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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**COMPILATION**  
**OF VENICE COMMISSION OPINIONS AND REPORTS CONCERNING**  
**THE STABILITY OF ELECTORAL LAW (\*)**

*(\*) This document will be updated regularly. This version contains all opinions and reports/studies adopted up to and including the Venice Commission's 125<sup>th</sup> Plenary Session (11-12 December 2020)*

**Contents**

I.	Introduction .....	3
II.	Definition of the principle .....	3
A.	Reference documents .....	3
B.	Opinions and reports .....	5
III.	Scope.....	8
IV.	Temporality of electoral laws and inclusiveness of electoral reforms .....	11
V.	Relationship with constitutional jurisdiction .....	13
VI.	Exceptional situations / State of emergency .....	14
VII.	Stability of referendum law .....	15
VIII.	Reference documents .....	17

## **I. Introduction**

1. This document is a compilation of extracts taken from opinions and reports/studies adopted by the Venice Commission on issues concerning the stability of the electoral law. The aim of this compilation is to give an overview of the doctrine of the Venice Commission in this field. The scope of this document does not include the issues that are not related to electoral ones, or of those related to political parties, which are covered by existing compilations.
2. The present compilation is intended to serve as a source of references for drafters of constitutions and of legislation relating to electoral law, researchers, as well as the Venice Commission's members, who are requested to prepare comments and opinions on such texts. However, it should not prevent members from introducing new points of view or diverge from earlier ones, if there is good reason for doing so. The present document merely provides a frame of reference.
3. The document is structure in a thematic manner in order to facilitate access to the topics dealt with by the Venice Commission over the years.
4. Each opinion referred to in the present document relates to a specific country and any recommendation made has to be seen in the specific constitutional context of the country. This is not to say that such recommendation cannot be of relevance for other systems as well.
5. The Venice Commission's reports and studies quoted on this compilation seek to present general standards for all member and observer states of the Venice Commission. Recommendations made in the reports and studies will therefore be of a more general application, although the specificity of national/local situations is an important factor and should be taken into account adequately.
6. Both the brief extracts from opinions and reports/studies presented here must be seen in the context of the original text adopted by the Venice Commission from which it has been taken. Each citation therefore has a reference that sets out its exact position in the opinion or report/study (paragraph number, page number for older opinions), which allows the reader to find it in the corresponding opinion or report/study. References should be made to the opinion or report/study and not to the compilation.
7. The Venice Commission's position on a given topic may change or develop over time as new opinions are prepared and new experiences acquired. Therefore, in order to have a full understanding of the Venice Commission's position, it would be important to read the entire compilation under a particular theme. Please kindly inform the Venice Commission's Secretariat if you think a quote is missing, superfluous or filed under an incorrect heading ([venice@coe.int](mailto:venice@coe.int)).

## **II. Definition of the principle**

### **A. Reference documents**

2. Regulatory levels and stability of electoral law
  - a. Apart from rules on technical matters and detail – which may be included in regulations of the executive –, rules of electoral law must have at least the rank of a statute.
  - b. 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.

[..]

63. Stability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.

64. In practice, however, it is not so much stability of the basic principles which needs protecting (they are not likely to be seriously challenged) as stability of some of the more specific rules of electoral law, especially those covering the electoral system *per se*, the composition of electoral commissions and the drawing of constituency boundaries. These three elements are often, rightly or wrongly, regarded as decisive factors in the election results, and care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation.

65. It is not so much changing voting systems which is a bad thing – they can always be changed for the better – as changing them frequently or just before (within one year of) elections. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests.

[CDL-AD\(2002\)023rev2-cor](#) – *Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (Guideline II. 2; Explanatory Report, para. 63-65)*

I. The Code of good practice in electoral matters (CDL-AD(2002)023rev, item II.2.B) states:

“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.”

II. The Venice Commission interprets this text as follows:

1. The principle according to which the fundamental elements of electoral law should not be open to amendment less than one year prior to an election does not take precedence over the other principles of the Code of Good Practice in Electoral Matters.

2. It should not be invoked to maintain a situation contrary to the standards of the European electoral heritage, or to prevent the implementation of recommendations by international organisations.

3. This principle only concerns the fundamental rules of electoral law, when they appear in ordinary law.

4. In particular, the following are considered fundamental rules :

- the electoral system proper, i.e. rules relating to the transformation of votes into seats;
- rules relating to the membership of electoral commissions or another body which organises the ballot;
- the drawing of constituency boundaries and rules relating to the distribution of seats between the constituencies.

5. In general any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election.

[CDL-AD\(2005\)043](#) – *Interpretative Declaration on the Stability of the Electoral Law*

1.2 Stability of the law is a crucial element for the credibility of electoral processes. It is therefore important that stability of electoral law be ensured in order to protect it against political manipulation. This applies not least to the rules on the use of administrative resources.

[CDL-AD\(2016\)004](#) – *Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes*

## **B. Opinions and reports**

19. Stability of the electoral law is crucial to ensure trust in the electoral process, and in particular to exclude any suspicion of manipulation of the electoral legislative framework. According to the Venice Commission's Code of Good Practice in Electoral Matters, and as explained in the interpretative declaration on the stability of electoral law, no changes of principle (related to fundamental elements, for instance the electoral system, the composition of the electoral management bodies, and the drawing of constituency boundaries) should be introduced within 12 months of the elections.

