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(VENICE COMMISSION)

REPORT

ON

**THE IMPACT OF THE PRE-TRIAL DETENTION OF MAYORS ON THE
EXERCISE OF LOCAL DEMOCRATIC GOVERNANCE**

**Adopted by the Venice Commission
at its 144th Plenary Session
(Venice, 9-10 October 2025)**

on the basis of comments by

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I. Introduction

1. By letter of 5 June 2025, Mr Marc Cools, President of the Congress of Local and Regional Authorities of the Council of Europe ("Congress"), requested an opinion of the Venice Commission of the Council of Europe on the impact of the prolonged pre-trial detention of opposition mayors on the exercise of local democratic governance in Türkiye.
2. For the reasons further exposed at paragraph 12 below, the Bureau of the Venice Commission decided to deal with the question of the impact of mayors' pre-trial detention on local democratic governance in the form of a non country-specific report. The Venice Commission informed the Congress and the Turkish authorities accordingly, respectively with letters of 2 September and 26 September 2025.
3. Ms Monique Jametti Greiner, Ms Janine Otálora Malassis, Mr Cesare Pinelli and Mr Kaarlo Tuori acted as rapporteurs for this report.
4. The Venice Commission has conducted a comparative study of the existing rules on suspension and replacement mechanisms for mayors in pre-trial detention in its member states. It carried out its analysis on the basis of the replies it received to a questionnaire which was sent to the Commission members (CDL-PI(2025)016).¹
5. This opinion was drafted on the basis of comments by the rapporteurs and the results of the comparative research. It was adopted by the Venice Commission at its 144th Plenary Session (Venice, 9-10 October 2025).

II. Background and scope of the report

Background

6. On 27 March 2025, the Congress adopted Declaration 12(2025) on the Dismissals of mayors in Türkiye, in which it expressed "deep concern over clear signs of degradation of the working conditions of local and regional elected representatives and the weakening of fundamental freedoms and the rule of law in Türkiye, marked by an acceleration of the dismissals, arrests and prosecutions of opposition mayors on grounds of terrorism and corruption."²
7. Among other things, the Declaration called upon the Turkish authorities to implement the Congress Recommendation 519 (2024)³ and the 2020 Venice Commission Opinion on the replacement of elected candidates and mayors,⁴ and abolish the practice of dismissing mayors and appointing trustees; and to guarantee the rights of the defence and refrain from making extensive use of pre-trial detention when clear evidence of reasonable suspicion is missing.⁵ The Congress had previously invited Türkiye, again in line with the 2020 Venice Commission Opinion, to "repeal Article 45(1) added in 2016 to the Municipality Law, and, in the event of a mayor being removed, to consider alternative solutions to respect the will of the voters, such as allowing the municipal councils to choose a replacement mayor or repeating the mayoral elections."⁶
8. According to data provided by the Congress, following the 2024 local election, multiple opposition mayors have been arrested and suspended from office on various charges, including

¹ Replies to this questionnaire, sent in September 2025, in which the rapporteurs enquired about the relevant legal framework were received from 37 Venice Commission members. The material collected is available by [country](#) and by [question](#). Where necessary, additional desk-research was undertaken by the Commission.

² [Congress Declaration 12 \(2025\)](#), Dismissals of mayors in Türkiye, 27 March 2025, para. 2.

³ [Congress Report CG\(2024\)47-16](#), Local Elections in Türkiye, 31 March 2024.

⁴ Venice Commission, [CDL-AD\(2020\)011](#), Turkey - Opinion on the Replacement of Elected Candidates and Mayors.

⁵ [Congress Declaration 12 \(2025\)](#), Dismissals of mayors in Türkiye, 27 March 2025, paras. 13(a), (d).

⁶ [Congress Report CG\(2024\)47-16](#), Local Elections in Türkiye, 31 March 2024, Recommendation 6(n).

corruption and terrorism-related allegations. As of July 2025, this includes at least 13 mayors on corruption charges, and 13 mayors on terrorist charges, including high-profile detainees like the mayors of the metropolitan cities of Istanbul, Antalya and Adana.⁷ Specifically, Congress noted that since 2024, 13 directly elected mayors have been removed and replaced by trustees and four million Turkish citizens currently live in municipalities governed by government-appointed administrators.⁸

9. At the same time, Congress expressed deep concern regarding “the extensive use of pre-trial detention” in such cases and noted that “such detentions, especially when perceived as disproportionate, challenge the presumption of innocence and risk stifling pluralism and limiting freedom of political debate.” The initial request from Congress was submitted in respect of the arrest in March 2025 of Ekrem Imamoğlu, Mayor of the Metropolitan Municipality of Istanbul, and more generally of the “degradation of the working conditions of local and regional elected representatives.”⁹

10. As noted above, it is not the first time that the Venice Commission is called upon to assess a variety of legislative texts concerned with the exercise of local democracy in Türkiye. At the request of the Congress, the Venice Commission already issued an Opinion on the provisions of the Emergency Decree Law no. 674 of 1 September 2016 which concern the exercise of local democracy in Türkiye (October 2017),¹⁰ and an Opinion on the replacement of elected candidates and mayors (June 2020).¹¹ In these Opinions, the Venice Commission assessed in detail the legal framework in place for the suspension and replacement of mayors, as amended by the entry into force of Decree Law No. 674 of 1 September 2016.

Scope

11. The Commission recalls that as the consultative body of the Council of Europe on constitutional matters, its primary role is to provide legal advice in the field of democracy, human rights and rule of law.¹² As such, the Commission neither has the competence over, nor is it possible for the Commission to examine decisions taken in individual cases.¹³ The Commission therefore cannot assess, for example, whether the substantive and procedural requirements of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“ECHR” or “Convention”) have been respected in the cases referenced by Congress in its submission.

12. Considering the two recent opinions of the Commission on the legal framework regulating suspension and replacement of mayors in Türkiye, a decision was taken by the Bureau of the Commission to adopt, instead of the requested opinion, the present Report, which assesses the impact of mayors’ pre-trial detention on local democratic governance in general. It is complemented by a comparative section, on which further details are provided below.

III. International standards

13. The standards outlined in the following consider the impact of mayors’ pre-trial detention on local democratic governance from two perspectives – on the one hand, the impact on the individual rights of the elected mayors and, on the other hand, the impact on the rights of the voters who elected them.

⁷ Data provided by the Secretariat of Congress.

⁸ [Congress Declaration 12 \(2025\)](#), Dismissals of mayors in Türkiye, 27 March 2025, para. 6; [Statement by Congress co-Rapporteurs on local democracy in Türkiye](#), 18 February 2025.

⁹ Congress Request, 5 June 2005.

¹⁰ Venice Commission, [CDL-AD\(2017\)021](#), Turkey - Opinion on the Provisions of the Emergency Decree Law N° 674 of 1 September 2016 which Concern the Exercise of Local Democracy in Turkey.

¹¹ Venice Commission, [CDL-AD\(2020\)011](#), *op. cit.*

¹² [Venice Commission: Statute, Rules of procedure, Principles of Conduct](#), p. 60.

¹³ Venice Commission, [CDL-AD\(2017\)021](#), *op. cit.*, para. 11.

A. Right to Liberty and Security (Article 5 ECHR; Article 9 ICCPR)

14. Article 5 of the Convention guarantees a right of primary importance in a “democratic society” within the meaning of the Convention, namely the right to liberty and security.¹⁴ It can only be limited in very specific cases, as exhaustively detailed in Article 5(1). One of the most common types of deprivation of liberty in connection with criminal proceedings is detention pending trial, pursuant to Article 5(1)(c).¹⁵ In respect of this fundamental right, which is also reflected at Article 9(3) of the International Covenant on Civil and Political Rights (“ICCPR”), the United Nations Human Rights Committee clarified that pre-trial detention must be exceptional, justified by case-specific reasons and subject to ongoing review.¹⁶ Where the person placed in pre-trial detention is an elected representative, the below considerations must take into account the specific context that comes with such a position, as has been noted by the Court in the past¹⁷ and as will be further elaborated upon below.

15. The “reasonableness” of the suspicion on which an arrest must be based forms an essential part of the safeguard laid down in Article 5(1)(c) and presupposes the existence of facts or information which would satisfy an objective observer that the person concerned may have committed the offence.¹⁸ Whether a period of time spent in pre-trial detention is “reasonable” cannot be assessed in the abstract and it is for the national judicial authorities to ensure that, in a given case, the pre-trial detention of an accused person does not exceed a reasonable time.¹⁹ Both the concept of “speedy” decision (Article 5(4)) and “reasonable time” (Article 5(3)) must be determined in the light of the circumstances of each case, including the complexity of the proceedings, their conduct by the domestic authorities and by the detained individual and what was at stake for the latter.²⁰

16. Finally, any judicial control must be prompt in order to allow for a remedy against possible ill-treatment and to keep to a minimum any unjustified interference with individual liberty.²¹ Continued detention can be justified in a given case only if there are actual indications of a genuine requirement of public interest which, notwithstanding the presumption of innocence, outweighs the rule of respect of individual liberty laid down in Article 5.²²

¹⁴ ECtHR, *Demirtaş v. Turkey (no. 2)* [GC], [Application no. 14305/17](#), 22 December 2020, para. 314.

¹⁵ In relevant parts, Article 5(1)(c), (3) and (4) read:

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

[...] (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; [...]

3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

¹⁶ United Nations Human Rights Committee, General comment No. 35, Article 9 (Liberty and security of person), [CCPR/C/GC/35](#), paras. 37-38; see also Principle 39 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (United Nation General Assembly Resolution GA/Res/43/173, [Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment](#)).

¹⁷ See, e.g., ECtHR, *Mecit and others v. Türkiye*, [Application nos. 69884/17 and 81 others](#), 12 December 2023; *Eriş and Others v. Türkiye*, [Application nos. 58665/17 and 44 others](#), 24 October 2023.

¹⁸ ECtHR, *Demirtaş v. Turkey (no. 2)* [GC], *op. cit.*, paras. 314, 355; The persistence of a reasonable suspicion that the detainee has committed an offence is a *sine qua non* for the validity of his or her continued detention.

