defines the allocation of the number of constituencies and the number of seats per district according to the number of inhabitants of the region.

The Chamber of Representatives (lower chamber of the parliament) consists of 150 elected representatives in 11 electoral constituencies distributed according to the linguistic region:

- 5 constituencies in Flanders (79 seats);
- 5 constituencies in Walloon (49 seats)
- 1 constituency in the bilingual district of Bruxelles-Halle-Vilvoorde (22 seats).

All constituencies are mono-linguistic, only regional parties being able to nominate candidates, with the exception of Brussels-Halle-Vilvoorde constituency from the Brussels capital region and Dutch-speaking communities from Flemish Brabant, of which 6 are communities with facilities for Francophones.

Nowadays, out of the 150 members, 87 belong to the Dutch speakers group, 61 to the Francophone linguistic group, and 2 are members of the Workers’ Party, who declares itself to be Belgian).

Bosnia and Herzegovina

Bosnia and Herzegovina has a bicameral parliament, a tripartite presidency representing each major ethnic group and is run by a high representative appointed by the UN Security Council (under the Dayton Agreement). It also comprises two autonomous regions: the Federation of Bosnia and Herzegovina (consisting of 10 cantons: 5 with Bosnian majority and 5 with Croatian majority) and Republika Srpska, as well as a self-governed district (Brčko District).

In Bosnia and Herzegovina there are almost exclusively parties representing ethnic groups (Bosnian, Serbian and Croat): Democratic Action Party, Union for a Better Future, Party of Democratic Activity are of Bosnian ethnicity, while Alliance of Independent Social Democrats, Serbian Democratic Party, People’s Democratic Alliance are of Serbian ethnicity, and Croatian Democratic Union from Bosnia

and Herzegovina, Croatian Democratic Union 1990 are of Croatian ethnicity. The constitution and the electoral law do not contain any provision regarding the ethnicity of the candidates.

The electoral threshold is 3%.

Croatia

In Croatia, ethnic and regional parties are allowed, the most important being the following: the Istrian Democratic Assembly, the Serbian Independent Democratic Party, the Croatian Democratic Alliance of Slavonia and Baranja. The electoral threshold is 5%.

Since 2003, out of the 12 electoral constituencies, the XI district is for the diaspora and the XII district for ethnic minorities. The XII district constituency has 8 members elected from ethnic minorities as follows: 3 Serbian deputies elected in multiethnic districts using the simple majority rule; 5 deputies of other minorities elected in the following manner: the Hungarian minority - 1 mandate, the Italian minority - 1 mandate, the Czech and Slovak minorities - 1 mandate together, the Austrian, Bulgarian, German, Polish, Romanian, Roma, Ruthenian, Russian, Ukrainian, Wallachian and Jewish - 1 mandate together, and Albanian, Bosnian, Montenegrin, Macedonian, Slovenian minorities - 1 mandate together.

Finland

The Constitution does not introduce barriers to the establishment of parties based on ethnic or regional criteria; it includes provisions on local self-government (including provisions on municipal elections). The Electoral Law does not impose any restrictions or special measures regarding the participation of regional or minority parties in elections. Moreover, it grants a facility to a small province - Åland, to choose, apart from the rest of the country, a member of the Parliament. The Law on Political Parties also does not contain provisions regarding the participation of regional or minority parties in elections.

One of the effects of freedom of association in parties and regional political organizations that would represent ethnic minorities is the presence of the Swedish People's Party of Finland (in Swedish: Svenska folkpartiet i Finland) in the Finnish Parliament, which during the elections from 2015 obtained 4.5% of the votes and, implicitly, 9 mandates.

Germany

In Germany, minorities have their own department: "Minderheitenrat", which deals with the relationship between them and the federal government. The political representation of the recognized minorities - Danish, Friars, Swabians and Roma - is allowed without taking into account the 5% threshold that political parties have to pass in order to enter the Bundestag, which means that even if their political group does not reach this threshold, the minority is represented in parliament in proportion to the number of obtained votes. All minorities benefit from separate special rules for their specific languages and for their cultural heritage.

Italy

The Constitution of Italy provides for the protection of linguistic minorities by specific means (Fundamental Principles, Article 6).

By the provisions of Title V, Articles 114 to 133, the Constitution of Italy offers considerable autonomy to regions (some of them having a particular autonomy: Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige / Südtirol and Valle d'Aosta/ Vallée d'Aoste) - including in terms of self-government and legislative powers.

In addition, in order to ensure the representation of minorities in the election of the President of the Republic, the Constitution provides that 3 delegates from each region, elected by the Regional Council, participate in the election of President by the Parliament met in a joint session.

The fundamental law of Italy does not contain provisions that could impose barriers to the establishment of ethnic or regional parties. Moreover, there are special provisions in the Italian law to favour the admission of recognized language groups in the Italian Parliament. For example, the Electoral Law (amended in 2017) foresees the minimum threshold for representation in parliament of 3% of the total valid casted votes for parties that run individually or as part of a coalition, but with special provisions for parties representing linguistic minorities. For such parties (which propose a common list of a coalition representing a recognized linguistic minority and which is submitted exclusively in regions whose statutes or legally constituted autonomy have special provisions in favour of such a linguistic minority) the threshold is 20% of the total of the valid votes casted in the region.

Such legal provisions existed in previous laws, in one form or another, thus existing numerous parties established on ethnic and regional criteria that have had parliamentary representation.

Examples (election results for Chamber of Deputies 2018):

- Northern League (NL) - full name - the Northern League for the Independence of Padania (Lega Nord per l'Indipendenza della Padania) is a regionalist party founded as a federation of seven regional parties from the northern and central Italy (we should note the Liga Veneta, Lega Lombarda, Piemont Autonomista, Uniuin Ligure, Lega Emiliano-Romagnola and Alleanza Toscana); 125 seats in the Chamber of Deputies. The Northern League promotes the federalization of Italy and especially the fiscal autonomy.
- The Valdostan Union (in French Union Valdôtaine, UV) is a regionalist and centrist party from the Valle d'Aosta region, representing in particular the French-speaking minority.
- The South Tyrolean People's Party (Italian: Partito Popolare Sudtirolese, German: Südtiroler Volkspartei, SVP) (ethnic and autonomist regional party from the South Tyrol) took part in the general elections of 2018 in coalition with Partito Autonomista Trentino Tirolese party, PATT (regionalist, autonomist); the coalition obtained 4 seats in the Chamber of Deputies.

Dozens of regional and ethnic parties carry out their work on the Italian political scene, which, even if at some point fail to impose, can reach a certain political level, fact demonstrated over time through a very dynamic (and volatile, at the same time) alliance system.

Macedonia

There are no restrictions on the constitution of political parties representing ethnic or regional minorities in Macedonia. Thus, in Macedonia we meet parties established on ethnic criteria alongside the traditional / classical and multiethnic political parties.

Except for the Albanian minority, ethnic minorities have a relatively homogeneous spread throughout Macedonia and, therefore, the political parties that represent them have either national or regional coverage.

The most important ethnic minority parties and organizations are: the Besa Movement, the Democratic National Revival, the Democratic Prosperity Party - of the Albanian minority, the Democratic Party of Turks, the Progressive Turkish Party, the Democratic League of Bosniaks, the Party for Roma Emancipation from Macedonia, the Democratic Party of the Serbs.

Groups of citizens may also participate in the elections (without any express mentioned restrictions) in addition to political parties.

There is no electoral threshold for access to Parliament.

Montenegro

In Montenegro, political parties can be set up without any restrictions of an ethnic or regional nature. Thus, in Montenegro, parties representing ethnic minority also operate besides traditional / classical and multiethnic political parties.