20. The one-year rule applies only to *fundamental elements* of the electoral system. However, the closer to the elections the amendments to electoral legislation are passed, the more they may influence the election results. [...]

[CDL-AD\(2020\)036](#) – *Albania – Joint Opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020*

## **III. Electoral laws**

[...]

### *Stability in electoral legislation*

18. The Code of Good Practice in Electoral Matters highlights that the stability of the law is crucial to the credibility of the electoral process. Therefore, it should be avoided that fundamental elements of electoral law – like the composition of election commissions, the electoral system and the drawing of constituency boundaries – are changed frequently or just before elections. According to the Venice Commission, changes to fundamental aspects of the election system should not take effect less than one year prior to an election (see CDL-AD(2002)023 rev2-cor, part II.2.d and Expl. Report, paras 63-65).

19. Whereas in many countries the electoral framework is stable and necessary amendments are adopted well ahead of the next election, in some other states significant changes to the election legislation occur frequently and late. In a number of countries (e.g. Italy, North Macedonia, Poland, Turkey) 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.

20. It should be stressed that, even if they implement international recommendations, late amendments to the electoral legislation limit the time needed for electoral preparations, including training and voter education, and make it difficult to apply the electoral legislation properly and uniformly. Voters and electoral contestants may also have difficulties adopting "last-minute"

amendments. Furthermore, late changes to the electoral rules may be detrimental to a thorough and inclusive legislative process. They may even be perceived as politically biased, thus, undermining confidence in the elections.

[CDL-AD\(2020\)023](#) – *Report on electoral law and electoral administration in Europe*

17. Stability of the electoral law is crucial to ensure trust in the electoral process, and in particular to exclude any suspicion of manipulation of the electoral legislative framework. [...]

[CDL-PI\(2020\)011](#) – *Republic of Moldova – Urgent joint opinion on the draft Law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services*

21. The Venice Commission has identified the main principles underlying the European electoral heritage. [...] The Venice Commission has also identified three general conditions which have to be met to make compliance with the underlying principles possible. Those are: a) respect for fundamental human rights, especially freedom of expression, assembly and association; b) stability of electoral legislation and its protection from political manipulation; c) procedural guarantees such as organisation of elections by an impartial body, election observation, an effective system of appeal, funding or security.

54. The obligations stemming from Article 1 of the ECHR and Article 3 of Protocol 1 to the ECHR cover not only the organisation, but also the conduct of such elections. If elections [...] fail to respect the preconditions of [...] stability of electoral legislation and its protection from political manipulation; [...], they fail to meet the obligation for the annexing State to secure the enjoyment of the right to free and fair elections of the population of the annexed territory. These preconditions appear difficult to meet for elections organised in an occupied territory.

[CDL-AD\(2019\)030](#) – *Report on the compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised territory into a nationwide constituency for Parliamentary elections*

See also [CDL-AD\(2018\)010](#) – *Report on Term Limits - Part I - Presidents (para. 97);*

[CDL-AD\(2018\)009](#) – *Report on the identification of electoral irregularities by statistical methods (para. 6); and*

[CDL-AD\(2012\)005](#) – *Report on measures to improve the democratic nature of elections in Council of Europe member states (para. 7)*

17. It is welcomed that the fundamental elements of the electoral legislation are regulated by a cardinal law, therefore providing for its stability and broader consensus. [...]

[CDL-AD\(2012\)012](#) – *Hungary – Joint Opinion on the Act on the Elections of Members of Parliament of Hungary*

9. In the past, electoral legislation in Ukraine was too often changed, sometimes just a few months before elections. Very often such changes created a situation when provisions of different laws regulating the electoral process were contradictory (for example, during the 2006 parliamentary and local elections). This was seriously undermining the stability of the electoral law and as a consequence, the trust of voters in elections. The adoption of an Election Code could contribute to the stability of the electoral legislation in line with the recommendations of the Code of Good Practice in Electoral Matters.

[CDL-AD\(2010\)047](#) – *Ukraine – Opinion on the draft election code of the Verkhovna Rada of Ukraine*

19. While electoral legislation is not something cast in stone, it should not be subject to constant change. [...] In certain circumstances, exceptions to the one year rule could be accepted, namely where there is a need to rectify, through legislation, unforeseen problems or to provide redress to violations of internationally recognised rights where they had been built into the electoral law.

[CDL-AD\(2010\)037](#) – *Report on the timeline and inventory of political criteria for assessing an election*

96. It has however to be reminded that the stability of the electoral legislation is important for the public's confidence in the electoral process. Amendments should therefore take place in the future when necessary to improve the conformity of the legislative framework with international standards, but should otherwise be avoided in principle.

[CDL-AD\(2009\)005](#) – *Albania – Joint Opinion on the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR*

7. The stability of fundamental elements in electoral law is [...] regarded as one of the factors in the credibility of the electoral process, and care must be taken to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation. Even when no manipulation is intended, changes will seem to be dictated by immediate party political interests. [...] The principle of stability of electoral law was affirmed by the European Court of Human Rights on 18th November 2008 in the case *Tănase and Chirtoacă v. Moldova* (paragraph 114 with reference to the Code of Good Practice in Electoral Matters).