¹⁹ ECtHR, *Buzadji v. the Republic of Moldova* [GC], [Application no. 23755/07](#), 5 July 2016, para. 90.

²⁰ ECtHR, *Kavala v. Turkey*, [Application no. 28749/18](#), 11 May 2020, para. 180.

²¹ ECtHR, *De Jong, Baljet and Van den Brink v. the Netherlands*, [Applications no. 8805/79, 8806/79, 9242/81](#), 22 May 1984, para. 51; *Aquilina v. Malta* [GC], [Application no. 25642/94](#), 29 April 1999, paras. 48-49.

²² ECtHR, *Buzadji v. the Republic of Moldova* [GC], *op. cit.*, para. 90 (with further references).

B. Freedom of Expression and Assembly (Articles 10, 11 ECHR; Articles 19, 21 ICCPR)

17. The freedom of expression protected in Article 10 of the Convention constitutes “one of the essential foundations of [democratic] society, one of the basic conditions for its progress and for the development of every man.”²³ Interferences with Article 10 may be justified only insofar as they pursue a legitimate aim, are provided for by law and lawful (in terms of the quality of the Law) and are proportionate to the legitimate aim pursued and necessary in a democratic society. The right to freedom of expression is also regulated at Article 19 ICCPR, and has been described as constituting the “foundation stone for every free and democratic society.”²⁴ In a relevant case, the Court noted that freedom of expression is particularly important for elected representatives, who represent their electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with the freedom of expression – in this particular case of an opposition member of parliament – call for the closest scrutiny on the part of the Court.²⁵

18. Article 11 as right to freedom of peaceful assembly is a fundamental right in a democratic society and, like freedom of expression, one of the foundations of a democratic society.²⁶ Also found at Article 21 ICCPR, the right of peaceful assembly “enables individuals to express themselves collectively and to participate in shaping their societies.”²⁷ Notwithstanding its autonomous role and particular sphere of application, Article 11 must also be considered in the light of Article 10, where the aim of the exercise of freedom of assembly is the expression of personal opinions as well as the need to secure a forum for public debate.²⁸

C. Limitation on use of restrictions on rights (Article 18 ECHR)

19. The purpose of Article 18 of the Convention²⁹ is to prohibit the misuse of power, by preventing abusive and illegitimate limitations of Convention rights and freedoms through State action which run counter to the very spirit of the Convention.³⁰

20. The jurisprudence of the Court has concerned itself specifically with the notion of “ulterior purpose”, described as a purpose which is not prescribed by the relevant provision of the Convention and which is different from that proclaimed by the authorities.³¹ In considering the nature and degree of reprehensibility of the alleged ulterior purpose, consideration is given to the impact of the impugned restriction and the extent of gravity of the ulterior purpose. In a number of cases, the Court has found that pre-trial detention of elected representatives – when there are no other proven grounds for the detention – pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate.³²

²³ ECtHR, *Handyside v. the United Kingdom*, [Application no. 5493/72](#), 7 December 1976, para. 49; *Sanchez v. France* [GC], [Application no. 45581/15](#), 15 May 2023, para. 145.

²⁴ United Nations Human Rights Committee, General comment No. 34, Article 19 (Freedoms of opinion and expression), [CCPR/C/GC/34](#), para. 2.

²⁵ ECtHR, *Demirtaş v. Turkey (no. 2)* [GC], *op. cit.*, paras. 242-245.

²⁶ ECtHR, *Djavit An v. Turkey*, [Application no. 20652/92](#), 9 July 2003, para. 56; *Kudrevičius and Others v. Lithuania* [GC], [Application no. 37553/05](#), 15 October 2015, para. 91.

²⁷ United Nations Human Rights Committee, General comment No. 37, Article 21 (Right of peaceful assembly), [CCPR/C/GC/37](#), para. 1.

²⁸ ECtHR, *Ezelin v. France*, [Application no. 11800/85](#), 26 April 1991, para. 37; *Éva Molnár v. Hungary*, [Application no. 10346/05](#), 7 January 2009, para. 42.

²⁹ It reads as follows: “The restrictions permitted under [the] Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

³⁰ ECtHR, *Merabishvili v. Georgia*, [Application no. 72508/13](#), 28 November 2017, para. 303.

³¹ ECtHR, *Ilgar Mammadov v. Azerbaijan*, [Application no. 15172/13](#), 22 May 2014, para. 137; *Khodorkovskiy v. Russia*, [Application no. 5829/04](#), 31 May 2011, para. 255; *Merabishvili v. Georgia*, *op. cit.*, para. 283. In that context, the Court has, in recent years, moved from an initial assumption of good faith on behalf of authorities to a more objective assessment of the presence or absence of an ulterior purpose and thus of a misuse of power.

³² ECtHR, *Demirtaş v. Turkey (no. 2)* [GC], *op. cit.*, para. 436; *Kavala v. Turkey*, *op. cit.*, para. 231. In particular, it is assessed whether the impugned restriction would affect merely the individual applicant or his fellow

D. Electoral Rights

1. Article 3 of Protocol No. 1 ECHR, Article 25 ICCPR

21. As the issue at stake concerns locally elected representatives, international standards related to electoral rights and to local democratic governance are also relevant. The right to vote and to stand for election is enshrined in Article 3 of Protocol No. 1 to the Convention. ECtHR jurisprudence establishes that the rights in question are not absolute but subject to “implied limitations” and Contracting States must be given a margin of appreciation in this sphere.³³ In assessing the interference with Article 3 of Protocol 1, the Court verifies whether there has been arbitrariness or a lack of proportionality, and whether the restriction has interfered with the free expression of the people.³⁴

22. According to consistent case-law of the ECtHR, Article 3 of Protocol no. 1 concerns only the choice of the legislature. Accordingly, in principle it does not cover local elections, whether municipal or regional.³⁵ The Commission has recalled in the past that the right to be elected is inherently linked to the right to sit as an elected person, and has described the *rationale* behind this rule as follows: “the right to be elected would be an empty shell, deprived of any effectiveness, if the legal protection of that right did not extend to elected representatives in carrying out their duties on behalf of the voters.”³⁶ More specifically, the Commission noted that it considered that this principle applies to “all elective positions”.³⁷

23. Congress, in turn, claims that the right to free elections should be extended to all types of elections and referendums, in order to guarantee fundamental protections for candidates and voters alike.³⁸

24. The provisions in Article 25(b) of the ICCPR, which also enshrine the right to vote and to stand for election, under the umbrella of a broader right to participate in public life, have been considered applicable to municipal elections.³⁹ Whilst it does not contain a list of “legitimate” aims capable of justifying restrictions to the exercise of the rights it guarantees, relevant interpretative material provides that any restrictions to the exercise of the rights protected by Article 25 should be based on “objective and reasonable criteria.” More specifically, no “unreasonable restrictions” should be imposed on citizens’ participation in the conduct of public affairs.⁴⁰

2. European Charter on Local Self-Government

25. In view of the impact of the practice under examination on electoral rights at the local level, the provisions of the European Charter of Local Self-Government (“Charter”) gain particular relevance. Already in its preamble, the Charter points to the link between local government and democracy, which should be considered the “core” of the Charter by stating that “local authorities are one of the main foundations of any democratic regime” (recital 3).⁴¹ The Charter provides for the principle of the election of councils and assemblies by free, secret, equal, universal and direct

activists/supporters, or the very essence of democracy as a means of organising society in which individual freedom may only be limited in the general interest.

³³ ECtHR, *Ždanoka v. Latvia*, [Application no. 58278/00](#), 16 March 2006, para. 103.

³⁴ ECtHR, *Mathieu-Mohin and Clerfayt v. Belgium*, [Application no. 9267/81](#), 2 March 1987, para. 52; *Ždanoka v. Latvia*, *op. cit.*, paras. 103-104, 115.

³⁵ ECtHR, *Xuereb v. Malta*, [Application no. 52492/99](#), 15 June 2000; *Salleras Llinares v. Spain*, [Application No. 52226/99](#), 12 October 2000; *Malarde v. France*, [Application no. 46813/99](#), 5 September 2000.

³⁶ Venice Commission, [CDL-AD\(2023\)050](#), Ukraine - *Amicus Curiae* Brief on Additional Sanctions for Committing an Administrative Offence, para. 18.

³⁷ Venice Commission, [CDL-AD\(2023\)050](#), *op. cit.*, para. 18, with further references.

³⁸ [Congress DEC 12 \(2025\)](#), Dismissals of mayors in Türkiye, para. 10.

³⁹ UN Human Rights Committee, *Ignatane v. Latvia*, [Communication No. 884/1999](#), 31 July 2001, para. 7.4.

⁴⁰ United Nations, Human Rights Committee, [CCPR/C/21/Rev.1.Add.7, General Comment No. 25](#), paras. 4, 6, 15.

⁴¹ Congress, [CG-FORUM\(2020\)02-205 final](#), A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government (“Congress Commentary”), para. 5.

suffrage (Article 3(2)). Furthermore, Article 3(2) indicates how the interests of the local population are determined, i.e. by the local population itself, by way of democratic decision-making.⁴² The Charter also prescribes that representatives must be free in the exercise of their mandate (Article 7(1)) and that any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles (Article 7(2)).

26. As far as local democracy is concerned, Articles 3(2) and 7(1) of the Charter provide a basis to infer relevant principles. These notably include “the choice of representative democracy at local level, in which decision-making power is exercised by councils or assemblies directly elected by the people. [...] This principle determines that ‘the right of citizens to participate in the conduct of public affairs’ mentioned in the preamble [of the Charter] is mainly exercised at local level by elected local representatives. Local elections therefore play a key role in local democracy: local representatives must be directly elected in free elections, by secret ballot on the basis of direct, equal and universal suffrage.”⁴³ Whereas the Charter does not specify where this democratic legitimacy lies, the Additional Protocol to the Charter enshrines the right of everyone within a local authority’s jurisdiction to participate in the affairs of that authority.⁴⁴

27. Notwithstanding the above, the question still arises as to whether these provisions apply to directly elected mayors. Article 3 of the Charter does not mention a need to have executive bodies, or the way in which they should be appointed, but only states that elected councils or assemblies “may possess executive organs responsible to them.”⁴⁵ Therefore, it could be argued that this provision of the Charter is not applicable to directly elected mayors, since they cannot be described as executive organs “of” the local council. In the opinion of the Congress, however, the trend of directly elected mayors that has spread across Europe in recent decades could not really be anticipated at the time of the drafting of the Charter.⁴⁶ In subsequent Recommendations, the Congress has stated that Article 3(2) leaves the door open to the direct election of the executive.⁴⁷

28. With regard to the right to sit as an elected person (see above paras. 21-22), the Congress has stressed that “[l]ocal democracy is not only about free and fair elections and should also enable locally elected politicians to draw up local strategies and policies in response to the needs of the local population.”⁴⁸ The provisions in Article 7 examined above enshrine this principle for local elected representatives.