Given the relatively homogeneous ethnic spread throughout Montenegro, ethnic parties have either national or regional coverage. The most important ethnic parties and organizations (some of whom are represented in the Montenegrin parliament) are: the New Serbian Democracy, the Socialist Popular Party (of Serbian minority), the New Democratic Force (of Albanian minority), the Croatian Civic Initiative and the Bosnian Party.

Groups of citizens may also participate in the elections (without any express mentioned restrictions) in addition to political parties.

The electoral law of Montenegro Republic provides facilities for ethnic minority parties. Among other things, the lists of candidates of political parties or ethnic minority organizations for parliamentary elections are accepted if are supported by 1,000 signatures - compared with 0.8% of the total number of voters in the respective constituency valid for the other parties. Also, in the case of lists of candidates of parties and organizations representing ethnic minorities, the 3% electoral threshold decreases to 0.7%

Romania

In Romania, neither the Constitution, nor the electoral legislation or any other law do not prohibit or restrict the establishment of ethnic minority or regional minority parties. As a matter of fact, starting with 2015, following a decision of the Constitutional Court which has been notified about the violation by the Law of political parties of the right to free association provided by the Romanian Constitution, a party can be founded by three citizens.

In addition, the Constitution contains a facility for national minorities specified in Article 62 (paragraph 2): "Organizations of citizens belonging to national minorities who do not hold during the election the number of votes to be represented in Parliament have the right to a place of deputy, according to the electoral law. The citizens of a national minority can be represented by only one organization".

The law on the election of the Senate and the Chamber of Deputies (adopted in 2015) stipulates that the right to propose lists of candidates in parliamentary elections belongs not only to political parties, political alliances and electoral alliances, but also to "citizens' organizations belonging to national minorities".

Moreover, they enjoy of:

- a provision on the basis of which they may opt to propose the same list of candidates in all electoral constituencies.
- a provision according to which an organization that has not obtained at least one mandate of deputy or senator in the elections has the right, according to art.62 paragraph (2) of the Constitution of Romania, to a deputy mandate if it has obtained in the entire country, a number of votes equal to at least 5% of the average number of votes validly casted per country for the election of a deputy.

As a result of these provisions, 18 organizations of national minorities are currently represented in the Chamber of Deputies. To these, there is added the Democratic Union of Hungarians in Romania, which has managed to overcome the electoral threshold valid for all political parties (5% at present) since 1990.

Serbia

In Serbia, neither the Constitution nor any other law contains any restrictions on the establishment of ethnic or regional parties. Thus, in Serbia, parties representing ethnic minority also operate besides traditional / classical and multiethnic political parties. These, in particular, are also set up at the regional level: in Vojvodina for the Hungarian minority and in Sandžak for the Bosnian minority.

The most important regional or ethnic minority parties (represented in the Serbian parliament) are: the Alliance of Vojvodina Hungarians, the Bosniak Democratic Union of Sandžak, the Party of Democratic Action of Sandžak, the League of Social Democrats of Vojvodina (regional party).

Groups of citizens may also participate in the elections (without any express mentioned restrictions) in addition to political parties.

Although there is a 5% electoral threshold that parties have to overcome to accede to Parliament, ethnic parties are exempt from this rule.

Slovakia

Slovak legislation does not contain restrictions on the establishment of ethnic minority parties or those with regional coverage. The minimum number of founding members of party should account for 10000, considered high compared to the European average. Nevertheless, it did not prevent the existence and participation in elections of two ethnic Hungarian parties: the first is called Most-Híd, which obtained 6.5% of the votes at the last parliamentary election (in 2016) and the second is the Hungarian Community Party (Magyar Közösség Pártja) that obtained 4.1% of votes in 2016. This second party is not represented in the parliament at present because it did not exceed the 5% electoral threshold. Both parties operate in the Nitra region.

As this example shows, in Slovakia, ethnic minority parties do not benefit from any facilities in relation to the others, thus participating in elections just like any other party.

Slovenia

The Constitution and other laws do not prohibit the establishment of political parties representing ethnic minorities. However, until 2016 there were no such parties. In 2016, however, the Serbian Social Party of Slovenia was established (during a protest - in response to the so-called discriminatory attitude of the Slovenian authorities towards the distribution of European funds at the national level).

Deputies in the National Assembly are elected by proportional vote, with a 4% threshold at the national level. The country is divided into 8 constituencies, each of them being represented by 11 elected deputies. For the election of the representatives of the Italian and Hungarian minorities, two special constituencies are organized - one for each of the two minorities. Deputies in these constituencies are elected on the principle of the simple majority, as representatives of ethnic organizations (e.g. the Italian Community of Slovenia).

Hungary

The Constitution does not contain specific provisions, but only general and does not impose any barriers.

The CCIII / 2011 Law on election of members of parliament recognizes that "national minorities living in Hungary must be an integral part of the state and will have the right guaranteed by the fundamental law to participate in parliament's work". Article 6. Compilation of national lists / Section 7 states that "National lists shall be compiled as lists of parties or minorities". Section 9 provides that "(1) The national minorities' self-governments may compile lists of national minorities. (2) Development of the list of any national minority is conditioned by the existence of signatures from at least 1% of voters registered as minority voters in the electronic register (but no more than 1500 recommendations) (3) A national minority list may include candidates who are registered in the electronic register of voters as voters of the same national minority. (4) A list of national minorities must include at least 3 candidates (5) Cumulative

lists made up by coalitions of two or more national self-governments of national minorities may not be drawn up”.

An ethnic minority can obtain a mandate if it receives at least a quarter of the number of votes corresponding to a mandate of a party constituted on other bases than the ethnic ones.

Hungary recognizes 13 national minorities, the most numerous being the Roma and the German ones, these being the only ones large enough to have an elected person in the National Assembly. The rest of the minorities have a “spokesperson” in the parliament - a representative who can be given the right to speak, but does not have the right to vote.

Although the Roma ethnic group is the largest in Hungary - 3.2% (officially - the numbers submitted by non-governmental organizations or international organizations go up to about 10%), the minority has failed to obtain any mandate so far. The National Roma Self-Government participated in the 2018 parliamentary elections, obtaining only 5700 votes.

The German minority is the only ethnic minority represented at this moment in the Hungarian Parliament and has just one deputy.

3.3. Ensuring the right to participate in elections for people with disabilities

We can already speak about several decades of experience in implementing solutions for implementation of rules and recommendations comprised in international conventions on the rights of people with disabilities to participate in political life in European countries. A number of good practices that deserve to be popularized arise from this experience.

The most common practice is found in the case of people with mobility impairments (locomotor, neuro-locomotors, eyesight disabilities) and consists in offering the possibility to vote by post, to vote assisted (in the case of visually impaired people, in particular) or to vote at the place they live or are found temporarily (in the case of persons placed in medical establishments or old people’s asylums) by means of a mobile box. These facilities are found in the vast majority of European countries, including the Republic of Moldova.

Regarding voters with locomotor disabilities, however, there are differences between countries in terms of assuring them the possibility of going to the polling stations. In many cases, they are confronted with the accessibility of the place a where the polling station operates - there is no ramp at the entrance; the section is upstairs and there is no lift that such voters can use, etc. Positive examples from this point of view are found in Austria, where the electoral law provides for the obligation for each constituency to have at least one accessible polling station for people with disabilities and Italy - a country where local public authorities organizing elections are obliged to make accessible public transport services available to disabled persons to reach an accessible polling station.

The use of these means to facilitate the vote of people with intellectual disabilities is not so widespread. Moreover, there are still quite a number of countries, including the Republic of Moldova, where these people are denied the right to vote. On the other hand, among states that ensure by law and by practical measures their right to vote, we find:

- **Austria** - a country where people with intellectual disabilities (as well as those with physical disabilities, in fact) can be assisted by a person during their choice;
- **Italy** - a country where in 1978 the provision on the ban on voting imposed on people declared "incapable" was cancelled. Thus, people with intellectual and psycho-social disabilities have the right to vote, but without the assisted vote. This means that the voter must be able to enter the voting cabin for himself and express his/her vote without being helped by someone else.