[CDL-AD\(2008\)036](#) – *“the former Yugoslav Republic of Macedonia” – Opinion on the issue of the Re-appointment of the members of the State Election Commission of “the former Yugoslav Republic of Macedonia”*

7. In general, electoral matters should not be regulated in detail in the Constitution. In Albania there is, however, an evident concern to ensure the stability of the electoral choices in a political framework where conflicts are frequent and there is no common acceptance or interpretation of important rules of the democratic game. While it is therefore welcome that the new constitutional regulation is less detailed and complex, it also seems appropriate that the basic choice in favour of a regional-proportional system is set forth in the text of the Constitution.

[CDL-AD\(2008\)033](#) – *Albania – Opinion on the Amendments to the Constitution of the Republic of Albania (Adopted on 21 April 2008 by the Assembly of the Republic of Albania)*

15. [...] [I]t should be avoided that rules on politically delicate issues – like the composition of election commissions, the electoral system or the drawing of constituency boundaries –, which are regarded as decisive factors in the election results, are changed frequently or just before elections. [...]

[CDL-AD\(2006\)018](#) – *Report on Electoral Law and Electoral Administration in Europe – Synthesis study on recurrent challenges and problematic issues*

8. While the draft unified code is needed in order to safeguard the rule of law and democratic procedure of the elections, the parliamentary procedure of draft legislation should be watched closely to prevent any fundamental changes of the fundamental elements of electoral law. Political parties may be motivated to amend the electoral legislation before the elections in their favour. Temptation for that may rise in the parliamentary procedure of the draft law. It has to be

noted that the stability of electoral law is of high importance to avoid any manipulation with the electoral system.

[CDL-AD\(2006\)008](#) – “the Former Yugoslav Republic of Macedonia” – Joint Opinion on the Draft Electoral Code of “the Former Yugoslav Republic of Macedonia” by the Venice Commission and OSCE/ODIHR

62. [...] stability of the specific rules of electoral law, especially those covering the electoral system per se, the composition of electoral commissions and the drawing of constituency boundaries can be ensured. These provisions could be made more precise: electoral law should have the rank of statute law and should not be changed too often and in no case immediately before elections (within one year). [...]

[CDL-AD\(2004\)010](#) – Opinion on the draft ACEEEO Convention on Election Standards, Electoral Rights and Freedoms

Stability of electoral law is not demanded by constitutional or international law. However, in the established democracies, major changes in this respect are few, guarding against any risk of the system being manipulated for purposes of electoral gain, and bearing witness to the maturity of democracy. In Western Europe, only Italy has recently effected a major change for the national elections by switching from a virtually universal proportional system to a mixed but predominantly majority system. France, which has frequently revised its balloting method in the past, has upheld the system of two-round majority election to a single seat since the creation of the Fifth Republic, apart from the 1986 elections which were held according to the proportional system. Stability is still more pronounced in Switzerland, and by and large both federal and cantonal electoral law have only been amended in secondary areas since the proportional system was introduced for the election of the legislative assembly in the recent or remote past. On the other hand, introduction of the proportional system for electing the executive has not succeeded in taking hold elsewhere than in Ticino and Zug. Swiss electoral law is thus typified by considerable stability.

Retention of the fundamental rules of the electoral system in the constitution of Ticino should ensure that the innovation is perpetuated even if the system changes, and prevent it from being challenged on grounds of party interests.

[CDL-INF\(2001\)016](#) – Switzerland – Opinion on the Electoral Law of the Canton of Ticino (p. 10)

### III. Scope

22. It is difficult to anticipate the effect of the introduction of partially open lists on the results. Preference voting will be effective only if it reaches a certain threshold: to change the ranking of the list, a candidate must receive more preference votes than the average number of votes received for each of the seats won by the party or coalition; in any case, the quotient may not be larger than 10,000 votes (Article 163.3 of the Electoral Code). The effect of this innovation will depend on the behaviour of the voters, more precisely on the more or less extensive use they will make of the possibility to vote for a specific candidate. Even if a rather small number of mandates could be distributed differently based on this amendment for the upcoming elections, there might still be some impact on the campaigning tactics. Some interlocutors of the Venice Commission and ODIHR considered that this change would not have a major impact on the results. The level of impact based on this change has to be seen in the elections, but it cannot be excluded that the amendment changes the voting behaviour for many voters and has an impact on the campaigning, too. While its effects have still to be assessed, it seems that this innovation should not be considered a fundamental change.



23. There is no fundamental change with the replacement of the threshold from 3% (parties) or 5 % (coalitions) at regional level to 1 % nationally (Article 162(1) of the Electoral Code). Like the former, the new threshold should be ineffective due to the natural threshold linked to the size of constituencies, except, possibly, for individual candidates and parties representing (small, concentrated) national minorities. An exception for the latter could therefore be considered after the 2021 elections.

24. A change which might appear as fundamental concerns the suppression of coalitions as allowed by the former version of the Code (*apparentements*: the coalition is considered as a single list in the first allocation of seats). It is unlikely that it will lead to changes in the allocation of a large number of seats. However, in a tight electoral competition, such changes could be decisive for the obtention of the majority of seats in Parliament. The requirement of special majorities for the revision of certain pieces of legislation, including the electoral law, (Article 81(1) of the Constitution) and, of course, for constitutional revision (Article 177(3)) has to be taken into consideration too. It has to be noted that, in 2017, the rule on coalitions was not applied following a consensual political agreement, so in practice no real change would take place vis-à-vis the last parliamentary elections.