⁴² [Congress Commentary](#), para. 37

⁴³ [Congress Commentary](#), para. 39.

⁴⁴ Article 1 of the Additional Protocol; The Congress Commentary notes that only one provision in the Charter’s preamble is substantive and establishes “a right not mentioned in the Charter, namely ‘the right of citizens to participate in the conduct of public affairs.’ This dimension has been implemented by the Additional Protocol. [...] This ‘right of citizens’ was enshrined at a later date in the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, which entered into force on 1 June 2012”. ([Congress Commentary](#), paras. 2, 6).

⁴⁵ [Congress Commentary](#), para. 41.

⁴⁶ [Congress Commentary](#), para. 42.

⁴⁷ See [Congress Recommendation 113 \(2002\)](#) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy). See also: [Congress Recommendation 151 \(2004\)](#) on the advantages and disadvantages of a directly elected local executive in the light of the principles of the Charter; In its more recent contemporary commentary to the Charter and its explanatory report, the Congress also sheds light on this issue. In its examination of the provisions in Article 6 of the Charter, which aims to safeguard local autonomy by allowing local authorities to establish internal administrative structures and arrangements, the Congress delves into the institutional make-up of a local authority and concludes that “[t]he power to take decisions in this field will depend on different factors, such as the existence of directly elected mayors or mayors elected by the council. In the former case, both the mayor and the local council may have the power to determine the internal structure of their respective organisational spheres. In the latter case, the power to determine the entire organisational structure of the local authority is usually vested in the council, which approves by-laws, statutes or similar internal rules establishing the different organs, services and divisions of local government. This power may be delegated to the mayor, for the specific organisation of the mayoral office.” ([Congress Commentary](#), paras. 49, 99).

⁴⁸ [Congress Commentary](#), para. 45.

29. In particular, the Congress notes that “Article 7.1 [of the Charter] seeks to ensure that citizens are free to serve as elected representatives and are not prevented from holding political office owing to financial or material considerations. Nobody should be deterred from standing for election at local level; once elected, local councillors should not be prevented from discharging their duties effectively.”⁴⁹ While the Charter is silent on the particular conditions of eligibility and possible incompatibilities, the Congress has recently argued that “[r]estrictions on holding elected office should be as limited as possible and set out in national laws, which means they apply to all levels of government. The main restrictions on holding office should be related to potential conflicts of interest or involve a commitment that prevents the local representative from discharging his or her duties for the local authority in a professional way.”⁵⁰

IV. Comparative Findings

30. As outlined above, the Venice Commission has carried out a comparative research on the conditions which could lead to the temporary suspension or permanent removal of a mayor where charges are brought against them, as well as concerning their subsequent replacement. In doing so, the Commission has considered mayors irrespective of their manner of election or appointment and the below study therefore includes both directly and indirectly elected mayors, as well as those appointed by the government. Where relevant, the manner of election or appointment has been specified. At the outset, the Commission wishes to underline that evidence from different legal systems cannot be definitively compared in isolation from the whole legal framework and without taking into due account the specific broader social, political and historical background.

31. To conduct this comparative research, the following two questions were sent by way of questionnaire to all Venice Commission members:

- *Under which circumstance(s) can the pre-trial detention of a mayor lead to their permanent/temporary suspension? What kind of guarantees exist?*
- *Provided that a mayor is permanently/temporarily suspended during pre-trial detention, are there any mechanism(s) in place in your legal framework to replace them? If so, please specify whether these mechanisms are permanent or temporary and which kind of guarantees apply.*

Responses were provided by 37 Venice Commission members⁵¹ and complemented by desk research, where necessary. The Commission expresses its gratitude to all members who contributed with responses to the present analysis. The individual results of this questionnaire are available online,⁵² and the information provided has been analysed and organised into clusters as per the below.

A. Suspension and removal mechanisms for mayors

32. As a first step, the Commission has focused its comparative analysis on rules and procedures applicable to the temporary suspension and permanent removal of mayors when criminal charges are brought against them, as well as any safeguards attached thereto.

⁴⁹ This paragraph is therefore closely linked to paragraph 2, which deals with financial compensation (see below). By “local elected representatives”, the Charter means any person holding political office (“mandat” in French) on the basis of an election (basically, local/provincial council members, mayors, etc.).”

⁵⁰ [Congress Commentary](#), para. 120.

⁵¹ Algeria, Austria, Belgium, Canada (British Columbia), Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Republic of Korea, Kosovo, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Malta, Moldova, Monaco, Montenegro, North Macedonia, Norway, Peru, Poland, Portugal, Romania, San Marino, Slovak Republic, Spain, Sweden, Switzerland, Türkiye, Ukraine.

⁵² Available by [country](#) and by [question](#).

1. Temporary suspension in cases of pre-trial detention

33. Only in very few countries, a mayor is automatically temporarily suspended from his functions if they are placed in pre-trial detention and solely for the time of their detention. **Algeria; Italy; Republic of Korea; Poland; Romania.**⁵³ In **Spain**, a mayor is automatically temporarily suspended upon confirmation of an indictment for the crime of being a member or being associated with armed gangs or terrorist or rebel individuals, and upon ordering of provisional detention.⁵⁴

34. In other countries, the pre-trial detention of a mayor does not automatically lead to their temporary suspension. However, where a mayor is in pre-trial detention, a discretionary decision may be taken to suspend them, by different bodies:

- a. By the municipal council: **Iceland; Ireland; Norway; Peru;**⁵⁵
- b. By a judge in criminal proceedings: **Kyrgyzstan; Latvia; Lithuania; Moldova; Portugal; San Marino;**⁵⁶

⁵³ **Algeria**, Municipal Code (Law No. 11-10 of 22 June 2011); this suspension does not entail a loss of mandate but is provisional pending the finalisation of the relevant proceedings; **Italy**, Article 11 of Legislative Decree No. 235 of 2012, providing for suspension in case of pre-trial detention as per Article 285 of the Code of Criminal Procedure; it is noteworthy that, where Article 11 of Legislative Decree No. 235 of 2012 is not applied, Italian legislation specifically excludes directly elected public officials such as mayors, from disqualification measures such as suspension from public duty or service (Article 289(3) of the Code of Criminal Procedure); **Republic of Korea**, Article 124(1)2 of the Korean Local Autonomy Act provides that the vice mayor shall exercise authority in place of the mayor where they are “detained after indictment”; when assessing the constitutionality of this provision, the Constitutional Court of Korea held as follows: “The work of a local government head – who formulates and decides numerous projects and policies for the promotion of residents’ welfare and executes budgets – requires collecting residents’ opinions through various channels, engaging in substantial discussions with relevant bodies on important matters, and taking swift decisions in urgent cases. [...] When the head is in detention, it becomes markedly difficult to gather diverse opinions, deliberate sufficiently with relevant bodies, handle urgent duties, or maintain effective oversight. Thus, the statutory provision suspends the duties of a local government head who is detained after indictment and mandates that the deputy head act on the head’s behalf to prevent expected risks to the smooth conduct of official duties and residents’ welfare. In other words, by excluding from duty a head who is detained after indictment, thereby ensuring the normal and continuous performance of the office, the legislative purpose is to secure smooth and efficient local administration and to promote residents’ welfare.” (Constitutional Court, 28 April 2011, 2010Hun-Ma474); **Poland**, Article 28g(1)(1) of the Act on Municipal Self-Government; pre-trial detention is listed as one of the circumstances constituting “temporary impediment”; the suspension lasts only for the duration of the impediment and the mayor resumes their role on the day of release; **Romania**, Article 159(1)(a) of the Administrative Code.

⁵⁴ **Spain**, Article 384bis of the Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*); the decision confirming an indictment is taken at the end of the investigative phase and where there is sufficient evidence to formally charge a person with the alleged commission of a crime; the suspension is maintained for the duration of the detention.

⁵⁵ **Iceland**, Articles 7 and 54 of Local Government Act No. 138/2011; where a mayor is unable to perform his or her duties due to pre-trial detention, the municipal council has the authority to ensure the functioning of the municipality, including through suspending or terminating the mayor’s tenure; **Ireland**, S. 18(4) and 19 of the Local Government Act of 2001; a mayor may be removed – as a member of the municipal council – by resolution of said council, creating a “casual vacancy” which would allow the deputy mayor to assume the office until the next election; **Norway**, Section 7.12(2), (4) of the Local Government Act; in case of an indictment for an offence punishable by imprisonment of more than three years, temporary suspension may be imposed until a final judgment has been rendered on the case; **Peru**, Article 25(3) of Law 27972, Organic Law of Municipalities; temporary suspension may be decided by the municipal council for the duration of the detention order; upon expiration of the detention order, the mayor automatically resumes their function.