In fact, there is also a political party in Italy that represents the rights of people with disabilities - Movimento Italiano Disabili, who has also run for the last parliamentary elections (but failed to enter parliament).

Regarding the access to vote of people with disabilities, we observe cases such as:

- **Austria** - country where tactile voting devices are used. The official in the polling station must provide a visually impaired person with a trapped pattern so that he/she can vote without being helped.
- **Italy** - a country where people with visual disabilities have the right to be assisted in the voting cabin.
- **United Kingdom** - each polling station must have a tactile voting device and at least one ballot printed with a large shrift for information. With the help of these, people with visual impairments are given the opportunity to vote without the support or assistance of someone else and, and by doing so, the secrecy of the vote is respected.
- **Spain** - the country where the ballot procedure for people with visual disabilities familiar with the Braille system was introduced. On the basis of a prior request, the voter is provided with the electoral documents in Braille together with the ballot and envelope.

4. Existing provisions in the legislation of the Republic of Moldova on the participation of minority groups in elections and political life at the society level

4.1. General provisions

First of all, it should be noted that the constitutional provisions on rights in elections are quite vague. In Article 38 - The right to vote and the right to be elected, paragraphs 2 and 3 provide that:

“(2) The citizens of the Republic of Moldova having attained the age of 18 on or by the voting day inclusively are entitled to vote, except for the persons banned from voting by the law.

“(3) The right to stand for election is guaranteed to all citizens of the Republic of Moldova enjoying the right to vote, according to the law”.

There is also an article on the rights of persons with disabilities, namely **Article 51 - Protection of persons with disabilities**, which does not explicitly refer to the political or electoral rights of these persons.

More extensive and more specific provisions are contained in **the Electoral Code**, the last version of which was adopted by the Parliament in November 2017. With this new Electoral Code, the proportional system with closed party-list, which operated until 2017, was replaced by a “parallel mixed” system, on the basis of which:

“50 members of parliament shall be elected in the national constituency based on the proportional representation vote. 51 members of parliament shall be elected in the uninominal constituencies based on the majority vote, one from each constituency (art. 79, par. (3))”.

4.2. Provisions concerning women candidates

In 2016, the Parliament of the Republic of Moldova adopted an amendment to the Law on Equal Opportunities for Women and Men, according to which the candidates of each gender must be represented in a minimum share of 40% on the party lists. In the new form of the Electoral Code, this principle was kept, but considering that on the basis of the new electoral system half of the parliament members are elected on the list and half in the uninominal constituencies, a solution had to be found for both types of elections. The solution was that the candidate list (at national level) for each party must include at least 40% of the candidates for each gender, while opting for a party incentive mechanism for candidates in uninominal constituencies: those political parties that respect the minimum limit of 40% for each gender shall benefit from an increase in budget support of at least 10% of the amount allocated for that budgetary year. Moreover, it is welcomed the fact that a multiplication factor is provided for this increase for each female candidate selected in the uninominal constituency, thus encouraging political parties to nominate women candidates in the uninominal constituencies also.

These rules are provided in **Article 46 - Appointment of candidates**, in paragraphs (3) and (4), which are as follows:

“(3) Candidates’ lists for parliamentary and local elections shall be drawn up respecting the minimum representation rate of 40% for both genders.

(4) Political parties that will respect the quota of at least 40% of women candidates proposed to uninominal constituencies will benefit from an increase of the budget support of at least 10% of the amount allocated for the budget year of that party and a multiplication factor for each female candidate selected in the uninominal constituency according to the legislation on political parties and procedure established by the Central Electoral Commission”.

It is also worth mentioning that facilities are provided for women while candidating in uninominal constituencies. More specifically, they are provided in Article 86. The special conditions for subscription lists:

“(1) In order to be registered by the constituency electoral council, the candidate for the uninominal constituency shall submit, under the terms of articles 47 and 48, subscription lists containing at least 500 signatures and up to 1000 supporters with the right to vote from the uninominal constituency where he/she intends to candidate. By derogation from this paragraph, a female candidate may be registered if she presents signatures of at least 250 and not more than 500 supporters with the right to vote in the constituency where she candidates”.

4.3. Provisions concerning ethnic minorities

As far as national minorities are concerned, the legislation of the Republic of Moldova permits the existence of political parties and their social political organizations, as for any other party or organization. The only restrictions are those set out in Article 3. Restrictions on the activity of political parties are as follows:

“(1) Political parties which, by their status, program and / or activity, militate against the sovereignty, territorial integrity of the country, democratic values and the rule of law of the Republic of Moldova, use illegal or violent means for the achievement of their purposes, incompatible with the fundamental principles of democracy are prohibited.

(2) Affiliation of political parties to international political organizations whose aims or activity are contrary to the provisions of paragraph (1) is prohibited.

(3) Political parties can not practice military, paramilitary activities, as well as other activities prohibited by law.

(4) Any interference in the internal activity of the political parties is prohibited, with the exceptions provided by the law.

(5) The establishment and activity of the parties, other political organizations of foreign states, as well as of their branches and structures, are prohibited in the Republic of Moldova.

(6) The establishment and activity of political parties based on discrimination on race, nationality, ethnic origin, language, religion, sex, wealth or social origin criteria are forbidden”.

To these restrictions is also added the limitation of the possibility of setting up regional political parties (exclusion, even in the case of local ones), achieved by the provisions of art. 8, paragraph (1) governing the number of founding members and the geographical area to cover their places of living. Even though this article does not explicitly prohibit regional parties, the party registration procedure makes extremely difficult their registration by ethnic groups located on narrow surfaces or any other groups located in certain regions:

“(1) For the registration of the political party, the following documents shall be submitted to the Ministry of Justice: [...] d) the constitutive act accompanied by the list of members of the political party, whose number may not be less than four thousand, constitutive acts of the party’s territorial organizations, list of delegates participating in the constituent congress. At the time of the party’s constitution, its members must be domiciled in at least half of the second-level administrative territorial units in the Republic of Moldova, but not less than 120 members in each of the mentioned administrative-territorial units”.

On the other hand, **Article 46** of the Electoral Code **“Appointment of candidates”** stipulates that:

“(2) The right to nominate candidates for elections, if all the conditions laid down in this Code are met, shall have: a) the registered political parties and other social-political organizations, until the establishment of the date of the elections, in accordance with their statutes (regulations) and the legislation in force; (b) electoral blocs formed on the basis of decisions adopted in accordance with the statutes (regulations) of the parties and other social-political organizations that have formed them, which are registered by the Central Electoral Commission, in case of presidential and general local elections, or by the constituency electoral councils, in the case of new elections. Candidates will be appointed within 15 days from the date of constitution of the electoral blocs, and if they have been constituted until the beginning of the electoral period - within 15 days from the beginning of this period; c) citizens of the Republic of Moldova who propose their own candidacy (independent candidates)”.

As the **final report of the November 2014 OSCE / ODIHR Observation Mission**⁷ (the last parliamentary elections held before this study) states *“The legal framework allows for the participation of national minorities in the elections on an equal basis. However, existing regional requirements for the establishment of political parties and an elevated threshold of six per cent for entering the parliament de facto pose a challenge for the representation of regionally-based minorities and undermine their chances to political representation”.* The report also states that *“This issue was particularly raised by the representatives from Autonomous Territorial Unit of Gagauzia. The authorities have not ensured any special measures to promote minority representation”.*

On the other hand, the report states: *“Most contestants claimed to have representatives of different ethnic groups in their candidate lists, thus reflecting the diverse composition of the society. However, this data was not provided to the OSCE/ODIHR EOM. The election administration also does not compile disaggregated data on candidates’ ethnicity to allow for minority-related analysis. A limited number of minority candidates were on the lists, but were mostly positioned low on the lists”.*

⁷ <http://www.e-democracy.md/files/elections/parliamentary2014/final-report-osce-elections-2014-ro.pdf>

It should also be emphasized an article that has been introduced in the new version of the Electoral Code and which protects, to a certain extent, the interests of national minorities related to their representation in the parliament. It is about Article 80 - Electoral Constituencies, an article which provides as follows regarding the rules to be observed in drawing up the uninominal constituencies, in paragraph (2), let. f) and g):

“f) the uninominal constituencies in which the national minorities live shall be constituted taking into account their interests and boundaries of the respective administrative-territorial units;

g) the uninominal constituencies on the territory of the Autonomous Territorial Unit of Gagauzia shall be constituted in such a way that they do not exceed the administrative boundaries of the autonomy, and these districts can not be completed with localities outside the autonomy, taking into account the risk of dilution of the national minority”.

