



**20<sup>TH</sup> EUROPEAN CONFERENCE OF  
ELECTORAL MANAGEMENT BODIES ON  
“STABILITY OF ELECTORAL LAW – PRACTICAL ASPECTS”**

**Co-organised by the Central Electoral Commission of the Republic of Lithuania and  
the Council for Democratic Elections of the Council of Europe**

**20<sup>E</sup> CONFERENCE EUROPEENNE DES  
ADMINISTRATIONS ELECTORALES SUR LA  
« STABILITE DU DROIT ELECTORAL - ASPECTS PRATIQUES »**

**Coorganisée par la Commission électorale centrale de la République de Lituanie et  
le Conseil des élections démocratiques du Conseil de l'Europe**

**15-16.04.2025  
Vilnius**

**Introductory session  
*Session d'introduction***

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The Venice Commission, Member

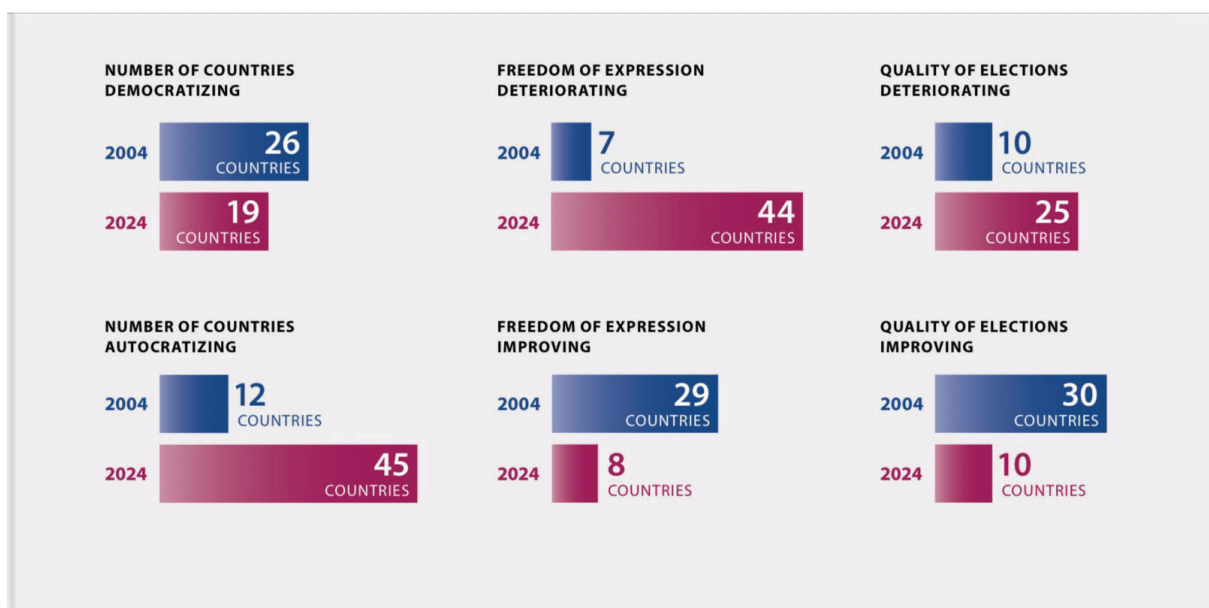
Dear Representatives of EMB, dear colleagues,

Democracy is not all about elections, but free, fair and genuinely competitive elections are its indispensable pillar. That being said, there is never a wrong time to talk about elections. It seems especially now.

There is a near-consensus among scholars exists about the *backsliding* of democracy worldwide. Politicians from democratic countries openly acknowledge the same trend. The evidence is overwhelming and troubling.

According to the V-Dem Institute Democracy Report 2025 only 19 countries in 2024 were democratizing, while 45 were on the path to autocratization. Strikingly, 27 out of these 45 were democracies at the beginning of authoritarian cycle. Only 9 out of 45 have managed to resist and remain democratic. After the fall of the Berlin Wall, few would have predicted such a dramatic reversal. Figuratively speaking in a state of democracy the world is back to where it was around 1996.

Whenever democracy comes under threat, elections are always part of the story. *Elections integrity* becomes a primary target. Why so? Because most of the authoritarian or autocratizing regimes in our time hold elections. They don't abandon them entirely for open dictatorship. They maintain a degree of competitiveness in elections but skew the playing field to favor incumbents. Elections remain meaningful, *but not fair*. Democracy is losing ground not through brute force, but through manipulation.



Election integrity - ensuring elections are free, fair, and credible - election is relies on legal principles and predictability. Transparency, accountability and accuracy of election administration are essential, alongside ethical electoral behaviour and effective integrity monitoring. When election integrity is undermined, it usually involves distorting key aspects of election law to favor those in power. The *electoral field* thus becomes *legal battlefield*.