⁵⁶ **Kyrgyzstan**, Article 27 Law No. 125 of 27 October 2021 “On the state civil service and municipal service”; suspension may be imposed on the basis of a ruling by a prosecutor, investigator or court; it is of note that in Kyrgyzstan, a mayor is appointed by the president; any suspension thus issued remains until a final decision is taken on the case; **Latvia**, Article 16 Local Government Law; Article 243(1)(3) of the Criminal Procedure Law; as a specific “security measure” applied in criminal proceedings, this may include a prohibition on specific employment preventing them to fulfil the duties of their position; **Lithuania**, Article 157(1) of the Code of Criminal Procedure; suspension may be imposed upon request of a prosecutor in the course of an investigation of criminal acts, if it is necessary for the speedier and more impartial investigation of the criminal act or for preventing the possibility for the suspected person to commit new criminal acts; **Moldova**, Article 33(1) of Law No. 436/2006 on Local Public Administration; a mayor may temporarily be suspended from office if prosecuted for a criminal offence until a final court decision is reached; such a decision is subject to the court’s discretion, which must justify the appropriateness of this decision considering the specific circumstances of the case (see references to relevant decisions of the

- c. By the administration: **Germany** (disciplinary authority)⁵⁷; **Israel** (committee appointed by the Ministry of Interior).⁵⁸

35. Other countries do not regulate the possibility to suspend a mayor in case of pre-trial detention. However, in such situations, the absence of a mayor would make them unable to perform their duties, which could or would *de facto* lead to their suspension. This is the case in: **Ireland; Liechtenstein; North Macedonia; San Marino; Slovakia and Sweden.**⁵⁹

36. Finally, very few countries include no regulations which could be applied – whether directly, or by interpretation – to suspend a mayor in pre-trial detention. A mayor in pre-trial detention would thus in principle continue to exercise their mandate. They include the following: **France;**⁶⁰ **Montenegro; Monaco; Switzerland.**

Constitutional Court of Moldova below, at footnote 104); **Portugal**, Article 199(1)(a) of the Code of Criminal Procedure; it may be applied as a coercive measure in case the relevant crime is punishable by more than two years of imprisonment; however, it is noteworthy that despite recent amendments, the law is still not clear regarding the legality of the suspension of the exercise of political mandate of mayors as a coercive measure in criminal proceedings; in any case, this refers only to the exercise of the mandate, not to the capacity held by the mayor; the political mandate thus subsists despite the suspension; **San Marino**, Article 53 (3), (6) of Law no. 24 of 2 March 2022; a judge may impose the suspension from exercising a public office or a temporary prohibition of exercising administrative and representative functions as a “personal precautionary measure”, resulting in a *de jure* impossibility to exercise the office of mayor.

⁵⁷ **Germany**, temporary suspension may be imposed by the disciplinary authority as a disciplinary measure upon mayors in case of pre-trial detention (Baden-Württemberg: § 22 I LDG BW, Bavaria: § 39(1) BayDG, Hesse: § 43(1) HDG; North Rhine-Westphalia: § 38 I LDG NRW); it is of note that in Germany, mayors have the legal status of election officials and at the same time temporary civil servants for the duration of their mandate, making them subject to civil service and disciplinary laws; the imposition of temporary suspension from duty is conditioned upon the severity of the misconduct, whereby it must be expected that the disciplinary proceedings will result in dismissal from civil service or forfeiture of pension rights; it may also be conditioned upon the fact that remaining in service would significantly hinder the relevant service or hinder the investigation at stake, and that the suspension would not be disproportionate taking into account the gravity of the matter and the expected disciplinary action (see eg, §§ 13, 15, 43(1)2 HDG); the Federal Constitutional Court established that elected civil servants, such as mayors, do not enjoy specific protections and that they may be temporarily suspended from office; it further held that the principle of democracy does not require that local elected officials be exempt from legal review and that it be solely left to the voters to decide upon their previous performance in office (Decision of the Federal Constitutional Court (1st Chamber of the 2nd Senate) of 23 August 2017 – 2 BvR 1745/17).

⁵⁸ **Israel**, S. 19A(a), (e), (h) of the Local Authorities Law, 5735-1975; when an indictment has been submitted against a mayor, temporary suspension may be imposed by a committee appointed by the Ministry of Interior; the committee appointed to review the mayor's suspension is composed of three judges and jurists, all of whom are appointed by the Minister of Interior; in doing so, the committee will take into considering inter alia the seriousness and number of the relevant charges as well as the relationship between the charges and a mayor's powers and functions as head of local authority; the suspension ends if criminal proceedings are discontinued, end without convention or a conviction takes place for an offence that does not involve “moral turpitude”.

⁵⁹ **Ireland**, a mayor absent for a continuous period of up to 18 months will be deemed to have resigned (S. 18(4) and 19 of the Local Government Act of 2001); **Liechtenstein**, a mayor in pre-trial detention could be understood as “prevented” from continuing to perform their duties and will accordingly be replaced (Article 55 of the *Gemeindegesetz*); **North Macedonia**, a mayor in pre-trial detention could be deemed “absent” or subject to an “impediment” (Article 52(5), (6) of the Law on Local Self-Government (Official Gazette of the Republic of Macedonia, No. 5/2002; Official Gazette of the Republic of North Macedonia, No. 202/2024)); the “absence” or “impediment” could justify the mayor designating a council member to temporarily substitute him for the relevant time period; **San Marino**, a mayor in pre-trial detention would be considered “physically unable” to perform their duties, qualifying as a *de facto* absolute impediment to exercising their function (Article 4 of Law no. 158 on Township Councils); **Slovakia**, a mayor in pre-trial detention would be deemed “unable” to exercise their mandate (§ 13b (1) of the Municipalities Act no. 369/1990), as confirmed in: *Jozef Tekeli, Marian Hoffmann, Lukáš Tomaš Zákon o obecnom zriadení : Komentár. 2. vydanie*. Bratislava: Wolters Kluwer, 2021, pp. 631-632.

⁶⁰ **France**, this approach reflects the particular importance attached by French law to the respect for the choice of voters and the stability of mandates entrusted to their representatives; while they may choose to resign from their position, they cannot be suspended by the municipal council; they may however be suspended by the government under very specific circumstances (Article L.2122-16 *code général des collectivités territoriales*); the government can suspend the mayor in cases of serious and repeated breaches of the obligations attached to the mayor's functions, as established by the jurisprudence of the *Conseil Constitutionnel* ([Decision No 2011-210 QPC](#), 13 January 2012); in rare cases, suspension has also been pronounced in respect of a mayor before the end of

2. Temporary suspension without pre-trial detention

37. In addition, a number of countries regulate the possibility of temporarily suspending a mayor from their duties in case criminal charges are brought against them, irrespective of whether or not the individual mayor is held in pre-trial detention.

38. Such decisions may be with or without discretion, taken by the judiciary, municipal council or the executive, and are often linked to specific allegations: **Canada (British Columbia); Estonia; Finland; France; Greece; Kosovo; Norway; Türkiye; Ukraine.**⁶¹

3. Removal from office

39. As for removal from office in the context of criminal charges brought against a mayor, in most surveyed countries, this solely takes place upon conviction by final judicial decision, often for a set of specific offences: **Algeria; Austria; Finland; Germany; Hungary; Israel; Italy; Kosovo; Kyrgyzstan; Lithuania; Malta; Monaco; North Macedonia; Poland; Romania; San Marino; Slovakia; Spain; Sweden; Switzerland; Ukraine.**⁶²

criminal proceedings in cases of serious incriminating facts (see *Conseil Constitutionnel*, [Decision No 348771](#), 7 November 2012).

⁶¹ **Canada (British Columbia)**, temporary suspension must be imposed in case of charges of an offence under the Criminal Code or an indictable offence under the Controlled Drugs and Substances Act (Section 109.3 of the *Community Charter*); the suspension ends when the proceedings are terminated, irrespective of whether this ends in an acquittal, conviction, stay of proceedings or withdrawing of charges; **Estonia**, temporary suspension by court order if (1) they may commit further criminal offences, should they continue to work in their position; (2) their continuing work in their position may harm criminal proceedings in the case; the suspension is revoked if the applicable grounds cease to be present (§ 141 Code of Criminal Procedure); **Finland**, temporary suspension may be imposed by the municipal council in case of charges of an offence in public office or for a criminal act “outside a position of trust”; temporary suspension must be imposed by the municipal council in “if it is necessary to safeguard the credibility and reliability of municipal decision-making, taking into consideration the seriousness and possible repeated nature of the suspected offence” (Sections 85(3), (4), 86(1) (1484/2016) of the Municipalities Act); **France**, the government may suspend a mayor in cases of serious and repeated breaches of the obligations attached to the mayor’s functions; **Greece**, temporary suspension must be imposed by the head of the competent region in case a mayor is committed to trial for felony (Article 146 of Law 3463/2006 on Local Government Code); the suspension ends when the Court of Appeals, acting at first instance, issues its verdict; in case of an acquittal, the suspension counts as never having been imposed; **Kosovo**, temporary suspension may be imposed by a judge where there is a grounded suspicion of having committed a specifically prescribed offence under the criminal code, as well as reason to believe that, in exercising their function, a mayor is likely to hinder the investigation; the offences cover offences against constitutional order or security of the country, against life and body, against sexual integrity, organised crime, corruption and offences against official duty, smuggling of migrants and trafficking, domestic violence, money laundering, smuggling of goods and fraud (Article 539(1), (9) of Code No. 08/L-032 Criminal Procedure Code, with references to Chapters XIV, XVI, XX, XXIV, XXXIII, Articles 164, 165, 248, 302, 311 and 323 of Code No. 06/L-074 Criminal Code); separately, the government may temporarily suspend a municipal mayor if it considers that they have violated “the Constitution and the applicable laws” (Article 64 Law No. 03/L-040 on Local Self-Government); **Norway**, temporary suspension may be imposed by the municipal council if the mayor is indicted for an offence punishable by more than three years imprisonment (Section 7.12 of the Local Government Act); the suspension lasts until the case is finally decided; **Türkiye**, Article 127(4) of the Constitution; Article 47(1)-(3) of the Municipal Law, providing that mayors in respect of whom an investigation or prosecution is initiated on account of an offence connected with their duties may be suspended from office by the Minister of Interior pending final judgment; the decision on suspension is lifted where no prosecution is initiated, the case is dismissed or ends in acquittal, or lapses due to general amnesty, or ends in a conviction which does not require removal from office; **Ukraine**, temporary suspension as a measure under the Criminal Procedural Code may be imposed where a mayor is suspected or accused of committing a crime, and well as in cases of an administrative offence related to corruption (Article 131, 154(1) of Code of Criminal Procedure, No. 4651-VI; Article 65-1(5) of Law on Prevention of Corruption (No. 1700-VII)).