4.4. Provisions concerning other underrepresented groups

The Republic of Moldova ratified the United Nations Convention on the Rights of Persons with Disabilities in 2010, this representing the commitment to harmonize national legislation with the principles described in this convention.

Since signing the Convention, Moldova has made numerous changes to the legislative framework, as reported in the reports submitted to the Committee on the Rights of Persons with Disabilities (CRPD) under Article 35 of the Convention. The CRPD is a committee of independent experts that monitors the implementation of the Convention by the signatory states. CRPD opinions on progress and recommendations have been forwarded to the Republic of Moldova and address various aspects of the Convention, including those referring to Articles 12 and 29.

The full non-alignment of national legislation to these articles for any reason (including related to misinterpretation) restricts the political participation of people with disabilities.

Interpretation of Article 12 (in conjunction with Article 29 - participation in political and public life) has, in fact, led to similar situations in many countries, most of the restrictions arising from the link of participation with the provisions on the legal capacity of the person.

In fact, CRPD issued a series of comments on these articles for disambiguation. The first of these refers to Article 12, which was invoked for the failure of the President of the Republic of Moldova in not promulgating the Law no. 87 / 7.05.2015 on amending and completing certain legislative acts (Electoral Code, Civil Procedure Code, Law No. 837 / 17.05.1996 on public associations, etc.). Amendments and additions supposed to grant to persons “lacking in exercise capacity” the right to vote, to contest the court decision in which their interests and other rights are violated.

In an article⁸ published by the Centre for Legal Assistance for Persons with Disabilities that quotes the letter⁹ that motivates the non-promulgation of the law by the President

⁸ <http://www.civic.md/stiri-ong/33489-sase-ani-de-la-ratificarea-conventiei-onu-privind-drepturile-persoanelor-cu-dizabilitati.html>

⁹ <http://advocacy.md/sites/newadvocacy/files/Scrisoare%20nepromulgare%20a%20%20L%2087.pdf>

of the Republic of Moldova, the authors note that the refusal to promulgate is based on an unofficial translation, which is obviously an erroneous translation.

Translation example¹⁰: Article 12, paragraph 1. *“States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law”* was translated as *“States Parties reaffirm that persons with disabilities have the right to recognition, wherever they may be, of their legal capacity”* and paragraph 2 *“States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”* was translated as *“States Parties will recognize that persons with disabilities enjoy legal assistance on an equal basis with others in all areas of life”*

Article 29 of the Convention strengthens the right of persons with disabilities (including those with mental health problems) to participate in political and public life to the same degree as other citizens. This article also specifies that people with disabilities should be given the opportunity and the right to vote and to be elected.

People with disabilities benefit from facilities provided in some articles of the Electoral Code. The first one is **Article 30 - Establishment of polling stations and polling station electoral bureaus** - an article which, in paragraphs 2 and 3, provides:

“(2) [...] The headquarters of the polling stations shall, as a rule, be established in publicly owned establishments and shall be arranged in such a way as to facilitate the access of elderly and disabled persons to them.

“(3) Special polling stations may be established in addition to hospitals, nursing homes, maternity wards, shelters and asylums for the elderly. These polling stations must include at least 30 voters. ”

The second one is **Article 59. The procedure for filling in the ballot** that refers to the possibility that voters who do not feel able to vote for themselves can seek the help of another person:

“(1) The ballot is filled in by the voter only in the secret cabin. The voter who is unable to fill the ballot on his own, can invite another person in the cabin, except for the members of the polling station office, representatives of the electoral contestants and persons authorized to assist in the electoral operations [...]”.

The third **Article 60. Ensuring the security of the voting process** also provides for the possibility for voters to request the mobile ballot box if they can not go to the polling station (paragraph 4):

“(4) If the voter can not come to the polling station for reasons of health or other reasons, the electoral commission of the polling station shall at his / her request appoint at least 2 members of the bureau to move with a mobile ballot box and the necessary material for voting at the place where the voter is to vote. Requests may be made in a written form, starting 2 weeks before the election day and until 18.00 of the day before the vote. On the day of voting, requests may be made in a written form by 15.00 if a medical certificate is presented. These persons vote according to the voter list for voting at the

¹⁰ The original text of the CNUDPD and the translation used in the letter of the President Nicolae Timofti.

place of being, drafted by the electoral office of the polling station on the basis of their requests, and the persons not mentioned in such a list can not vote at the place of being. In the electoral list, the name of the person concerned is marked with "Voted at the place of being". The provisions of this paragraph do not apply to voting abroad".

It is obvious that these provisions refer in particular to persons with locomotor disabilities and, in the case of art. 59, paragraph (1), to persons with visual impairments. For people with mental or intellectual disabilities not only there are no facilities, but Moldovan law provides for the possibility that the court can decide that a person is "incapable", and the Electoral Code provides for the possibility that such persons could be excluded from voting rights. Art. 13, paragraph (1), let. b) states that the persons who do not have the right to vote are "b) who are recognized as incapable by a final decision of the court. The Ministry of Justice informs the mayor on existence of such cases, and after the implementation of the State Electoral Register – the Central Electoral Commission".

5. Opinions and recommendations of national and international organizations on the inclusion of underrepresented groups in elections and political life of the Republic of Moldova

5.1. Comments and recommendations of international organizations

In March 2015, the OSCE / ODIHR Election Observation Mission presented its report on the November 2014 parliamentary elections from the Republic of Moldova¹¹. First of all, we note the remarks that have been made about how the recommendations contained in previous reports were implemented, some of which concerned the situation of underrepresented groups:

“Several significant changes to the Election Code proposed in 2014 failed to be adopted and remain pending in parliament. These include revisions to party and campaign finance regulations, inclusion of gender quotas for party lists [...]. These proposals were drafted together with the CEC and civil society before the 2014 elections and were discussed in an extensive consultation and negotiation process. Many interlocutors of the OSCE / ODIHR EOM expressed disappointment with the failure to implement comprehensive and inclusive reforms and warned on the lack of political will to reform the legal framework”.

A first remark we find is about the situation of women candidates in parliamentary elections:

*“The legal framework protects equality between women and men in public and political life. At the same time, there are no legal requirements that would increase women’s participation. Women made up almost 31 percent of candidates, and only a few were placed on winnable positions on candidate lists. **The visibility of women candidates in the campaign was low and with rare exceptions, the campaigns did not address issues related to women”.***

Regarding the way in which political parties have dealt with the issue of ensuring a balance in the number of candidates representing the two genders, the report states that *“only a few women have been placed in winning positions on the lists of candidates”*. However, *“the number of women who were finally elected to parliament increased from 18 to 21”*. Finally, the mission’s recommendation was:

“In line with international obligations and practices aimed at promoting equality between women and men, political parties should make more efforts to include women on lists of candidates, including on winning positions”.