In this context, it is not surprising that the Venice Commission's *Code of Good Practice in Electoral Matters* and its *Interpretative Declaration* clearly emphasize that certain fundamental elements of electoral law, in particular the *electoral system proper*, *composition of electoral commissions* and the *drawing of constituency boundaries*, should not be subject to frequent and easy change and should not be open to amendment **less than one year before an election**.<sup>1</sup> Actually, following what it wrote in its Code of Good Practice the Venice Commission firmly stand for *stability of electoral legislation*. The focus on these three areas: the *electoral system proper*, *composition of electoral commissions* and the *drawing of constituency boundaries* is no coincidence - they are often perceived, rightly or wrongly, as decisive factors in electoral outcomes and are thus frequently manipulated for political gain.

<sup>1</sup> "The fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election, or should be written in the constitution or at a level higher than ordinary law.", *The Code of Good Practice in Electoral Matters* (CDL-AD(2002)023 rev, item II.2.B

Of course, beyond these three elements many other factors determine the quality of elections. That includes, inter-alia, the choice of the electoral system, the quality of electoral legislation, political party legislation, application of the “rules of the game”, campaign and party funding, and more.

*The quality of electoral legislation*, for example, is particularly important. *Sound electoral legislation* is essential to realizing the democratic principle that citizens have the right to take part in government and in the conduct of public affairs into practice. But, even the most sound electoral legislation can be compromised by hasty and frequent changes, extravagant experiments and its adaptation to the party and political interests. That’s why the principle of stability of electoral law is a guarantee for *legal certainty*. It is why changes of the fundamental rules of the (electoral) game should occur, if at all, only well in advance of elections, and certainly *not during the game itself*.

What we call the “rules of the game” is one of the most important aspects of elections. Any game, and electoral as well, should be based on the principle that the rules do not favor ones and disfavor the others. The rules must be equal for all contestants. Furthermore, these rules should be applied and exercised in the *playing ground* that is *leveled* for all the competitors. As long as the playing field is reasonably level we can speak of functioning democracy. But when the playing field tilts - either abruptly or gradually - we leave the realm of democracy and move into the territory of competitive authoritarian regimes or face the ongoing process of autocratization of the society. Sudden or frequent changes of electoral legislation, especially close to elections, often signal democratic backsliding.

Naturally, discussions about the stability of electoral legislation are most relevant in democracies, where free and fair elections are a foundational institution. Strangely enough principle of the stability of the electoral legislation can be relevant to competitive authoritarian regimes, too. Being hybrid regimes, sometimes democracies in backsliding, or authoritarian regimes on the way to democratic transition, elections in them, though not faire, can still be competitive and might become a tool of democratization or re-democratization of the country. Indeed autocrats or would-be autocrats sometimes lose elections. Chile under Pinochet, Mexico under PRI, Serbia under Milosevic, Slovakia under Meciar, North Macedonia under Gruevski are just some of many examples.

By contrast, in closed autocracies discussions on stability of electoral law are irrelevant as it is all the same when election laws are changed. Whenever the change occurs they are always firmly controled of incumbents and in their favor. To ask, for

example, whether electoral law stability matters in regimes like Putin's or Lukashenka's is to ask a rhetorical question.

Returning to the three elements emphasized by the Code of Good Practice soberly speaking we can say that changing *electoral system* might not necessarily be a bad thing – change sometimes may be for the better – but *changing them frequently* or just before (within one year of) the elections in the eyes of the voters almost always make an impression, even when no manipulation is intended, that change seems to be dictated by political party interests. This perception is usually well-founded, as changes tend to benefit some political forces and harm others.

The manipulation with the *composition of the election commissions* or with the *electoral boundaries* is equally problematic. Changes to election commissions often revolve around “us” and “them”, where “ours” are expected to actually be “our party soldiers” and to serve political interests rather than uphold electoral integrity. Instability in the composition of election commissions undermines trust in the electoral process.

Redistricting is usually even more problematic. While demographic shifts may justify boundary changes, redistricting is frequently used as a political weapon and the strong one. Electoral geometry becomes the skill on how to outmaneuver the opponents and maximize the in a number of seats in the parliament instead about how to represent people fairly. As a fundamental element of electoral law, redistricting carries significant political implications.

The Venice Commission has recently dealt or are still dealing with the cases involving attempts to change the composition of election commissions or manipulate electoral boundaries. Whether subjecting election administration to impeachment in presidential systems or putting it under control of political parties in the parliamentary ones these moves aim to ensure loyalists dominate electoral administration. While the Venice Commission never questioned that electoral administration must remain accountable, their independence is essential for credible elections.

Procedure in doing these changes of key elements of electoral law usually talks a lot on substance. If the changes are done in transparent and inclusive manner where all the relevant stakeholders are the part of the process and the level of consensus is high, it is less likely that changes are politically manipulative. But, if the process is non-transparent and non-inclusive, and opposition parties and/or civil society organizations are ambushed by sudden and non-consensual changes there is little doubt what interventions in the electoral legislation serves for.