⁶² **Algeria**, Municipal Code (Law No. 11-10 of 22 June 2011); final criminal conviction for a crime or offence that undermines honour, probity or public order; if the mayor is acquitted, the prosecution is abandoned or proceedings discontinued, he or she is automatically reinstated; **Austria**, whether, and under which conditions, a mayor may be removed from office due to a final criminal conviction is governed by the laws of the nine *Bundesländer*, eg § 19a (1) in conjunction with §§ 87(1)(1), 88(1) *Burgenländische Gemeindevahlordnung* 1992; § 65 (1)(b) and (3) *Kärntner Allgemeine Gemeindeordnung*; § 25 (2)(a) in conjunction with (3) *Tiroler Gemeindeordnung* 2001 and § 9 (3) *Tiroler Gemeindevahlordnung* 1994; § 29 (1)(c) in conjunction with § 19 *Steiermärkische Gemeindeordnung* 1967 and § 41(2) *Steiermärkische Gemeindevahlordnung* 2009; **Finland**, Sections 86(2) of the Municipalities Act

4. Specific safeguards in case of pre-trial detention and/or suspension

40. A range of countries have specifically confirmed that regular rules and guarantees concerning pre-trial detention apply in case a mayor is so detained, and that mayors do not enjoy immunity. These include **Algeria, Canada (British Columbia), Germany, Greece, Hungary, Iceland, Ireland, Italy, Lithuania, Peru, Poland, Romania, San Marino, Spain and Türkiye.**

41. Beyond that, concerning specifically the issue of suspension, numerous countries have provided additional details on specific substantive and procedural safeguards. These include:

- a. Suspension limited to specific offences: **Canada (British Columbia); Finland; Greece; Kosovo; Norway;**⁶³
- b. Right to administrative and/or judicial review: **Algeria; Estonia; Germany; Hungary; Kosovo; Lithuania; Monaco; Montenegro; North Macedonia; Norway; Peru; Poland; Romania; Türkiye;**⁶⁴

(1484/2016); discretionary decision of municipal council upon final criminal conviction for imprisonment of at least six months; **Germany**, imposed (depending on the relevant *Bundesland*) either by de-selection (§§ 66 GO NRW, 55(1) GemO RLP), by the highest legal supervisory authority (§ 128 GemO BW) (subject to appeal before an administrative court), or by a disciplinary court (eg, §§ 11, 42 BayDG, 10, 45 LDG NRW, 10, 45 SächsDG), or through the loss of eligibility for public office for a duration of five years (§ 45 Criminal Code, automatically imposed upon anyone sentenced to at least one year for a serious criminal offence); **Hungary**, imposed upon initiation of the municipal council and litigation before administrative courts, following final criminal conviction for continuous illegal activities or omissions of the mayor in office (Sections 69, 70(1) of Act CLXXXIX of 2011 on Local Governments); or through loss of eligibility for public office (Section 61 of Act C of 2012 on the Criminal Code, imposed in case of sentencing to an executable imprisonment for an intentional criminal offence and if deemed unworthy of the right to participate in public affairs); **Israel**, final criminal conviction for an offence involving "moral turpitude" (S. 20 of the Local Authorities Law, 5735-1975); **Italy**, Article 11(7) of Legislative Decree 235/2012; **Kosovo**, criminal conviction with imprisonment of six months or more (Article 56(3)(h) Law No. 03/L-040 on Local Self-Government); **Kyrgyzstan**, final criminal conviction (Article 47(3) Law No. 123 of 20 October 2021 "On Local State Administration and Local Self-Government Bodies"); **Lithuania**, final criminal conviction (Article 176(4)(4) of the Electoral Code); in this context, Article 68 of the Criminal Code provides for a court's powers to impose deprivation of public rights, which may be imposed where the relevant criminal act was committed by abusing such rights; however, the termination of a mayor's mandate upon final conviction is not dependent upon the application of Article 68 (Supreme Administrative Court of Lithuania, Case No. eR-4-1188/2025, 13 June 2025); permanent removal is also regulated through the "quasi-impeachment" procedure, in case a mayor has engaged in actions contrary to the Constitution and/or laws (Lithuania, Article 13 of the Law on Local Self-Government); **Malta**, criminal conviction in case of imprisonment exceeding 12 months (Article 12(h) of the Local Government Act 1993); or in case of conviction for "corrupt practice" (Article 108(1) of the Local Government Act 1993, which further describes "corrupt practice" as *inter alia* any person who commits the offence of "personation, treating, undue influence or bribery"); **Monaco**, final criminal conviction with imposition of a penalty of ineligibility; **North Macedonia**, *inter alia* in the event of unjustified absence for more than six months, or following final criminal conviction of imprisonment for more than months, Article 54(1)3., 6. of the Law on Local Self-Government (Official Gazette of the Republic of Macedonia, No. 5/2002; Official Gazette of the Republic of North Macedonia, No. 202/2024); **Poland**, final criminal conviction for specific crimes, as regulated in electoral law (Ustawa z dnia 5 stycznia 2011 r. – Kodeks wyborczy, Dz.U. z 2025 r. poz. 365); **Romania**, final criminal conviction, regardless of the manner in which the sentence is to be served (Article 160(1)(d) of the Administrative Code); **San Marino**, final criminal conviction, particularly for intentional criminal offences or criminal offences against political rights, where the punishment exceeds one year, or where a disqualification from public office is imposed (Article 2 of Electoral Law (Law no. 6 of 31 January 1996 and subsequent amendments)); **Slovakia**, final criminal conviction for an intentional crime, or including a non-suspended prison sentence (§ 13a(1)(d) of the Municipalities Act no. 369/1990); **Spain**, final criminal conviction, provided suspension or dismissal is established as a possible penalty thereof, the proportionality of which must be established on a case by case basis (Article 40 of Regulation on the Organisation, Functioning and Legal Regime of Local Authorities); **Sweden**, criminal conviction for a crime for which imprisonment of two years or more is prescribed (Chapter 4, Section 9 of the Local Authorities Act (2017:725)); **Switzerland**, criminal conviction for offences incompatible with the dignity of a mayor's function; **Ukraine**, final criminal conviction (Article 79(1) of Law No. 280/97 on Local Self-Governance).

⁶³ See above footnote 61, for further details on relevant legislation.

⁶⁴ **Algeria**, Municipal Code (Law No. 11-10 of 22 June 2011); **Estonia**, within four months of a suspension order, a motion for verification may be filed with the court to verify whether the suspension continues to be justified; a new motion may be brought after another four months (Article 141² of the Code of Criminal Procedure); **Germany**, an action for annulment may be brought before an administrative court against the decision to temporarily suspend a mayor from duty (§ 42(1)Alt. 1 Administrative Court Procedure); **Hungary**, the procedure to establish a mayor's legal liability for continuous illegal activities or omissions follows administrative procedural law norms regarding the

- c. Defence rights, including right to be heard: **Belgium; Estonia; France; Iceland; Israel; Monaco; Montenegro;**⁶⁵
- d. Specific burden of proof: **Poland;**⁶⁶
- e. Right to a reasoned decision: **Iceland; Kosovo; Lithuania; Moldova; Norway; Poland; Ukraine;**⁶⁷
- f. Limited duration of suspension: **Belgium; France; Israel; Kosovo; Lithuania; Ukraine;**⁶⁸
- g. Limited nature of suspension: **Canada (British Columbia);**⁶⁹
- h. General principle of impartiality and proportionality: **Iceland; Kosovo; Lithuania;**⁷⁰

immediate legal protection in the court procedure (Section 70 (2) of Act CLXXXIX of 2011 on Local Governments); **Kosovo**, Article 539, 540 of Code No. 08/L-032 Criminal Procedure Code; Article 64 Law No. 03/L-040 on Local Self-Government; **Lithuania**, Article 157 of the Code of Criminal Procedure; it is noteworthy that the Constitutional Court of Lithuania established that this provision is compatible with the Constitution, noting in particular that it specifies the authority competent for the decision, the aim of the provision, the criterion of necessity, the duration of the measure and possibility to appeal the decision (Constitutional Court of Lithuania, Ruling No. KT7-N4/2016 of 17 February 2016); **Monaco**, review before the *Tribunal supreme*; **Montenegro**, Article 63 of the Law on Local Government (Official Gazette of Montenegro No. 2/2018, 34/2019, 38/2020, 50/2022, 85/2022 81/2025 and 98/2025); **North Macedonia**, Article 54(2) of Law on Local Self-Government (Official Gazette of the Republic of Macedonia, No. 5/2002; Official Gazette of the Republic of North Macedonia, No. 202/2024); Article 3(6) of the Law on Administrative Disputes (Official Gazette of the Republic of North Macedonia, No. 96/2019); **Norway**, Section 7.12(2), (4) of the Local Government Act; **Peru**, reconsideration may be sought in respect of a decision by the municipal council to temporarily suspend a mayor in pre-trial detention, for purposes of identifying a body competent to render a decision; in final instance, appeal may be made to the *Jurado Nacional de Elecciones*; **Poland**, administrative decisions concerning the removal or designation of replacement are subject to appeal before administrative courts; **Romania**, the prefect's order to temporarily or permanently suspend them is a reviewable administrative act (Article 159(2) of the Administrative Code; Law No. 554/2004 on the judicial review of administrative acts); **Türkiye**, the decision of suspension from office shall be reviewed every two months and shall be lifted if it no longer serves the public interest (Article 47(2), (3) of the Municipality Law).

⁶⁵ **Belgium** (Flanders), Article 156 of the *Décret 22 décembre 2017 sur l'administration locale*; (Wallonia), Article L1123-6 *Code de la démocratie locale et de la décentralisation*; (Brussels), *Nouvelle loi communale*, Article 8; **Estonia**, Article 141²(2) of the Code of Criminal Procedure; **France**, Article L.2122-16 *code général des collectivités territoriales*; **Iceland**, Articles 3-6, 13, 22 Administrative Procedures Act No. 37/1993; **Israel**, S. 19A(e)(1), (g) of the Local Authorities Law, 5735-1975; **Monaco**, Article 36 Loi n° 959 of 24 July 1974; **Montenegro**, Article 63 of the Law on Local Government (Official Gazette of Montenegro No. 2/2018, 34/2019, 38/2020, 50/2022, 84/2022, 85/2022 81/2025 and 98/2025).