Regarding the possibility that ethnic minorities have in order to be represented in the parliament from Chisinau, the report of the OSCE / ODIHR Mission mentions:

*“The legal framework allows for the participation of national minorities in the elections on an equal basis. However, **existing regional requirements for the establishment of political parties and the six per cent threshold for entering the parliament de facto pose challenges for the representation of regionally-based minorities and undermine their chances for political representation.** This issue was particularly*

¹¹ <https://www.osce.org/ro/odihr/elections/moldova/148271?download=true>

raised by the representatives from Autonomous Territorial Unit of Gagauzia. The authorities have not ensured any special measures to promote minority representation. Authorities could consider, upon consultation with national minority groups, the introduction of special mechanisms that would encourage greater participation and representation of minorities in public and political life”.

On the other hand, many people would argue that the Moldovan Parliament is a multiethnic one, due to the fact that most parties propose on the lists of candidates representatives of different ethnic groups. OSCE / ODIHR observers, however, state that:

“[...] this data was not provided to the OSCE/ODIHR EOM. The election administration also does not compile disaggregated data on candidates’ ethnicity to allow for minority-related analysis. A limited number of minority candidates were on the lists, but were mostly positioned low on the lists [...]. Political parties could promote nominations from national minorities on winnable positions on candidate lists and encourage their participation in party structures”.

Moreover, there is presented that:

“Roma representatives have expressed concerns to the OSCE/ODIHR EOM that their community is continuously underrepresented in elected bodies. They reported that there were no Roma representatives as candidates. Efforts should be made to promote better political representation of the Roma at all levels, including through voter education programmes specifically targeting the Roma community”.

Regarding the rights of persons with disabilities, the OSCE / ODIHR mission draws attention on the situation of voters who are declared incapable of voting and are deprived of this right by a judicial decision, stating that:

“The lack of clear legal provisions, thus, in practice deprives individuals of their legal capacity. Their placement under guardianship, among other things, entails an automatic loss of the right to vote for persons with disabilities that is contrary to international obligations” (Article 29 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) provides that “State Parties shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others.” Paragraph 7.3 of the 1990 OSCE Copenhagen Document states that the participating States will “guarantee universal and equal suffrage to adult citizens”. According to paragraph 24 of 1990 OSCE Copenhagen Document, “any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of the law”).

Finally, the report contains a number of recommendations, some of which refer to measures aimed at improving the representation of underrepresented groups:

“Political parties could consider ways to identify minority representatives, particularly women, through dialogue with local communities. Political parties could promote nominations from national minorities on winnable positions on candidate lists and encourage their participation in party structures”.

“The legal framework should be amended with an aim to ensure the right to vote is fully protected in accordance with OSCE commitments and international obligations. Legal provisions that suspend legal capacity and grant guardianship should be reviewed [...]”

“In line with international obligations and practices aimed at promoting gender equality, greater efforts to include women on candidate lists, including in winnable positions, should be made by political parties”

In June 2017, the European Commission for Democracy through Law (the Venice Commission) and the OSCE Office for Democratic Institutions and Human Rights (OSCE / ODIHR) presented their **“Joint Opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)”**.

Regarding the way the new provisions of the Electoral Code were to ensure the representation of women, it is mentioned that:

“The draft maintains the provision of the current Electoral Code, which requires that each gender be represented with a minimum of 40% of candidates on candidate lists. It also stipulates that modifications to candidate lists shall be carried out by observing the provisions of the Law on Ensuring Equal Chances for Women and Men¹². However, given that these measures will apply only to half of the seats in the Parliament (those elected from the proportional contest), the provisions would not serve to improve the low representation of women, on the contrary. It is recommended that this issue be given further consideration, including additional temporary special measures to encourage political parties to present a gender-balanced representation of candidates across constituencies, or imposing that a representative number of women be placed in winnable positions in candidate lists in the proportional component¹³”

Concerning the way in which the draft amendment to the Electoral Code ensures the representation of minorities, the two bodies note:

“49. The delimitation of boundaries can thus be of critical importance to the performance of the system in representing national minorities, limiting or enhancing their representation as a result. Among other measures, it is advisable that constituencies established in areas with concentrated minority population do not merge with other territorial units or parts of the country in order not to dilute the representation of minorities.

50. In the 2013 draft proposal to introduce a mixed electoral system, three constituencies were to be created in the Autonomous Territorial Unit of Gagauzia. While the 2014 Joint

¹² Article 7(2)b of the Law on Ensuring Equal Chances of Men and Women stipulates that parties must contribute to ensuring equal rights and opportunities between women and men by ensuring the representation of women and men in candidate lists without discrimination on the criterion of sex.

¹³ Article 4.1 of the CEDAW states that the adoption “of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination”. See also paragraph 3 of the OSCE Ministerial Council Decision 7/09, which calls on participating States to “encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender balanced representation in elected public offices at all levels of decision-making”.

Opinion expressed some reservations as to the criteria for determining these three constituencies, the introduction of constituencies specific to Gagauzia was welcomed. The current draft proposal, however, does not prescribe any single-member constituencies specific to Gagauzia. As a consequence, the representation of the Gagauzian minority is dependent on the general rules of representation in the nationwide constituency or representation in uninominal constituencies according to the general criteria in Article 74 and subject to CEC decision. The effective representation of the Gagauz minority would therefore depend on the precise delimitation of constituencies; it is advisable to create contiguous constituencies that do not join parts of the Gagauz Autonomous Region with other parts of the territory”.

Concerning the chances of representation of national minorities concentrated in certain areas, it is also indicated:

“51. Moreover, the representation that a sizable concentrated national minority may achieve in a single-member constituency may prove to be less than the representation that would be achieved under a proportional system, as majoritarian candidates may receive more votes than are necessary to win seats. This may also result in the compartmentalisation of national minorities or the emergence of tensions between communities. The Venice Commission and the OSCE/ODIHR therefore recommend ensuring that no revision of the electoral legislation goes without proper consideration of national minorities’ representation”.

5.2. Observations and recommendations of some Moldovan organizations

In January 2018, Promo-Lex Association analysed how the Moldovan Parliament implemented the recommendations of the Venice Commission and the OSCE / ODIHR in the process of debating and adopting the amendments to the Electoral Code and made public a report¹⁴ related to that analysis. Some of those recommendations also referred to issues related to the representation of underrepresented groups. Here are the Promo-Lex views summarized in the table below:

Recommendation of the Venice Commission and OSCE / ODIHR	Measures adopted by Parliament on the basis of recommendations	Appreciation of the degree of execution	Argumentation of the Promo-Lex position
Constituencies established in regions with concentrated minority population should not be merged with other territorial units or parts of the country, in order to not dilute the minority representation	In art. 80, par. (4), let. f) the uninominal constituencies in which the national minorities live densely shall be constituted taking into account their interests and boundaries of the respective administrative-territorial units.	Partially executed	These provisions were missing in the draft submitted for consideration. However, their introduction should have been followed by the specification of the inapplicability of the 10% deviation. The constituency of Taraclia has about 35082 voters.