There have been ideas, discussions and proposals to change the one-year rule - to shorten it perhaps to 180 days - but the Venice Commission and the OSCE/ODIHR remained firm in defending this timeframe. A shorter timeframe is rarely sufficient to ensure impartial and comprehensive delimitation procedures before the election. To promote stability in the fundamental elements of electoral law, the Code of Good Practice is very clear recommending that fundamental elements of an electoral law should not be open to amendment less than one year before an election and that the stability of the law is crucial to the credibility of the electoral process.

Nevertheless, the one-year rule applies *above all to fundamental elements* of the electoral system, even less consequential changes if introduced late, can have outsized effects on the election outcome and public confidence. If not for the substantial reasons - and they are often at place - rules which change frequently, or just prior to the elections and additionally if they are complicated – *may confuse voters*. Rightly or wrongly, voters might see the that “electoral law *simply as a tool in the hands of the powerful*, and conclude that their own votes have little weight in deciding the results of elections.”<sup>2</sup> It might prove to be one of the most detrimental consequences for the electoral integrity and for the public confidence that all social and political issues in democracy, should and could be resolved only by democratic procedures and through democratic institutions. It is not by occasion that elections integrity and very meaning of the elections as a par excellence democratic institution is under assault of cynicism of rising autocracies in our days.

In many countries the electoral framework is stable and necessary amendments are adopted well ahead of the next election. But, in some others significant changes to the election legislation occur frequently and late. In a number of countries important electoral reforms were adopted only a few months prior to recent elections in a hasty and non-inclusive way, without providing an opportunity for meaningful public debate and consultations with stakeholders. Without naming them I can say that the list of the countries the Venice Commission have dealt with on the topic of late electoral changes is impressive. It includes so called new democracies, but the EU members, as well.

Problem with late changes of electoral legislation is that even when they serve for the better by for example implementing international recommendations and standards, late amendments to the electoral legislation limit the time needed for

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<sup>2</sup> *Compilation of Venice Commission Opinions and Reports Concerning the Stability of Electoral Law*, CDL-PI(2020)020, page 4, para 63, Strasbourg, 14 December 2020.

electoral preparations, making many technical steps like trainings or voter education difficult to apply in the electoral legislation properly and uniformly. Even electoral contestants themselves may have difficulties adopting “last-minute” changes. The perception of changes that they are politically motivated even if they are not, almost goes without saying. This perception can be as damaging as the reality.

There are, of course, justified exceptions. When changes are clearly in the public interest and free from political manipulation, they may be welcome. In recognition of such cases, the Venice Commission adopted a *Revised Interpretative Declaration on the Stability of Election Law* in June last year where boundaries of flexibility towards “one year rule” had been somewhat broadened. Already existing principle that one year rule “should not be invoked to maintain a situation contrary to international electoral standards, to prevent amendments in accordance with these standards based on consensus between government and opposition and on broad public consultations, or to prevent the implementation of decisions by... international courts or of recommendations by international organisations” have been recognized and reaffirmed also in the Revised Interpretative Declaration, but what is new is the introduction of the implementation of decisions by “*national constitutional courts or supreme courts with equivalent jurisdiction*”.<sup>3</sup>

Though, I’m one of the authors of the Revised Declaration and some year ago did not have problem with this more flexible approach, today I would most probably think twice before introducing the decisions of the “national constitutional courts or supreme courts with equivalent jurisdiction” in the text of the Declaration.

Why so? Simply, world is changing rapidly and not necessarily for the better. In the beginning of this speech I offered some numbers demonstrating democracy backsliding in many spots on the globe. *State capture* of key independent institutions is one the standard tools in the playbook of democracy backsliding and autocratization process. Judiciary, including constitutional courts, is one of the primary targets of the state capture. In number of cases national judiciary just go along. Constitutional courts, once guardians of democracy, can become instruments of authoritarian consolidation. In such cases national court decisions could be used to legitimize election law changes that benefit incumbents. But, time will tell. I hope it will prove my concerns unfounded.

Despite this dilemma, the principle of stability of electoral law - and the “one year rule” as its operational tool - remains crucial. Ignoring it in most cases is a call for troubles. Breaching the rule might and in most of the cases will:

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<sup>3</sup> *Revised Interpretative Declaration on the Stability of Election Law*, CDL-AD(2024)027, Strasbourg, 24 June 2024.

- a) confuse voters;
- b) undermine public confidence in electoral process;
- c) caught off guard electoral administration;
- d) highly increase risks of political manipulations with election legislation;
- e) produce hasty and rather low quality changes of election legislation;
- f) restrict in scope and time inclusive public debate within the society and among stakeholders;
- g) skew election outcomes in favor of some of the contestants.

The Venice Commission has consistently advocated for the stability of electoral law including very important Barcelona conference on this topic in November 2023. I am confident that this conference will be another significant step forward in ongoing conversation on this important matter.

Thank you.