⁶⁶ In **Poland**, where the temporary suspension of a mayor is imposed because of their pre-trial detention, legal regulations set out the documents and circumstances which constitute formal proof of the impediment, and which must be submitted to activate the mechanism of temporary suspension; this includes in the specific case of pre-trial detention the employer's notification under the Code of Criminal Procedure regarding a court or prosecutor's decision (Article 28g(4)(1) of the Act on Municipal Self-Government, with reference to Article 261(3) of the Code of Criminal Procedure).

⁶⁷ **Iceland**, Articles 3-6, 13, 22 Administrative Procedures Act No. 37/1993; **Kosovo**, Articles 539, 540 of Code No. 08/L-032 Criminal Procedure Code; **Lithuania**, Article 31 of the Law on Local Self-Government; **Moldova**, Article 33(2)-(3) of Law No. 436/2006 on Local Public Administration; **Norway**, Section 7.12(2), (4) of the Local Government Act; **Poland**, where a mayor is permanently removed following a final conviction for specific crimes, this procedure is governed by electoral law and notably requires a formal finding; **Ukraine**, the temporary suspension of a mayor from office may only take place on the basis of a judicial decision; the legislation further specifies in detail the considerations to be taken into account in rendering a decision in this respect (Articles 156, 157 of Code of Criminal Procedure, No. 4651-VI).

⁶⁸ **Belgium** (Brussels), three months (Article 82 *Nouvelle loi communale*); **France**, one month (article L.2122-16 *code général des collectivités territoriales*); **Israel**, one year, S. 19A(e)(1), (g) of the Local Authorities Law, 5735-1975; **Kosovo**, where it is the government that has suspended a municipal mayor because it considers that he or she has violated "the Constitution and the applicable laws", such a suspension is limited to 30 days and the case must be submitted to the Constitutional Court for final decision (Article 64 Law No. 03/L-040 on Local Self-Government); **Lithuania**, not more than six months, with possibility to extend by three months (Article 157 of the Code of Criminal Procedure); **Ukraine**, the temporary suspension of a mayor from office may only take place for a period not exceeding two months, with possibility of extension (Articles 156, 157 of Code of Criminal Procedure, No. 4651-VI.); While **Türkiye** does provide for a review of the suspension decision every two months, no overall limitation of suspension is provided in relevant provisions (Article 47 of the Municipality Law).

⁶⁹ **Canada (British Columbia)**, a temporarily suspended mayor who is otherwise qualified to hold office "is not disqualified from being nominated for, being elected or holding office on a local government." (Section 109.3(3) of the Community Charter).

⁷⁰ **Iceland**, Articles 3-6, 13, 22 Administrative Procedures Act No. 37/1993; **Kosovo**, Article 539, 540 of Code No. 08/L-032 Criminal Procedure Code; **Lithuania**, Article 157 of the Code of Criminal Procedure.

- i. Where a decision on suspension is taken by the municipal council, necessity of specific majority: **Ireland; North Macedonia; Norway**;⁷¹
- j. Right to continuous salary and/or compensation: **Algeria; Kosovo; Kyrgyzstan; Lithuania; Moldova; Norway; Romania; Türkiye**.⁷²

B. Replacement mechanisms for mayors

42. As a second step, the Commission has analysed the various mechanisms of replacement identified in the comparative study and has classified them by clusters – specifying as it did whether these concern (temporary) suspension or (permanent) removal from office. Given the breadth of information shared with the Commission regarding replacement mechanisms in general, the mechanisms identified below are not limited to instances of suspension and/or removal from office due to pre-trial detention but cover any and all mechanisms to replace mayors in case of suspension or removal, irrespective of whether this is linked to pre-trial detention.

1. Replacement by deputy mayor or by second-placed candidate

43. Temporarily unavailable mayors, including those suspended, are temporarily replaced by their deputies in the following countries: **Algeria, Austria, Belgium, France, Germany, Greece, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Republic of Korea, Kosovo, Kyrgyzstan, Moldova, Montenegro, North Macedonia, Norway, Poland, Portugal, Romania, Slovakia and Spain**.⁷³

⁷¹ **Ireland**, two thirds majority (S. 34 of the Local Government Act of 2001); it is of note that these safeguards are even higher in the specific case of the city of Limerick, where the removal of a mayor requires the approval of both Houses of Parliament (Part 7 of the Mayor of Limerick Act); **North Macedonia**, two thirds majority (Article 54(2) of Law on Local Self-Government (Official Gazette of the Republic of Macedonia, No. 5/2002; Official Gazette of the Republic of North Macedonia, No. 202/2024); Article 3(6) of the Law on Administrative Disputes (Official Gazette of the Republic of North Macedonia, No. 96/2019)); **Norway**, a decision by the municipal council to temporarily suspend the mayor if they are indicted for an offence punishable must be taken on the basis of a two thirds majority, and to remove the mayor from office if they are deemed "unfit to hold the office" must be taken with at least 90% of the votes cast (Section 7.12(2), (4) of the Local Government Act).

⁷² **Algeria**, Municipal Code (Law No. 11-10 of 22 June 2011); **Kosovo**, Articles 539, 540 of Code No. 08/L-032 Criminal Procedure Code; **Kyrgyzstan**, Article 27 Law No. 125 of 27 October 2021 "On the state civil service and municipal service"; **Lithuania**, Article 31 of the Law on Local Self-Government; **Moldova**, Article 33(2)-(3) of Law No. 436/2006 on Local Public Administration; this right applies only if the mayor is acquitted or if the case is closed (except in cases of amnesty); **Norway**, Section 7.12(2), (4) of the Local Government Act; **Romania**, Article 159(5) of the Administrative Code; **Türkiye**, Article 47(4) of the Municipal Law.

⁷³ **Algeria**, Article 72 Municipal Code (Law No. 11-10 of 22 June 2011); **Austria**, § 30 *Burgenländische Gemeindeordnung* 2003; § 75(1) *Kärntner Allgemeine Gemeindeordnung*; § 36(1) *Oberösterreichische Gemeindeordnung* 1990; § 49(2) *Salzburger Gemeindeordnung* 2019; § 32(1) *Steiermärkische Gemeindeordnung* 1967; § 94(1) *Wiener Stadtverfassung*; § 62(3) *Vorarlberger Gemeindegesetz*; § 27(1) *Niederösterreichische Gemeindeordnung* 1973; § 31(3) *Tiroler Gemeindeordnung* 2001; **Belgium** (Wallonia) Article L1123-5 of the *Code de la démocratie locale et de la décentralisation*; (Flanders) Article 62 the Decree of 22 December 2017 on the Local Administration; (*Brussels*) Article 14 of the *Nouvelle loi communale*; **France**, Article L2122-17 of the *code général des collectivités territoriales*; **Germany**, § 48(2)1 GemO BW; § 39(1)1 BayGO, § 47 HGO, § 68 GO NRW; **Greece**, Article 89 of the Local Government Code; **Ireland**, Section 31(7) of the Local Government Act 2001 (as amended); the Mayor of Limerick is replaced by the *Príomh Chomhairleoir* (Chief Councillor) of the Limerick City and County Council (Section 13 of the Mayor of Limerick Act 2024); **Italy**, Article 46(2) and 53 of the Legislative Decree No. 267 of 2000 (however, this does not apply in the autonomous region of Aosta Valley, where the deputy mayor is not appointed, but directly elected by citizens at the same time as the mayor); **Latvia**, Section 17 of the Local Government Law; **Liechtenstein**, Article 55 of the Act on Municipalities (*Gemeindegesetz*); **Lithuania**, Article 30(1)(2) of the Law on Local Self-Government; **Republic of Korea**, Article 124(1)2 of the Korean Local Autonomy Act; **Kosovo**, Article 60 of Law no. 03/L-040 on Local Self-Government, 4 June 2008; **Kyrgyzstan**, Article 49 of the Law of the Kyrgyz Republic dated October 20, 2021 No. 123 On Local State Administration and Local Self-Government Bodies; **Moldova**, Article 34 of Law No. 436/2006 on Local Public Administration; **Montenegro**, Article 67 of the Law on Local Government; **North Macedonia**: Article 52 of the Law on Local-Self Government; **Norway**; Section 6-2 of the 2016 Act on Local Government; the law also provides that, when a deputy steps in to replace the mayor, a new deputy must be elected; **Poland**: Article 28g of the Act on Municipal Self-Government; **Portugal**: Article 36(1)(2) of Law nº 75/2013, of 12 September; **Romania**: Article 152(1) Administrative Code Ordonanta de Urgenta no. 57 3 July 2019; **Slovakia**, Article §13b(1) of the Municipalities Act no. 369/1990; **Spain**, Article 23.3 of the *Ley de Bases de Régimen Local*; and Article 47 of the "Regulation on the Organisation, Functioning and Legal Regime of Local Authorities".

44. In some legal frameworks, such as the one of **Malta**, **Peru**, and **San Marino**,⁷⁴ the first person elected after the mayor, belonging to the same list or party, assumes the role of deputy mayor and has the duty to temporarily replace her/him.

2. Repeat elections or initial nomination procedure

45. In some countries, the removal from office and hence early termination of a mayor's mandate triggers new elections. Indeed, in **Germany**, **Greece**, **Italy**, **Kosovo**, **Montenegro**, **North Macedonia**, **Romania** and **Switzerland**,⁷⁵ in case of a permanent removal of a mayor, early direct elections are called.

46. In some instances, the replacement of a mayor removed from office occurs by repeating the initial nomination procedure, as applicable. This is the case in **Algeria**, **Estonia**, **Ireland** and **Spain**, where the mayor is indirectly elected and, upon a mayor's removal from office, the municipal council proceeds with the election of a new mayor, who will remain for the remainder of the mandate.⁷⁶

47. In **Belgium**,⁷⁷ where a mayor (*bourgmestre*) has been removed, a new mayor is nominated in accordance with the initial nomination procedure. In **Kyrgyzstan**⁷⁸ (appointment by the government) and **Sweden**⁷⁹ (appointment by the municipal council), the appointing body revokes their mandate and nominates a new mayor.

3. Position left vacant until next elections

⁷⁴ **Malta**, Article 4(4) of Local Government Act 1993; **Peru**, Article 23 of Law 27972 Organic Law of Municipalities; **San Marino**, Article 5 Law no. 158 of 24 September 2020.