¹⁴ <https://promolex.md/11476-analiza-promo-lex-gradul-de-realizare-a-recomandarilor-comisiei-europene-pentru-democratie-prin-drept-si-ale-biroului-osce-pentru-institutii-democratice-si-drepturile-omului-pentru-republica-moldo/?lang=ro>

Recommendation of the Venice Commission and OSCE / ODIHR	Measures adopted by Parliament on the basis of recommendations	Appreciation of the degree of execution	Argumentation of the Promo-Lex position
<p>Create contiguous constituencies that do not connect parts of the ATUG with other parts of the country</p>	<p>In art. 80, par. (4), let. g) the uninominal constituencies on the territory of the Autonomous Territorial Unit of Gagauzia shall be constituted in such a way that they do not exceed the administrative boundaries of the autonomy; at the same time, these constituencies can not be completed with localities outside the autonomy, taking into account the risk of dilution of the national minority.</p>	<p>Executed</p>	<p>These provisions were missing in the draft submitted for consideration.</p>
<p>Inclusion of additional special temporary measures to encourage parties to ensure a fair representation of both genders on candidates' lists or the possibility of imposing a requirement according to which a representative number of women should be place in winning positions on the lists of candidates, in the proportional component of the election</p>	<p>In art. 46, par. (4) an increase of budget support was provided for at least 10% of the allocated sum for the budgetary year during which political parties will respect the quota of at least 40% of women candidates proposed to uninominal constituencies, as well as a multiplication factor for each female candidate chosen in the uninominal constituency.</p> <p>In art. 86, par. (1) it is stated that in order to be registered by the constituency electoral council, a female candidate for the uninominal constituency may be registered if she has the signatures of at least 250 and not more than 500 supporters with the right to vote in the constituency where she candidates (for men - minimum 500 and maximum 1000).</p>	<p>Executed</p>	<p>The electoral code contained provisions on the obligation to draw lists of candidates for parliamentary elections, with the minimum representation rate of 40% for both genders. The draft submitted for review did not address this issue for uninominal constituencies. Measures have been introduced as a result of recommendations.</p>

6. Comparison of electoral legislation of the Republic of Moldova with the legislation of other states, in terms of promotion underrepresented groups

Since 1990, Moldovan electoral legislation has undergone a multitude of changes. These include the representation of categories or groups of citizens considered, in a number of international documents, to be “underrepresented” in proportion to their share in the population. A number of international bodies, such as the OSCE, ODIHR and others, have issued recommendations over time to improve the representation of these groups. Some of them were taken over by the parliament and transposed into the Electoral Code, but others were not. The current situation is presented in comparison with the situation in other countries.

6.1. Representation of women

The Parliament of the Republic of Moldova has followed the recommendations of the Venice Commission and the OSCE / ODIHR to introduce gender quotas in electoral law in order to improve women’s chances of being elected and thus increasing their number in parliament.

Starting with 2016, the Republic of Moldova is among the countries that have provided in the law a minimum percentage of women (for each genre, practically) which each electoral competitor (political party, political bloc or socio-political organization) has to ensure for its list of candidates. The percentage is quite high, accounting for 40%. However, it should be stressed that there is no provision to prevent women candidates from being placed at the bottom of the list, i.e. in ineligible places. In other words, Moldova is among the countries that have not foreseen in the law any rule regarding the placement of candidates of the two genders on the lists of candidates, along with countries such as **Greece, Montenegro and Poland**.

It also has provisions to stimulate the nomination of women candidates in uninominal constituencies (not imposing an obligation in this respect), by increasing the financial contribution that the parties receive from the state budget, depending on the number of nominated candidates and elected women. From this point of view, a comparison can only be made with **France, Germany and the United Kingdom** - the only countries in Europe with uninominal constituencies (in Germany, only for half of the elected parliamentarians). Among these three countries, France has somewhat similar provisions, but not in the sense that the nomination of women candidates is financially prized (as in Moldova), but in the sense that non-compliance with the rule stipulating that the number of female candidates should not be lower than the number of men with more than 2% of the total number of candidates is financially sanctioned.

It should be also emphasized the facility that women enjoy when proposing their candidatures in the uninominal constituencies consisting in the fact that the number of signatures they need is half the number of signatures that men require.

6.2. National minorities

In this respect, it should first be noted that Moldovan law does not prohibit the existence of political parties constituted on ethnic criteria, being in line with the legislation of the vast majority of European countries.

On the other hand, as several international organizations have repeatedly pointed out, the rule laid down in the Law on Political Parties, according to which, in order to register, a party must present a list of founding members from at least half of districts, it is extremely

difficult for some political formations representing ethnic minorities to emerge. Besides this, such entities do not benefit from any derogation from the electoral threshold that political parties have to overcome in order to enter the parliament, as is the case, for example, of Croatia, Finland and Slovakia. However, in Slovakia, the Hungarian minority is large enough and its presence in a certain region of the country, together with the fact that there are virtually no barriers to regional parties in this country, has led to the situation that this minority is represented in the parliament (currently, by a party, plus another that was just below the electoral threshold during the last elections).

In contrast to this situation, examples of countries such as **Italy, Montenegro, Romania, Serbia or Hungary** have to be mentioned, where national minority parties or organizations benefit from a number of facilities that make their access to parliament easier (see 3.2).

6.3. Situation of people with disabilities

As for most of other European countries people with disabilities from the Republic of Moldova benefit of facilities in order to vote. These consist of:

- setting up polling stations in order to facilitate access to them for the elderly and people with disabilities;
- establishing special polling stations near hospitals, nursing homes, maternity homes, shelters and asylums for the elderly;
- the possibility that the voter has, according to which if he/she is not able to complete the ballot on his own, he/she can invite another person in the cabin, except for the members of the polling station office, representatives of the electoral contestants and persons authorized to assist in the electoral operations [...] to help him/her;
- the ability of voters to request a mobile ballot box if they can not move to the polling station.

On the other hand, the provisions regarding citizens with intellectual and psychological disabilities have been criticized on several occasions by various international and national organizations. More specifically, it is about the fact that the Moldovan legislation provides for the possibility that a court can decide that a person is “incapable” and the Electoral Code provides for the possibility of such persons being excluded from the right to vote. Article 13, paragraph (1), let. b) states that these people do not have the right to elect representatives. In relation to all this, the OSCE / ODIHR considers that *“the lack of clear legal provisions in practice deprives people of their exercise capacity. Their placement under guardianship, among other things, involves automatic loss of voting rights by persons with disabilities, which contradicts international bonds”*.

In opposition to this situation, we find the following cases:

- **Austria** - a country where people with intellectual disabilities (as well as those with physical disabilities, in fact) can be assisted by a person during their choice;
- **Italy** - a country where in 1978 the provision on the ban on voting imposed on people declared “incapable” was cancelled. Thus, people with intellectual and psycho-social disabilities have the right to vote, but without the assisted vote. This means that the voter must be able to enter the voting cabin for himself and express his/her vote without being helped by someone else.

7. Recommendations for improving the national electoral legislation from the perspective of the inclusion of underrepresented groups

The standards and obligations set out in international documents are the first benchmark to which each state must relate when assessing its situation with regard to the political representation of underrepresented groups.

If, with regard to ensuring a fair representation of women, it can be mentioned that the legislation of the Republic of Moldova respects those standards and obligations (but the situation can still be improved), then when it comes to ethnic minorities, the discussion becomes more complicated. On the one hand, neither the Moldovan Constitution nor the Electoral Code, nor the Law on Political Parties or any other law do not prohibit the establishment of political parties or socio-political organizations representing ethnic minorities. On the other hand, the condition imposed for the registration of the political party, namely that *“at the moment of the party’s constitution, its members [...] shall be residents from at least half of the second-level administrative-territorial units from the Republic of Moldova, but not fewer than 120 members in each of these administrative-territorial units”* makes extremely difficult the emergence of a political party representing an ethnic minority.

The case of the Gagauz minority represents the most suggestive example of this, which has a weight of approx. 4.5% of the total population, but with a merged presence in a very narrow geographical area, making it impossible to meet the condition regarding the place of residence of the party members at the time of registration.

The 6% threshold, one of the highest in Europe, can be also added to this barrier. The law does not provide for any derogation from it for political parties and socio-political organizations of ethnic minorities.

Therefore, we can note that although political parties and socio-political organizations representing ethnic minorities are not forbidden in Moldova, the barriers placed at their establishment by the Law on Political Parties and by the Electoral Code during elections make it almost impossible the representation of ethnic minorities, through their own parties or organizations, in the Chisinau Parliament. Or, from this point of view, one may question the extent to which the Moldovan legislation respects the UN Declaration on the Rights of Minorities, namely Article 2, paragraph (3), which refers to *“the right (of minorities) to participate effectively to decisions taken at national and, where appropriate, regional level concerning the minority they belong or the regions in which they live”* (Article 2 (paragraph 3)).