25. Under these conditions, it is doubtful that the changes on rules for coalitions as provided for in the former version of the Code can be considered as a fundamental change.

26. Therefore, the Venice Commission and ODIHR consider that the amendments to the Constitution and to the Electoral Code, taken alone or in combination, are not such to represent a fundamental change to the electoral system of Albania. However, these changes could have an impact on the behaviour of the electoral stakeholders, the electoral strategies, the distribution of electoral resources, the campaigning and the choice of candidates in each electoral zone.

[CDL-AD\(2020\)036](#) – Albania – *Joint Opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020*

47. Specifically, with regard to elections, important decisions such as fixing their date require sufficient foresight. The principle of the stability of electoral law discussed by the Venice Commission in the Code of Good Practice on Electoral Matters (CDL-AD(2002)023rev2-cor) and notably the Interpretative Declaration on the Stability of the Electoral Law (CDL-AD(2005)043) is applicable by analogy to important decisions related to elections.

[CDL-AD\(2019\)019](#) – Albania – *Opinion on the powers of the President to set the dates of elections*

47. [...] It remains to be seen in practice and upon the development of additional regulations on how the SEVR [Single Electronic Voter Register] serves to improve the quality and accuracy of voter registration. Without prejudices to the content of the future Cabinet of Ministers regulation, consideration could be given to including more detailed provisions into the draft Election Code. This step would be in line with the overall objectives of codification, contributing to the conciseness and integrity, as well as stability of legislation.

[CDL-AD\(2018\)027](#) – Uzbekistan – *Joint opinion on the draft election code*

46. [...] Constituency borders are fundamental elements of electoral law, and redrawing them may have significant political consequences. To promote stability in the fundamental elements of electoral law, the Code of Good Practice recommends that such parts of an electoral law should not be open to amendment less than one year before an election. Given the importance of constituency boundaries, the proposed deadline of at least 180 days may not be sufficient to ensure impartial and comprehensive delimitation procedures before an election. The Venice

Commission and the OSCE/ODIHR therefore recommend undertaking the delimitation of constituencies at least one year in advance of an election.

[CDL-AD\(2017\)012](#) – *Republic of Moldova – Joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)*

30. Regarding the question “Is stability of the law(s) ensured (are laws on misuse of administrative resources stable insofar as they are only changed with fair warning, no shorter than one year before the elections)?”, the Code of Good Practice in Electoral Matters refers to the fundamental aspects of the electoral process such as electoral system, election administration, etc., which have to remain stable. Additionally, it should also be referred in this respect to the Venice Commission’s Interpretative Declaration of the Code of Good Practice on this issue. As not being among the fundamental elements of an electoral law, it has to be recalled that changes or introductions of appropriate provisions on liability and (administrative or criminal) sanctions for the breach of rules related to misuse of administrative resources are strongly recommended, even less than one year before elections. [...]

[CDL-AD\(2017\)006](#) – *Joint opinion on the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe*

85. [...] [T]he Venice Commission and the OSCE/ODIHR underline the importance of the principle of stability of the legislation. This principle should be guaranteed especially with regard to the fundamental elements of the legal framework, such as the composition of the election administration. Fundamental changes should not be made within one year before an election process and it is thus recommended that such changes should apply only after the upcoming May 2014 elections to the European Parliament. This does not preclude improving technical provisions of the legislation or bringing the legislation in compliance with the case-law of the European Court of Human Rights regarding the issue of prisoners’ voting rights.

[CDL-AD\(2014\)001](#) – *Bulgaria – Joint Opinion on the draft Election Code of Bulgaria*

135. The Venice Commission and OSCE/ODIHR recall that the stability of the electoral legislation is important for the public’s confidence in the electoral process. Amendments should therefore aim mainly at improving the conformity of the legislative framework with international standards.

[CDL-AD\(2011\)042](#) – *Albania – Joint opinion on the electoral law and the electoral practice of Albania*

11. [...] The law would also benefit from greater clarity on the term of the Election Commission, and if it is to stand for 4 years, or if it is to be replaced after each constitutive session of Parliament. Instability in the composition of the SEC [State Election Commission] would undermine the credibility of the electoral process.

[CDL-AD\(2008\)036](#) – *“the former Yugoslav Republic of Macedonia” – Opinion on the issue of the Re-appointment of the members of the State Election Commission of “the former Yugoslav Republic of Macedonia”*

7. In general, electoral matters should not be regulated in detail in the Constitution. In Albania there is, however, an evident concern to ensure the stability of the electoral choices in a political framework where conflicts are frequent and there is no common acceptance or interpretation of important rules of the democratic game. While it is therefore welcome that the new constitutional

regulation is less detailed and complex, it also seems appropriate that the basic choice in favour of a regional-proportional system is set forth in the text of the Constitution.

[CDL-AD\(2008\)033](#) – Albania – *Opinion on the Amendments to the Constitution of the Republic of Albania (Adopted on 21 April 2008 by the Assembly of the Republic of Albania)*

99. Furthermore, the decision of the Parliament to change once again the composition of the CEC [Central Election Commission] is a negative signal. The stability of the most sensitive features of electoral law, including the electoral system and the composition of the election Commissions, is essential to the legitimacy of the democratic process.

