

4TH SCIENTIFIC ELECTORAL EXPERTS DEBATES: THE STABILITY OF ELECTORAL LAW

Co-organised by the Universidad de Barcelona and the Venice Commission

Barcelona, 3rd November 2023

Salón de Grados, Faculty of Law, University of Barcelona

CONCEPT NOTE

The issue of the stability of electoral law has been long discussed by international organisations working in the field of elections. When assessing electoral legislation or observing elections, they insist that the authorities take care that the “game” (the electoral process) be played according to the rules, rather than manipulating the rules of the game (the electoral legislation). The confidence of voters in the electoral process is essential to ensure robust democracy and cannot be ensured without the stability of the legal framework.

This conference has been initiated by the Council for Democratic Elections – the tripartite body of the Council of Europe in charge of electoral matters, including representatives of the Venice Commission, the Parliamentary Assembly and the Congress of Local and Regional Authorities – which considers that, more than thirty years after the start of the internationalisation of electoral issues, it is high time to assess the meaning of the principle of the stability of electoral law.

The Venice Commission addressed this principle already in the [Code of Good Practice in Electoral Matters](#) in 2002 and made it more precise in an [interpretative declaration](#) adopted in 2005, to which it refers regularly in its opinions.

In spite of the emphasis put on the stability of electoral law, one cannot but observe that electoral legislation is regularly revised shortly before elections. Does it mean that the principle of the stability of electoral law is simply not considered? Or rather that the late revision of electoral legislation is justified? The organisers of the conference would infer that the truth is somewhere in between, and that is what has to be confirmed – or contradicted during the event. At any rate, the Venice Commission Code and interpretative declaration do not state that stability of electoral law is an absolute principle, which would require qualifying the principle. This will be addressed in detail in the five panels which will take place on 3 November (see below). The discussions in the conference could lead the Council for Democratic Elections and the Venice Commission to prepare a revised interpretative declaration.

PROGRAMME

9:30 Opening remarks: Importance of the stability of electoral law in the current European context

Stewart Dickson, *President of the Council for Democratic Elections*

Andreu Olesti Rallo, *Dean of the Faculty of Law, Universidad de Barcelona*

9:45 1st Panel: The scope of the principle of the stability of electoral law

According to the Code of Good Practice in Electoral Matters and the interpretative declaration, stability mainly concerns the fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries. Does it also encompass matters such as limitations to the right to vote and be elected, or limitations to human rights? And what is the scope of the requirement for any reform of the electoral legislation to occur early enough to be applicable (item II.5 of the interpretative declaration)?

Moderator: **Josep M. Castellà Andreu**, *Full Professor of Constitutional Law, Universidad de Barcelona, Former member of the Venice Commission*

Rapporteurs: **Enrique Arnaldo Alcubilla**, *Magistrate of the Tribunal Constitucional, Spain*
Damien Cottier (Switzerland, ALDE), *Chairperson of the Committee on Legal Affairs and Human Rights, representing the Committee on Political Affairs and Democracy, Parliamentary Assembly of the Council of Europe*
Eirik Holmøyvik, *Member of the Venice Commission, Norway, Substitute member of the Council for Democratic Elections, Norway*

10:45 2nd Panel: Regulatory levels – including the role of secondary (EMBs') legislation

The Code and the interpretative declaration accept amendments less than one year before elections if made at a higher level than ordinary law, especially at constitutional level. This was stipulated in order to avoid manipulations by the majority, but experience has shown that the majority can abuse constitutional reform to unilaterally enshrine its political choices. Instead of maintaining this exception, would it be preferable to insist on the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders, a requirement regularly recalled by international organisations?

In electoral law, a number of issues are dealt with by secondary legislation, in particular by regulations issued by electoral management bodies. What are the limits of delegation to such bodies – or to the executive branch of government?

Moderator: **Pere Vilanova Trias**, *Member of the Venice Commission and of the Council for Democratic Elections, Andorra, Emeritus professor, University of Barcelona*

Rapporteurs: **Manuel Delgado Iribarren**, *Legal Adviser to the Cortes before the Central Electoral Board*
Oscar Sánchez Muñoz, *Substitute Member of the Venice Commission, Spain*
Toni Greblă, *President of the Permanent Electoral Authority, Romania*

11:45 Coffee break

12:15 3rd Panel: The timing of the change

So many exceptions have been made to the “one-year” principle (no major change one year before elections) that it may be time to put it into question. Could a requirement not to apply the revised rules until the next elections better prevent manipulations? Or would it be possible to propose different deadlines according to circumstances (if so, which ones)?

And what does the requirement that “any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election” (interpretative declaration, II.5) mean in practice?

Moderator: **Reyes Pérez Alberdi**, Associate Professor of Constitutional Law, Universidad Pablo de Olavide, Sevilla

Rapporteurs: **Marco Olivetti**, Full Professor of Constitutional Law, LUMSA, Roma
Srdan Darmanović, Vice-President of the Council for Democratic Elections, Member of the Venice Commission, Montenegro

13:15 Lunch break

14:45 4th Panel: Emergency situations

“Emergency” is a polysemic term. First, it concerns the state of emergency. The most serious situation in this field is due to the war following the Russian aggression against Ukraine. Europe has however known other cases of states of emergency in recent years, in particular due to the COVID-19 crisis. The issue is therefore to know to what extent legislation can be adapted shortly before elections in the case of a state of emergency, or at least of an emergency situation.

The discussion could be broadened to consider when sudden, albeit less serious events, may create an emergency requiring a change to the law.

Moderator: **Marco Antonio Simonelli**, Professor of Constitutional Law, Universidad de Barcelona

Rapporteurs: **Carlos Vidal Prado**, Member of the Junta Electoral Central, Spain, Full Professor of Constitutional Law, UNED
Oliver Kask, Former President of the Council for Democratic Elections, Substitute member of the Venice Commission, Estonia

15:45 5th Panel: Digital technologies and elections

Digital technologies accompany our daily life and there is no exception in the electoral field. The question could be raised whether (constant) innovation allows changing the law shortly before elections. A distinction could be made between, on the one hand, innovations intended at facilitating the electoral process and, on the other, the use of digital technologies which threatens democracy (through threats against “electoral democracy”, that is the electoral infrastructures; but, above all, through threats against “deliberative democracy”, such as fake news).

Moderator: **Jordi Barrat i Esteve**, (Election Observation and Democracy Support), Associate Professor, Universitat Rovira i Virgili, Tarragona

Rapporteurs: **María Garrote de Marcos**, Professor of Constitutional Law, Universidad Complutense, Madrid

José Luis Vargas Valdez, Member of the Venice Commission, Tribunal Electoral del Poder Judicial, México

16:45 Coffee break

17:15 Discussion session: Q&As concerning all five panels

18:00 Closing session: The possible need for an update of the standards on the basis of practice

Moderator: **Simona Granata-Menghini**, Director, Secretary of the Venice Commission

Rapporteurs: **Rafael Rubio Núñez**, Full Professor of Constitutional Law, Universidad Complutense, Madrid, Former substitute member of the Venice Commission

Katharina Pabel, Substitute member of the Venice Commission and of the Council for Democratic Elections, Austria

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