Also, the way in which Moldovan law ensures the right of people with disabilities to participate in elections, especially those with intellectual disabilities, can be considered not meeting the standards set out in the international treaties. More specifically, the fact that a person can be declared by a court in a state of inability to vote may be considered to be in contradiction with international obligations, in the absence of *“clear legal provisions in practice”*, an aspect which *“deprives people of their ability to exercise”* (OSCE / ODIHR opinion).

Together with the standards and obligations set out in the treaties and other international documents, resolutions and recommendations are also an important reference in the effort to improve the legislation governing the representation of different groups of citizens in parliament (and other elected bodies).

The experience of other European countries that can serve as a model and source of inspiration can be added to all of these.

Taking into account international standards and obligations, resolutions and recommendations, as well as examples provided by the legislation of other European countries, the following recommendations can be made:

7.1. Concerning the representation of women

Amending the Electoral Code by adding a rule referring to the alternation of the two-gender candidates to the rule of a minimum share of 40% for each gender on the lists of candidates proposed by political parties, political blocs and socio-political organizations. For example, there could be a rule that there should not be consecutively more than two candidates of the same gender. This would avoid the situation that all women on a list of candidates (or most of them) are placed at the bottom of the list (in ineligible places).

The analysis of the possibility of imposing a mandatory gender quota also for the candidates from the uninominal constituencies. Considering the size of the financial contribution that political parties receive from the state budget, it is possible that a bonus representing a certain percentage of this contribution does not represent a sufficient incentive to cause parties to adopt gender quota under the internal rules of nomination of candidates.

7.2. Concerning the representation of ethnic minorities

Modifying the Law on political parties so as to allow establishment of parties and socio-political organizations with a narrower regional coverage, so that ethnic minorities merged into smaller geographical areas can form political parties to represent and promote their interests. The removal of any legal provisions on this issue (which would bring Moldova closer to the situation in most European countries) could also be considered.

Introducing derogations from the electoral threshold for political parties and socio-political organizations of ethnic minorities. In the absence of such facilities (but in the conditions of simplification of the registration conditions of the parties provided by the Law on political parties), a situation could arise in which such a party or such an organization would have deputies elected in uninominal constituencies, but not one chosen on the list of candidates, which would mean an underrepresentation of the respective ethnic minority.

Amending the Electoral Code by replacing the national constituency with a number (10-12) of regional constituencies. Apart from the fact that this measure would allow voters to gain better knowledge of the candidates and would encourage political parties to nominate candidates from several regions of the country, it would also offer the possibility for an ethnic minority party to propose lists of candidates only in certain regions or even a list in a single region and the electoral threshold (even if maintained) to be considered for each region separately and not at the national level.

7.3. Concerning the participation of people with disabilities in elections

Restrict or even eliminate the possibility for a person to be declared incapable of voting by a court decision based on mental or intellectual disability reasons.

Stipulation in the law of the obligation that every place where polling stations operate should have at least one section at the level 1 of the building, where there is an access ramp for wheelchairs, thus being accessible to persons with locomotor disabilities who are moving in wheelchairs (but also elderly people or those with different diseases, who are moving with great difficulty on the stairs).

Analysing the possibility of equipping polling stations with tactile voting devices and at least one ballot printed with a large shrift for information. With the help of these, people with visual impairments would have the possibility to vote without the support or assistance of someone else and, and by doing so, the secrecy of the vote would be respected.

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Annex 1: Situation regarding the gender quotas in EU member states and other European countries

COUNTRY	ELECTORAL SYSTEM	GENDER QUOTAS	WOMEN IN PARLIAMENT
EU MEMBER STATES			
Austria	Proportional, with closed party-list	No quotas established by law. Most major parties have set quotas for their own lists, on a voluntary basis. For example, the Social Democratic Party has adopted a 40% gender quota, while in the case of the Green Party, the rule opts for the male / female parity (50% - 50%).	34%
Belgium	Proportional, with a semi-open party-list (preferential vote)	Established by the electoral law. The difference between the number of women and men can not be higher than 1 on a list of candidates proposed by a party. The first two candidates on a list can not be of the same gender. Lists of candidates that do not comply with these rules are not allowed.	39%
Bulgaria	Proportional, with closed party-list	No quotas established by law. There are no known cases of important parties that have adopted gender quotas under the internal rules for determining candidates.	24%
Czech Republic	Proportional, with a semi-open party-list (preferential vote)	No quotas established by law. The Czech Social Democrats adopted as a rule the 25% quota as the minimum percentage of women who have to be on each candidate list.	22%
Cyprus	Proportional, with closed party-list	No quotas established by law. The main political parties have set a gender quota of 30% for their own lists of candidates, without any rule as to how the positions between the two genders are divided on those lists.	13%
Croatia	Proportional, with a semi-open party-list (preferential vote)	Established by the Electoral Law and the Law on Gender Equality. None of the two genders should have representatives on a list of candidates less than 40%. There is no order of two-gender candidates prescribed by law. The party that does not respect this quota is sanctioned with a fine of 50,000 HRK. For each candidate representing the underrepresented gender that is elected, the party is awarded a 10% bonus from the funds it receives from the public budget (depending on the number of elected persons).	13%
Denmark	Proportional, with a semi-open party-list (preferential vote)	No quotas established by law. Currently, none of the political parties has established any gender quota in the internal rules of selection and nomination of candidates.	37%

COUNTRY	ELECTORAL SYSTEM	GENDER QUOTAS	WOMEN IN PARLIAMENT
Estonia	Proportional, with a open party-list ("mandatory" preferential vote off the voters determines the order of the candidates)	No quotas established by law. The Social Democratic Party and the Reform Party have set quotas for their own lists on a voluntary basis.	27%
Finland	Proportional, with a open party-list ("mandatory" preferential vote off the voters determines the order of the candidates)	No quotas established by law. There are no gender quotas in the party's internal rules, but most political parties pay special attention to the fair and balanced representation of women and men in parliament.	42%
France	Majority, in two election rounds	Established by the electoral law. For each political party, the difference between the two genders in terms of the number of nominees (in uninominal constituencies) may not be more than 2% of the total number of proposed candidates. Failure to comply with this rule would entail sanctioning the party by reducing the funds it receives from the state budget (depending on the number of votes received) with a sum in relation to the size of the deviation from the 2% limit.	39%
Germany	Mixed compensatory system (proportional)	No quotas established by law. The main parties and political entities from Germany have adopted gender quotas under the internal rules of selection and nomination of candidates. The Democratic-Christian Union is among them, with a gender quota of 33% and the Social Democratic Party with a 40% of gender quota, is also among them. Some parties have set quotas for their own lists, on a voluntary basis.	36%
Greece	Proportional, with a semi-open party-list (preferential vote)	Established by the law. Any candidate list must include candidates of both genders in a share of at least 1/3 for each gender. There is no provision on the order of candidates of the two genders on the list. Failure to comply with this rule for a certain list of candidates entails the rejection of that list.	20%
Ireland	Single transferable vote	For each party, candidates representing each of the two genders must account at least 30% of the number of proposed candidates. Starting with 2020, the threshold will be raised to 40%. The party that does not comply with this rule is sanctioned with 50% of the funds it receives annually from the state budget.	22%
Italia	Proportional, with a semi-open party-list (preferential vote)	There is a rule only if the voter who votes the list of a party expresses two preferential votes - for two candidates other than the one at the top of the list. In this case, the two preferential votes must be divided between the two genders, otherwise they will be cancelled.	36%