[CDL-AD\(2002\)009](#) – Georgia – *Opinion on the Unified Election Code of Georgia*

#### **IV. Temporality of electoral laws and inclusiveness of electoral reforms**

19. Whereas in many countries the electoral framework is stable and necessary amendments are adopted well ahead of the next election, in some other states significant changes to the election legislation occur frequently and late. In a number of countries (e.g. Italy, North Macedonia, Poland, Turkey) 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.

20. It should be stressed that, even if they implement international recommendations, late amendments to the electoral legislation limit the time needed for electoral preparations, including training and voter education, and make it difficult to apply the electoral legislation properly and uniformly. Voters and electoral contestants may also have difficulties adopting “last-minute” amendments. Furthermore, late changes to the electoral rules may be detrimental to a thorough and inclusive legislative process. They may even be perceived as politically biased, thus, undermining confidence in the elections.

[CDL-AD\(2020\)023](#) – *Report on electoral law and electoral administration in Europe*

13. The principle of stability of electoral law must be respected. For any substantial changes to apply to the upcoming local and presidential elections of September and November 2020, they need to be adopted well in advance of the process to allow sufficient time for stakeholders to become familiar with the new provisions and make preparations required for compliance. No legislative changes should be applied to the electoral processes already underway, such as, for example, local elections in certain areas. For the upcoming presidential election, in line with international good practice, those proposed changes that are technical and do not affect “fundamental elements of the election law”, could be applied, if they enter into force prior to the beginning of the electoral process for this election.

19. [...] With the exception of the new provisions about campaigning by third parties, the other general changes which could have an effect on the electoral process for presidential elections do not appear to significantly impact fundamental elements of the electoral legal framework to infringe upon the concept of stability. Nevertheless, those changes should be applied only if they enter into force before the start of the electoral process (including the compilation of the electoral rolls). In line with international good practice, the Venice Commission and ODIHR therefore recommend not to apply any legislative changes to the September 2020 local elections, and to

apply them to the next presidential elections only if necessary and if they enter into force prior to the beginning of the electoral process.

[CDL-PI\(2020\)011](#) – Republic of Moldova – Urgent joint opinion on the draft Law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services

21. ODIHR and the Venice Commission emphasised the importance of stability in electoral legislation and presented the European standards as the following: “[...] It must be added that the Venice Commission does not consider the one-year restriction as preventing a state from bringing its electoral law in accordance with the standards of Europe’s electoral heritage or the implementation of recommendations by international organisations. Indeed, some of the late amendments to the Electoral Code address concerns previously raised by the Venice Commission and the ODIHR. If new provisions affecting fundamental elements of electoral law are adopted within one year before an election, such amendments should only take effect after the forthcoming election.”

28. Adding to the concerns over the timing of the amendments, it is problematic that the March and April amendments were adopted in a hasty manner without a proper consultation of the relevant stakeholders, including the opposition parties and civil society. In numerous opinions, the Venice Commission and ODIHR have stressed the importance of a comprehensive and inclusive public consultation when adopting legal frameworks on issues of major importance for society, such as major amendments to electoral law. In the current case, the amendments were moreover made in a State of Emergency, limiting the space for democratic debate and the free expression of a plurality of views. While some amendments are technical, several amendments may have significant consequences for the exercise of suffrage rights (passive and active), the electoral result or the administration of elections. As emphasised by ODIHR and the Venice Commission on previous occasions, considering the importance of these amendments, as well as the 2017 constitutional reform’s effect on the existing electoral system (see 3 and 4 below), it is vital that they take place following an inclusive and thorough process of public consultation. Hasty and non-inclusive amendments to fundamental elements of the electoral law such as in the 2018 amendments, challenge the very legitimacy of the Turkish electoral system.

29. Taken together, significant changes to the [Turkish] electoral legislation were made very close to election day without meaningful public consultation. These amendments appear to have been initiated and finally adopted at a time when the same majority in the Parliament which initiated the amendments, also considered calling for early elections. The most significant amendments were also largely unrelated to the implementation of the 2017 constitutional reform. Based on this sequence of events as well as their content, the application of the March amendments for the 2018 parliamentary and presidential elections is clearly problematic and runs counter to the Code of Good Practice in Electoral Matters. Regardless of the actual motive behind the amendments, their timing and process challenge the legitimacy of Turkish electoral legislation.

[CDL-AD\(2018\)031](#) – Turkey – Joint Opinion of the Venice Commission and ODIHR on Amendments to the electoral legislation and related "harmonisation laws"

12. If any amendments are made to fundamental elements of electoral law, including the electoral system proper, they should take place well in advance of the next elections and at any rate at the latest one year beforehand. Should early elections be called after the introduction of changes to an electoral system, this system should be applied only at least one year after the adoption of the amendments.

[CDL-AD\(2017\)012](#) – Republic of Moldova – Joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)

18. The draft electoral code sets a new legal framework for the conduct of elections following the adoption of a revised Constitution in December 2015. As the Constitution requires the new code to enter into force by 1 June 2016, the timeframe for reform is very short.

19. The Code of Good Practice in Electoral Matters stipulates that fundamental elements of the electoral system should not be changed a year before an election so as to guarantee the stability of the law. However, it is equally important to have sufficient time for a thorough, inclusive, and public discussion in order to build consensus around major changes in electoral legislation.