⁷⁵ **Germany**, in Baden-Württemberg, new elections for the office are scheduled within three months (§ 47 GemO BW); in Bavaria, new elections must be held if the mayor's civil service status is terminated prematurely (§ 42 II GLKrWG); in North Rhine-Westphalia, new elections must be held within six months if the mayor loses his office (§ 65 I 2 GO NRW); **Greece**, Article 89 of Law 3463/2006 as amended; **Italy**, Article 53 of the Legislative Decree No. 267 of 2000; in the event of permanent incapacity, removal from office, or death of the mayor, the council is dissolved, and the local executive remains in office until the election of a new council and a new mayor; **Kosovo**, Article 4(4), 11(1), (2) of Law No. 03/L-072 on Local Elections in the Republic of Kosovo, Official Gazette of the Republic of Kosovo, No. 32; early elections are held in case of "dismissal of mayor", "where the mandate of the mayor ends in accordance with the Law on Self-Government" or when the mayor's mandate "ceases"; **North Macedonia**, Article 54 of the Law on Local-Self Government; the mandate of the mayor ceases in the event of unjustified absence for a period longer than six (6) months; it is up to the council to decide on the justification of such absence by a two-thirds majority of the total number of council members; if the council decides for terminating the mayor's mandate for unjustified absence, the government will initiate the procedure for calling new mayoral elections; disputes concerning the dismissal of public officers can be brought to court; **Romania**, Article 160(11) Administrative Code Ordonanta de Urgenta no. 57 3 July 2019; **Switzerland**, Stadtverfassung von Thun vom 23. September 2001, Art. 61 Abs. 3; Constitution de la République et canton de Genève du 14 octobre 2012, art. 55 al.4.

⁷⁶ **Algeria**, Article 80 Municipal Code (Law No. 11-10 of 22 June 2011); **Estonia**: § 46 of the [Local Government Organisation Act](#), which provides that, where a mayor is removed following a vote of no-confidence, the municipal council has to elect a new mayor during the same session; in Estonia, a mayor is elected by the municipal council; **Ireland**, Section 37 of the Local Government Act 2001, with the exception of the mayor of Limerick, see Part 7 of the Mayor of Limerick Act 2024 regulating the replacement of Limerick's mayor; **Spain**, Article 40.5 of the Regulation on the Organisation, Functioning and Legal Regime of Local Authorities regulates the replacement of a mayor in case of resignation, death or final judgment.

⁷⁷ **Belgium** (Flanders), Articles 62 and 58 of the *Décret 22 décembre 2017 sur l'administration locale* (nomination by the Flemish government amongst the elected municipal councillors); (Brussels), Article 13 of the *Nouvelle loi communale* (election by the council of a new mayor from the same party or list).

⁷⁸ **Kyrgyzstan**, according to Article 47 of the Law of the Kyrgyz Republic dated October 20, 2021, No. 123 On Local State Administration and Local Self-Government Bodies, the mayors are nominated either by the *akim* (head of the regional administration) or the President.

⁷⁹ **Sweden**, local self-governments do not have a mayor but a *kommunalråd*, a member of the elected local assembly (council) who is chosen by the political majority to lead the work of the local authority, either generally or in one or more areas.

48. As an exception to the rule outlined above, in **North Macedonia**, when a mayor's mandate is terminated but less than six months remain until the next electoral period, the municipality is led by an *interim* elected by the council among its members.⁸⁰ In **Switzerland**, certain cantonal and local regulations foresee that the position remain vacant until the next elections, provided the relevant timeframe is short and the members of the local executive are in a position to manage current affairs. In **Poland**, when a mayor's mandate is terminated, no elections are held in case there are only six months left until the next election, and the municipality is led in the meantime by an administrator appointed by the Prime Minister.⁸¹

4. Replacement appointed by municipal body

49. In a limited number of countries, the power to identify the temporary replacement of the mayor is given to the municipal body. This is the case for **Canada (British Columbia)**, **Israel**, **Monaco** and **Türkiye**.⁸² On the other hand, in several countries, such a power is given to the municipal body as a fallback, in case the deputy mayor does not step in. This is the case for **Algeria**, **France** and **Moldova**.⁸³

50. In **Austria**, the procedure for electing a replacement mayor varies by *Bundesland* and includes both elections by the municipal council or by universal suffrage. In *Vorarlberg*, a directly elected mayor who is permanently removed from their position is replaced by a mayor elected by the municipal council if the removal occurs three years after the last election.⁸⁴

5. Replacement appointed by government

51. Among the countries surveyed for the present report, only three allow the government to replace a mayor.

52. The first case concerns **Poland**: if the mayor has to be replaced and a deputy has not been appointed, at the request of the *voivode* (provincial governor), the Prime Minister may appoint a person to temporarily take over the mayor's duties and responsibilities.⁸⁵ This mechanism is designed as a temporary solution and it enables the central authority to ensure swift staffing of the executive function.

53. The second case concerns **Italy**. In addition to the rules mentioned above, a municipality can be placed under a special administration (*commissariamento*) by the national authorities when the local government is unable to function properly. In such a case, a commissioner is appointed

⁸⁰ **North Macedonia**, Article 54 of the Law on Local Self-Government.

⁸¹ **Poland**, Article 28d of the Act on Municipal Self-Government.

⁸² **Canada (British Columbia)**, Section 130(1) of the Community Charter; the applicable [Procedure Bylaw Guide](#) published by the British Columbia Ministry of Municipal Affairs provides further guidance to designate a member of the municipal council to act in place of the mayor (p. 10); regarding best practices, a distinction is made between short-term leave of absence (designation on a rotating basis or for a set time period until the next general election) and long-term leave of absence (election by council members); **Israel**, Section 19A(i) of the Local Authorities Law (Election and Tenure of Head and Deputy Heads), 5735-1975; **Monaco**, Article 50 of Law no. 959 of 24 July 1974; **Türkiye**, Articles 45(1) of the Municipal Law; the municipal council elects a new mayor where their office is vacant or a disqualification is imposed for a period extending beyond the date of the next election; it elects a new deputy mayor where the mayor is suspended from office or has been arrested or a disqualification is imposed for a period not extending beyond the date of the new election.

⁸³ **Algeria**, Article 72 Municipal Code (Law No. 11-10 of 22 June 2011); **France**, Article L2122-17 of the *code général des collectivités territoriales*; **Moldova**, Article 34 of Law No. 436/2006 on Local Public Administration

⁸⁴ **Austria**, the replacement procedure varies by *Bundesland* and depends upon (1) whether the mayor is generally elected by the municipal council, and (2) the portion of the removed mayor's term that has already elapsed; § 63 (4) of the *Vorarlberger Gemeindegesetz* provides that a directly elected mayor is replaced by a mayor elected by the municipal council if the removal occurs three years after the last election. In such a case, the replacement mayor serves for the remaining two years of the term.

⁸⁵ **Poland**, Articles 28g(2), 28h of the Act on Municipal Self-Government, noting that this situation practically does not occur; this same procedure is also applied if a mayor loses his mandate but there are six months or less left before the next election (Article 28d(2) of the Act on Municipal Self-Government; cf. *infra* paragraph 48).

to manage the institution until new elections can be held. This special administration occurs only in extraordinary circumstances, and it follows an extensive and detailed administrative procedure. The commissioner is usually a public official who represents the government in the territory of the province.⁸⁶

54. Lastly, in **Türkiye**, in addition to the above-mentioned framework, where the mayor is suspended from duty or arrested due to terrorism or aiding and abetting terrorist organisations, a new mayor is nominated by the Minister of the Interior in metropolitan and provincial municipalities and by the provincial governor in other municipalities.⁸⁷

6. Residual options

55. When the mayor is temporarily suspended, the legal frameworks of **Iceland** and **Ukraine**⁸⁸ specifically pre-identify the individual that is called to replace the mayor.

56. Moreover, some other legal frameworks complement one of the previously mentioned mechanisms of replacement by pre-identifying the individual that is called to replace the mayor as an antideadlock option, thereby ensuring continuity. This is the case of **Belgium**, **France**, **Greece**, **Liechtenstein**, **Moldova**, and **Monaco**⁸⁹.

V. Analysis

57. As underlined above, the impact of the pre-trial detention of mayors is two-fold: not only may it impact the individual rights of the affected mayor but also it radiates beyond the individual and impacts the rights of the voters, whose choice as expressed in democratic elections may be frustrated through the nomination of a mayor who does not align with their choice. The main focus of the following analysis is on elected mayors, but the Commission wants to emphasise that indirectly elected or appointed mayors also need protection against arbitrary suspension, and that arbitrary suspension can be considered a violation of principles of local self-government.

A. Pre-trial detention and suspension of mayors

58. Whilst the present Report focusses on the issue of the impact of the pre-trial detention of mayors on local governance, the Commission deems it eminently relevant to also address issues related to the suspension of mayors and any related impact. Indeed, while detention in most cases creates a *de facto* situation in which mayors are not in a position to exercise their mandate,

⁸⁶ **Italy**, Articles 141-146 of the Legislative Decree 267/2000; a special administration is implemented when there are serious management problems, such as the resignation of the mayor, a vote of no confidence by the city council, or mafia infiltration; in the five autonomous regions with special statutes, an “Extraordinary Commissioner” is appointed by the President of the Region, following the investigation of the Councillor for Local Authorities; usually, an official from the regional administration is chosen for the position; the commissioner is appointed following the dissolution of the municipal council by the same dissolution decree, adopted by the President of the Republic upon the proposal of the Minister of the Interior, following a procedure initiated by the prefect with jurisdiction over the territory.

⁸⁷ **Türkiye**, Articles 45(2), 46 of the Municipal Law; the sole condition for appointment is that the person to be appointed must have the qualification to be elected.

⁸⁸ **Iceland**, Article 73 Reykjavík City Statutes 1020/2019 (as amended); the City Statute of Reykjavík identifies the Chair of the City Council (*forseti borgarstjórnar*), the City Secretary (*borgarritari*), and the City Attorney (*borgarlögmaður*) as the ones that are called to replace the absent mayor; **Ukraine**, Article 42 of the Law “On local self-governance in Ukraine” (No. 280/97 as of 21 May 1997); according to Article 50 of the Law “On local self-governance in Ukraine” (No. 280/97 as of 21 May 1997), the secretary of the village is elected by the council from among its deputies upon the proposal of the mayor and is required to work on a permanent basis for the entire term of office of the council.