COUNTRY	ELECTORAL SYSTEM	GENDER QUOTAS	WOMEN IN PARLIAMENT
Latvia	Proportional, with a semi-open party-list (preferential vote)	No quotas established by law. There are no quotas in the internal regulations of the main parties.	16%
Lithuania	Parallel mixed	No quotas established by law. The Social Democratic Party introduced a 33% quota for each gender.	21%
Luxembourg	Proportional, with closed party-list	No quotas established by law. The main parties have adopted gender quotas ranging from 33% to 50%.	23%
Malta	Single transferable vote	No quotas established by law. The Labour Party has adopted a 20% quota for female candidates.	15%
Netherlands	Proportional, with a semi-open party-list (preferential vote)	No quotas established by law. In the Labour Party, candidates are, in principle, alternating between men and women, although other criteria, such as age and ethnicity, are also considered. The Green Party has also set quotas for two-gender candidatures.	36%
Poland	Proportional, with a semi-open party-list (preferential vote)	Established by the law in the case of the Lower Chamber Starting with 2011, „the number of female candidates may not be less than 35% of all candidates on the list. The number of male candidates may not be less than 35% of the total number of candidates on the list.” If a list does not meet the quotation requirement, „the commission asks the person who notifies the list to remove the „defect” within 3 days. In the case of lists where the issue has not been remedied within the deadline, the committee decides to refuse to register the entire list.	27%
Portugal	Proportional, with closed party-list	Established by the law. The Law on equality states that „Candidates’ lists for the National Assembly elections must be designed to promote a minimum representation of 33% for each gender”. If a list fails to meet the quota requirement, the error will be made public and financial penalties will be applied in the form of a reduction in the public funds designated for the conduct of the electoral campaign, in relation to the level of list inequality. A very important provision is that „a list can not have more than two consecutive same-gender names”.	31%
United Kingdom	Majority, in a single election round	No quotas established by law. In 2001, the Liberal Democrats adopted a „target” of 40% for women candidates. In the 2005 election, the party placed women in 40% of the „winning” candidates”. They also implemented a „zipping” system on their lists of candidates for the European elections in 1999, which were carried out on a proportional with closed party-list system, but they did not use it in the 2002 European Parliament elections. As for the Labour Party, the commitment is that 50% of the winning candidates belong to women.	32%

COUNTRY	ELECTORAL SYSTEM	GENDER QUOTAS	WOMEN IN PARLIAMENT
Romania	Proportional, with closed party-list	<p>No quotas established by law.</p> <p>The Social Democratic Party adopted voluntarily the 30% quota for its own lists in 2004 (with no rules on the order in which candidates of both genders should be placed on the lists).</p>	21%
Slovakia	Proportional, with a semi-open party-list (preferential vote)	<p>No quotas established by law.</p> <p>There are parties, but no one in Parliament today, who have set quotas for their own lists, on a voluntary basis (as a percentage, without reference to the order in which candidates representing the two sections should be placed on lists).</p>	20%
Slovenia	Proportional, with a semi-open party-list (preferential vote)	<p>Established by the law.</p> <p>The electoral law amended in 2006 states that „in a list of candidates, no gender can be represented by less than 35% of the total number of candidates on the list“. The lists of three candidates must contain at least one representative of the opposite gender to the other two.</p> <p>Starting with the 2014 elections, women and men must alternate in the first half of the lists. During the transition period until 2014, it was considered sufficient that at least each third candidate has to be of a different gender from the other two.</p> <p>Moreover, a number of political parties have introduced, by internal rules, rules that go beyond the statutory minimum thresholds. The Social Democratic Party currently has a 40% gender quota and the Liberal Democratic Party, which in 1998 adopted the 25% quota, also adopted the rule to increase the gender quota by 3% during each election until it reaches the 40% quota.</p>	36%
Spain	Proportional, with a semi-open party-list (preferential vote)	<p>Established by the law.</p> <p>The lists of candidates for the Congress (the Spanish Parliament) must contain a balanced proportion of women and men, so that the candidates of each gender should represent at least 40% of the total number of candidates. If the number of mandates in the constituency is less than five, the ratio between women and men should be as close as possible to the share of 40%.</p> <p>This rule applies not only to the list as a whole, but also to every series of five consecutive candidates, thus avoiding the possibility of placing all candidates of the same gender (or even most of them) at the bottom of the list.</p> <p>Lists of candidates that do not meet this condition are rejected.</p>	39%
Sweden	Proportional, with a semi-open party-list (preferential vote)	<p>No quotas established by law.</p> <p>A series of parties have introduced internal quotas, associated with rules on the placement of candidates of the two genders on lists of candidates (e.g. „the zipper rule“ - a candidate of a certain gender followed by a candidate of the other gender; two female and two male candidates in the first four candidates on the list, etc.)</p>	44%

COUNTRY	ELECTORAL SYSTEM	GENDER QUOTAS	WOMEN IN PARLIAMENT
Hungary	Mixed compensatory system (proportional)	No quotas established by law. Certain parties have set quotas for their own lists, on a voluntary basis (as a percentage, without reference to the order in which they should be placed on lists of candidates representing the two sections). Among parliamentary parties, only the Hungarian Socialist Party has adopted a minimum quota of 20% for women.	10%
COUNTRIES THAT ARE NOT MEMBERS OF THE EUROPEAN UNION			
Bosnia & Herzegovina	Proportional, with a semi-open party-list (preferential vote)	Established by the law. Each list of candidates includes both male and female candidates who are equally represented. Equal representation of gender exists when one of the genders is represented by at least 40% of the number of candidates on the list. Candidates of the underrepresented gender will be distributed on the list of candidates as follows: at least one underrepresented gender candidate among the first 2 candidates, 2 underrepresented gender candidates among the first 5 candidates and 3 underrepresented gender candidates among the first 8 candidates, etc.	21%
Switzerland	Proportional, with a semi-open party-list (preferential vote)	No quotas established by law. The Social Democratic Party has adopted the 40% quota as the minimum gender representation, within the internal rules of the nomination of candidates	32%
Iceland	Proportional, with a semi-open party-list (preferential vote)	No quotas established by law. The main parties (and not only) have introduced internal quotas, which were made public, and which refer to ensuring a minimum percentage of candidates for each gender - typically 40%.	38%
Macedonia	Proportional, with closed party-list	Established by the law. At least one position should belong to the lowest represented gender within each list of candidates, at every three positions. Lists of candidates that do not meet this condition are rejected.	31%
Moldova	Mixed parallel (Proportional, with closed party-list till 2017)	Established by the law. Any party whose list of candidates (which is one at the national level) respects the 40% gender quota benefits of an additional 10% of the funds it receives from the budget in the respective (electoral) year. There is no clarification, however, on the order in which men and women candidates should be placed on the list. In addition, a multiplication factor of this increase is provided, depending on the number of women selected in the uninominal constituencies.	21% (made through the old system)

COUNTRY	ELECTORAL SYSTEM	GENDER QUOTAS	WOMEN IN PARLIAMENT
Montenegro	Proportional, with closed party-list	<p>Established by the law.</p> <p>The electoral law stipulates that each gender must be represented at a share of at least 30% on the lists of candidates.</p> <p>However, there is no provision regarding the positioning of women and men candidates on lists.</p> <p>Lists of candidates that do not meet this condition are rejected.</p>	23%
Norway	Proportional, with a semi-open party-list (preferential vote)	<p>No quotas established by law.</p> <p>The main parties (and not only) have introduced internal quotas, which were made public, and which refer to ensuring a minimum percentage of candidates for each gender - typically 40%. There is even a party (the Labour Party) who has determined that, on each list of candidates, women and men must be equal and share the first two places.</p>	41%
Serbia	Proportional, with closed party-list	<p>Established by the law.</p> <p>At least one candidate from the underrepresented gender on the list will be for each 3 candidates on the electoral list (the first group of 3 seats, the second group of 3 seats, and so on until the end of the list).</p> <p>Lists of candidates that do not meet this condition are rejected.</p>	34%

Source: IDEA International; legislation of the analysed countries.



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