[CDL-AD\(2016\)019](#) – Armenia – *Joint Opinion on the draft electoral code as of 18 April 2016*

63. Article 112 of the code vests the CEC [Central Election Commission] with the responsibility to form local election districts for the majoritarian contest, and to inform about the districts “within five days from calling of elections”. This provision is problematic because it gives way to instability in local election districts’ boundaries from one election to the other, and does not indicate which criteria the CEC should use in order to draw the boundaries. In addition, five days from the announcement of the election seem rather short for potential candidates to, first, know in which district they can run, and secondly, familiarise with the electoral districts. It is recommended this provision is reassessed taking into consideration the above mentioned concerns.

[CDL-AD\(2006\)023](#) – Georgia – *Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005*

14. Stability of electoral law is important for ensuring confidence in the electoral process. However, the freezing provision in the Final Provisions of the Law (paragraph 2), which states that amendments may be made to the Law no later than 240 days before the day of election of people’s deputies in 2006, may appear excessive. Given that the Law was only signed by the President on 7 July 2005, this left a window of just one month during which any amendments could be made. This provision is also of uncertain legal effect. This Law has no special status as compared to any law which could be adopted in the future; it would therefore appear that there is nothing to prevent the Supreme Rada from adopting a new law repealing this provision. This part of the Final Provisions could be interpreted as freezing the Law as it now stands for ever - or as long as the law is not totally revised -, not just in relation to the elections in 2006.

98. With respect to the final provisions, the second one foresees that “*amendments and additions to this Law may be made no later than 240 days before the day of election of national deputies of Ukraine in 2006*”. A rule absolutely respectful of the criterion of stability of electoral laws defended by the Venice Commission, but which may be too rigid, and in practice may cause problems if used with partisan aims.

[CDL-AD\(2006\)002rev](#) – Ukraine – *Opinion on the Law on Elections of People's Deputies of Ukraine by the Venice Commission and OSCE/ODIHR*

## **V. Relationship with constitutional jurisdiction**

76. As legitimate as may be the aim of preventing manipulations of the electoral process, the Constitutional Court as a constitutional organ should be trusted to play its role in a correct manner. The need to safeguard the stability of electoral law may justify excluding that such judgments are taken in the pre-electoral period. But no rules should be completely exempt from the control of constitutionality. If this provision is to be maintained at all, regarding legislation it will have to be modified to ensure that the Constitutional Court be able to review legislation adopted just before

the 12 months deadline. The exclusion of the control of normative acts issued by the Central Election Commission within 60 days prior to the election should be reconsidered.

[CDL-AD\(2017\)013](#) – Georgia – Opinion on the draft revised Constitution

8. The Code of Good Practice also discourages introducing any major changes at least one year before the next election so as to guarantee the stability of the law. However, the Electoral Code was required to be amended following the judgment by the Constitutional Court and presidential elections have to take place in 2016.

9. The draft law avoids as far as possible divergences from the election procedure applicable to parliamentary and local elections. As the next presidential election is scheduled for 30 October, the possibilities to revise the current Electoral Code are limited. The limited scope of the draft law is reasonable in general.

[CDL-AD\(2016\)021](#) – Republic of Moldova – Joint Opinion on the draft law on changes to the electoral code

## **VI. Exceptional situations / State of emergency**

98. The postponement of elections should be provided in law. In case an emergency law is missing, and the postponement is not provided, the factual situation may require postponement of elections, especially if the free movement or access to information is widely limited. The Code of Good Practice in Electoral Matters suggests that the electoral law should not be amended one year prior to the elections, except in technical matters. This principle should not be interpreted in a way forbidding the parliament to provide even during the state of emergency a legal ground for the postponement of elections, if this provision is missing. One cannot ask for elections to be organised in a situation where it is impossible in practice only due to the fact that the law has not foreseen the possibility for the postponement early enough.

102. A list of measures against such abuse has to be provided.

[..]

c. The postponement of elections may be limited in time by law, providing for the elections taking place even during the state of emergency if it lasts for long time, e.g. over a year. [...]

110. It is possible to provide for exceptional voting modalities during a state of emergency. Once again, the best solution would be to provide these modalities in the electoral law in advance, during ordinary circumstances. Usually, voting modalities do not have a strong impact on the election results. Thus, making a change of the election code as regards voting modalities less than one year before elections may possibly be in accordance with the Code of Good Practice in Electoral Matters if it is necessary for, or contributes to, fair elections. All the principles governing elections cannot be followed at the same level as in normal times (e.g. free elections and periodicity of elections). However, such late amendments may only be in accordance with best European practices if the principle of free suffrage is guaranteed in its core elements and such special means are in accordance with the requirements stipulated in the Code of Good Practice in Electoral Matters, I.3.2 and other documents, e.g. Recommendation CM/Rec(2017)5 of the Committee of Ministers to member States on standards for e-voting.

[CDL-PI\(2020\)005rev](#) – Report – Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections

101. International standards, as reflected in Article 3 Protocol 1 to the ECHR, Article 25.1.b of the ICCPR and the Code of Good Practice in Electoral Matters, include the fundamental principles of universal, free and secret suffrage, but also of periodicity of elections and stability of electoral law. [...]

104. Adopting new rules during emergency situations raises the issue of stability of electoral law, and, if derogating from the normal division of powers, those of legality and the separation of powers.

116. The principle of stability of electoral law is a guarantee for legal certainty: changes of the fundamental rules of the game should take place well in advance of elections (one year at least), and the rules should not be changed during the game - "any reform of electoral legislation to be applied during an election should occur early enough for it to be really applicable to the election".

130. [...] [T]he call for elections during states of emergency is prohibited in some countries. However, there does not seem to be legislation about their holding when they were already called.

*[CDL-AD\(2020\)018](#) – Interim Report on the Measures Taken in the EU Member States as a Result of the Covid-19 Crisis and their Impact on Democracy, the Rule of Law and Fundamental Rights*

51. The legitimate aim of maintaining the constitutional order can justify the postponement of elections in exceptional situations, such as state of war or natural catastrophes. When a severe crisis affects a country, elections might indeed exacerbate political conflicts and it may be necessary to seek a solution to the crisis. In very exceptional conditions it can be the duty of the authorities to postpone elections with a view to reduce tensions and to give voters the possibility of expressing their will in a safe and well-ordered context.

*[CDL-AD\(2019\)019](#) – Albania – Opinion on the powers of the President to set the dates of elections in a parliamentary system*

## **VII. Stability of referendum law**

### **3. Regulatory levels and stability of referendum law**

a. Apart from rules on technical matters and detail (which may be included in regulations of the executive), rules of referendum law should have at least the rank of a statute and not be adopted *ad hoc* for a specific referendum.

b. The fundamental aspects of referendum law should not be open to amendments to be applied during the year following their enactment, or should be written in the constitution or at a level superior to ordinary law.

c. Adoption of legislation on referendums should take place by broad consensus after extensive public consultations with all the stakeholders.

d. Fundamental rules include, in particular, those concerning:

- the composition of electoral commissions or any other body responsible for organising the referendum
- the franchise and electoral registers;
- the procedural and substantive validity of the text put to a referendum;

- the effects of the referendum (with the exception of rules concerning matters of detail);
- the participation of the proposal's supporters and opponents to broadcasts of public media.

[CDL-AD\(2020\)031](#) – *Revised guidelines on the holding of referendums (p. 11)*

19. The wording of the guidelines is slightly less restrictive than the Code of Good Practice in Electoral Matters as regards the requirement that all rules of referendum law – apart from rules on technical matters and detail – should have the rank of a statute, using the term “should” rather than “must”. Where a referendum is requested by the executive, it is conceivable that the latter could set the rules for it. Such a situation is not entirely satisfactory, however, and the requirement for a procedural statute is the norm (point II.2.a).

20. The list of fundamental aspects of referendum law, which should not be open to amendment less than one year before a referendum, at least if they are set out in ordinary legislation, takes into account the specific nature of referendums by including rules on the procedural and substantive validity of texts put to a referendum and the effects of referendums. It also emphasises the need for rules on the franchise and electoral registers, and access to the public media for the proposal's supporters and opponents. In addition, it must be understood in the light of the Interpretive Declaration on the Stability of the Electoral Law adopted by the Venice Commission in 2005: in particular, the stability of referendum law cannot be invoked to maintain a situation contrary to the norms of Europe's electoral heritage in the area of direct democracy or to prevent the implementation of recommendations by international organisations. Furthermore, given that it is unusual for the date of a referendum to be known a year or more in advance (whereas elections normally take place at set intervals), it is a matter not so much of prohibiting legislative amendments during the year preceding the vote as of prohibiting the application of such amendments during the year following their enactment, in case there are suspicions of manipulation (point II.2.b).

[CDL-AD\(2007\)008rev-cor](#) – *Code of good practice on referendums (see also Guideline II. 2)*

32. Law no. 129/2007 removing the 50 per cent participation quorum for the referendum on the suspension of the President was adopted on 5 May 2007. A referendum on presidential suspension was held on 19 May 2007. The Government Emergency Ordinance no. 41/2012, also removing the quorum, was published on 5 July 2012. The referendum took place on 29 July 2012. This means that both in 2007 and in 2012, the quorum required for the adoption of a referendum on the suspension of the President was changed while a suspension was imminent. In other words, the rules of the game were changed while the game was under way. Such event driven changes of electoral legislation amount to a violation of the legal certainty and the principle of the stability of the referendum process.

49. A call for the non-respect of a provision of the law, even if the result of its application does not correspond to the will of a considerable part of population at a given moment, is in contradiction to the rule of law. Such provisions can be amended or removed through the appropriate legislative procedures in Parliament but they cannot simply be ignored or overridden with a reference to the popular will, even if this will is expressed in a referendum. In such cases, which are so critical for the future of the state, it is essential to respect the stability of the established law. One party to the conflict cannot change the ‘rules of the game’ while the game is already in full swing. Even if there may be valid reasons to change an electoral rule, this must not be done just before elections or a referendum and even less once the official results have been announced.

[CDL-AD\(2012\)026](#) – *Romania – Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency*



*ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania*

65. As regards the issue of the right of Montenegrin citizens in Serbia to vote, the Commission cannot recommend a change of major scope to the present electoral rules which would imply adding more than 260,000 people to the voters' list. Such a change at the present stage would be incompatible with the necessary stability of the voting rules and jeopardise the legitimacy of the referendum as well as the reliability of the voters' list.

[CDL-AD\(2005\)041](#) – Montenegro – *Opinion on the Compatibility of the Existing Legislation in Montenegro concerning the Organisation of Referendums with Applicable International Standards*

### **VIII. Reference documents**

[CDL-AD\(2020\)036](#) – Albania – Joint Opinion of the Venice Commission and the OSCE/ODIHR on the amendments to the Constitution of 30 July 2020 and to the Electoral Code of 5 October 2020

[CDL-AD\(2020\)031](#) – Revised guidelines on the holding of referendums

[CDL-AD\(2020\)023](#) – Report on electoral law and electoral administration in Europe

[CDL-AD\(2020\)018](#) – Interim Report on the Measures Taken in the EU Member States as a Result of the Covid-19 Crisis and their Impact on Democracy, the Rule of Law and Fundamental Rights

[CDL-PI\(2020\)011](#) – Republic of Moldova – Urgent joint opinion on the draft Law no. 263 amending the Electoral Code, the Contravention Code and the Code of Audiovisual Media Services

[CDL-PI\(2020\)005rev](#) – Report – Respect for Democracy Human Rights and Rule of Law during States of Emergency – Reflections

[CDL-AD\(2019\)030](#) – Report on the compliance with Council of Europe and other international standards of the inclusion of a not internationally recognised territory into a nationwide constituency for Parliamentary elections

[CDL-AD\(2019\)019](#) – Albania – Opinion on the powers of the President to set the dates of elections

[CDL-AD\(2018\)031](#) – Turkey – Joint Opinion of the Venice Commission and ODIHR on Amendments to the electoral legislation and related "harmonisation laws"

[CDL-AD\(2018\)027](#) – Uzbekistan – Joint opinion on the draft election code

[CDL-AD\(2018\)010](#) – Report on Term Limits - Part I - Presidents

[CDL-AD\(2018\)009](#) – Report on the identification of electoral irregularities by statistical methods

[CDL-AD\(2017\)013](#) – Georgia – Opinion on the draft revised Constitution

[CDL-AD\(2017\)012](#) – Republic of Moldova – Joint opinion on the draft laws on amending and completing certain legislative acts (electoral system for the election of the Parliament)

[CDL-AD\(2017\)006](#) – Joint opinion on the draft checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level of the Congress of Local and Regional Authorities of the Council of Europe

[CDL-AD\(2016\)021](#) – Republic of Moldova – Joint Opinion on the draft law on changes to the electoral code

[CDL-AD\(2016\)019](#) – Armenia – Joint Opinion on the draft electoral code as of 18 April 2016

[CDL-AD\(2016\)004](#) – Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes

[CDL-AD\(2014\)001](#) – Bulgaria – Joint Opinion on the draft Election Code of Bulgaria

[CDL-AD\(2012\)026](#) – Romania – Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania

[CDL-AD\(2012\)012](#) – Hungary – Joint Opinion on the Act on the Elections of Members of Parliament of Hungary

[CDL-AD\(2012\)005](#) – Report on measures to improve the democratic nature of elections in Council of Europe member states

[CDL-AD\(2011\)042](#) – Albania – Joint opinion on the electoral law and the electoral practice of Albania

[CDL-AD\(2010\)047](#) – Ukraine – Opinion on the draft election code of the Verkhovna Rada of Ukraine

[CDL-AD\(2010\)037](#) – Report on the timeline and inventory of political criteria for assessing an election

[CDL-AD\(2009\)005](#) – Albania – Joint Opinion on the Electoral Code of the Republic of Albania by the Venice Commission and the OSCE/ODIHR

[CDL-AD\(2008\)036](#) – “the former Yugoslav Republic of Macedonia” – Opinion on the issue of the Re-appointment of the members of the State Election Commission of “the former Yugoslav Republic of Macedonia”

[CDL-AD\(2008\)033](#) – Albania – Opinion on the Amendments to the Constitution of the Republic of Albania (Adopted on 21 April 2008 by the Assembly of the Republic of Albania)

[CDL-AD\(2007\)008rev-cor](#) – Code of good practice on referendums

[CDL-AD\(2006\)023](#) – Georgia – Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005

[CDL-AD\(2006\)018](#) – Report on Electoral Law and Electoral Administration in Europe – Synthesis study on recurrent challenges and problematic issues

[CDL-AD\(2006\)008](#) – “the Former Yugoslav Republic of Macedonia” – Joint Opinion on the Draft Electoral Code of “the Former Yugoslav Republic of Macedonia” by the Venice Commission and OSCE/ODIHR

[CDL-AD\(2006\)002rev](#) – Ukraine – Opinion on the Law on Elections of People's Deputies of Ukraine by the Venice Commission and OSCE/ODIHR

[CDL-AD\(2005\)043](#) – Interpretative Declaration on the Stability of the Electoral Law

[CDL-AD\(2005\)041](#) – Montenegro – Opinion on the Compatibility of the Existing Legislation in Montenegro concerning the Organisation of Referendums with Applicable International Standards

[CDL-AD\(2004\)010](#) – Opinion on the draft ACEEEO Convention on Election Standards, Electoral Rights and Freedoms

[CDL-AD\(2002\)023rev2-cor](#) – Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report

[CDL-AD\(2002\)009](#) – Georgia – Opinion on the Unified Election Code of Georgia

[CDL-INF\(2001\)016](#) – Switzerland – Opinion on the Electoral Law of the Canton of Ticino