⁸⁹ **Belgium**, Article 14 of the *Nouvelle loi communale*; **France**, Article L2122-17 of the *code général des collectivités territoriales*; **Greece**, Article 89 of Law 3463/2006 as amended; **Liechtenstein**, Article 55 of the Act on Municipalities (*Gemeindegesetz*) identifies the older member of the municipal council; **Moldova**, According to Article 34 of Law No. 436/2006 on Local Public Administration, when the mayor is simply temporarily unavailable, at his own discretion, she/he can delegate the exercise of the mayoral duties to the deputy mayor or, as applicable, the council secretary for the duration of his absence; **Monaco**, Article 50 of Law no. 959 of 24 July 1974.

suspension creates a *de jure* situation in which mayors are prevented from this exercise. When it comes to any potential impact on local governance, in and of itself, the suspension of a mayor is therefore just as pertinent – if not more – than the question of pre-trial detention.

59. As a matter of principle, mayors are accountable for any criminal activity under relevant criminal codes, in the same fashion as any other citizen. Those countries surveyed above that have made submissions in this respect all note that mayors do not enjoy immunity from prosecution and that regular rules concerning pre-trial detention are applicable to them. The fundamental principles applicable in this respect have been exposed above.

60. In addition thereto, from the outset, the Commission stresses that the pre-trial detention and temporary suspension of democratically elected local representatives, including mayors, must be approached with special care. The ECtHR has already found that the prolonged detention of opposition figures can violate multiple Convention rights, including freedom of expression and the prohibition of ulterior restrictions, particularly where such detention prevents effective political participation.⁹⁰ While the limited scope of Article 3 of Protocol No. 1 to the ECHR may preclude a finding of violation in cases concerning democratically elected local representatives, such detention may nevertheless undermine the principles of local democratic governance enshrined in the Charter. Therefore, even though mayors must be treated as regular citizens for the purpose of imposing pre-trial detention, particular considerations must be given to the potential for the violation of said rights.

1. Right to Liberty and Security, and the Independence of the Judiciary

61. Pre-trial detention, particularly when applied to political opponents, sits at the intersection of the right to liberty and the structural guarantees of judicial independence. When the public perceives that the judiciary and law enforcement act selectively or in alignment with political objectives, confidence in the fairness of elections, the independence of the judiciary, and the legitimacy of governance diminishes. Where pre-trial detention targets political actors, its impact radiates beyond the individual right to liberty to the integrity of democratic competition and the independence of the judiciary. Politically-motivated detentions have the potential of pressuring judges to ratify executive choices *ex post*, eroding functional independence and public confidence. Where a judge must assess the pre-trial detention of a main opposition figure, they may feel pressured to confirm the latter, rather than to reassess applicable conditions. Foundational standards⁹¹ require that judges decide “free of restrictions, improper influences, inducements, pressures, threats or interferences,” a condition incompatible with systemic incentives to confirm or prolong detention for political ends. Importantly, if elected mayors’ pre-trial detention does not fulfil the conditions laid down in Article 5 of the Convention, this would negatively affect local democracy, irrespective of whether or not replacements are elected in accordance with the principles of local self-government and democracy.

62. Further, the suppression of political pluralism and the limitation of freedom of political debate were recognised by the ECtHR in a similar context as “ulterior motive” for the purposes of Article 18 of the Convention. Most notably, the detention of an opposition leader, “especially during two crucial campaigns relating to the referendum and the presidential election, [was seen as pursuing] the ulterior purpose of stifling pluralism and limiting freedom of political debate, which is at the very core of the concept of a democratic society”.⁹² A violation of Article 18 in conjunction with Article 5(1) was also found where a human rights defender had been placed in pre-trial detention, as “the contested measures were likely to have a dissuasive effect on the work of human-right defenders” and the restriction of the applicant’s liberty was thus applied for purposes

⁹⁰ ECtHR, [Selahattin Demirtaş v. Turkey \(no. 2\) \[GC\]](#), *op. cit.*

⁹¹ [UN Basic Principles on the Independence of the Judiciary](#) (Principles 1-4, 6), [Bangalore Principles of Judicial Conduct](#); [Council of Europe Recommendation CM/Rec\(2010\)12](#).

⁹² ECtHR, [Selahattin Demirtaş v. Turkey \(no. 2\) \[GC\]](#), *op. cit.*, para. 437; see also [Yüksekdağ Şenoğlu and others v. Türkiye](#), [Application no. 14332/17 and 12 others](#), 8 November 2022, para. 639.

other than bringing him before a competent legal authority.⁹³ In these decisions, a deprivation of liberty pursued for political purposes was found to violate Article 18 in conjunction with Article 5, crystallizing how preventive detention can be used to neutralize opposition.

2. Freedom of Expression and Assembly

63. Pre-trial detention and suspension of elected mayors further burdens two core civil and political liberties – freedom of expression and of peaceful assembly – by transforming a precautionary procedural measure into a restriction on democratic debate and collective action. Additionally, Article 25 ICCPR also guarantees participation in public affairs, which presupposes that elected representatives can speak, organize, and meet with constituents. In a case related to a parliamentarian, the Court noted that “Parliament is an essential forum for political debate, of which the performance of parliamentary duties form part. While serving their term of office, members of parliament represent their electorate, draw attention to their concerns and defend their interest.”⁹⁴ Arguably, similar considerations would apply to a mayor’s role in the municipal council.

64. When applied to mayors, pre-trial detention produces both direct and indirect effects on protected freedoms. Directly, detention could prevent public interaction and the possibility to express ideas, thereby suppressing core political speech and representative activity. Indirectly, it deters public actors and citizens from participating in political meetings and protests, for fear of association-based liability or retaliation. Where detention serves ulterior political purposes, the Court found violations of Article 18 in conjunction with *inter alia* Articles 10, or 11, recognizing that instrumentalization of criminal process to silence elected opponents is incompatible with a “democratic society.”⁹⁵ Therefore, detaining a mayor without a proven and reasonable cause would suppress public deliberation, affect freedom of expression, the citizen’s right to choose, and narrow the space for assemblies, therefore affecting the political rights of the citizens.

3. Impact on Electoral Rights

65. In the light of the above-mentioned provisions of the Charter, the pre-trial detention or suspension of local representatives may be construed as impairing the institutional guarantees of local self-government in at least two respects. First, it interferes with the free exercise of the mandate (Article 7(1)) by depriving elected officials of the ability to represent their constituents. Second, it frustrates the right of citizens to determine their interests through their elected assembly (Article 3(2)), thus eroding the representative character of local democracy.

66. As far as the rights under Article 3 of Protocol No. 1 are concerned, even though not directly applicable, the Court recently held “in view of the importance in a democratic society of the right to liberty and security of a member of parliament, the domestic courts must show, while exercising their discretion, that in ordering a person’s initial and/or continued pre-trial detention, they have weighed up the relevant interests, in particular those of the person concerned as safeguarded by Article 3 of Protocol No. 1 against the public interest depriving that person of his or her liberty where required in the context of criminal proceedings. An important element in this balancing exercise is whether the charges have a political basis. [...] [W]here a member of parliament is deprived of his or her liberty, the judicial authorities ordering that measure are required to demonstrate that they have weighed up the competing interests. As part of this balancing exercise, they must protect the freedom of expression of political opinions by the member of parliament concerned. In particular, they must ensure that the alleged offence is not directly linked to his or her political activity.”⁹⁶ While a mayor’s role is different from a parliamentarian, there are

⁹³ ECtHR, [Kavala v. Turkey](#), *op. cit.*, para. 232.

⁹⁴ ECtHR, [Selahattin Demirtaş v. Turkey \(no. 2\) \[GC\]](#), *op. cit.*, para. 393.

⁹⁵ ECtHR, [Merabishvili v. Georgia](#), *op. cit.*; [Selahattin Demirtaş v. Turkey \(no. 2\) \[GC\]](#), *op. cit.*.

⁹⁶ ECtHR, [Selahattin Demirtaş v. Turkey \(no. 2\) \[GC\]](#), *op. cit.*, paras. 389, 395; in said case, the Court concluded that the judicial authorities did not effectively take into account the fact that the applicant was not only a member

certain overlapping functions, particularly as far as the expression of political opinions and the exercise of political activity in general is concerned.

67. The Court also noted that domestic courts should genuinely consider the application of alternative measures to pre-trial detention provided for by domestic law⁹⁷ and concluded that despite retaining his status as member of parliament throughout his term, because it was effectively impossible for him to take part in the activities of parliament on account of his pre-trial detention, this constituted an unjustified interference with the free expression of the opinion of the people and with his own right to be elected and to sit in Parliament. Recalling that Article 3 of Protocol No. 1 is not directly applicable to mayors, the Commission nevertheless deems the principles to at least be of guidance in the present context.

68. Pre-trial detention of opposition mayors interrupts the electoral relationship between citizens and their chosen representatives. When mayors are detained for prolonged periods without conviction, voters lose the capacity to hold their local leaders accountable through democratic means. As concerns the pre-trial detention and suspension of democratically elected local representatives, the procedural safeguards enshrined in Article 5 of the ECHR and the principles of the rule of law therefore gain special relevance. Where they are not met, this will also have negative effects on local democracy and will affect the rights of citizens to participate in the conduct of public affairs and to have the result of their vote taken into account.

4. Assessment of suspension mechanisms

69. As noted above, there is an inherent link between the right to be elected and the right to sit as an elected person – one implies the other. This principle, however, is not without restrictions, and any restrictions to this right, including in case of suspension from mandate, must respect the principle of proportionality. The latter has been defined as the main common European standard to be applied for restrictions on the right to stand in elections or for the loss of mandate.⁹⁸ It must be stressed that the below considerations apply irrespective of whether mayors are directly or indirectly elected, or appointed.

70. At the outset, the Venice Commission notes on the basis of the comparative analysis conducted above, that pre-trial detention does not automatically lead to suspension, and *vice versa*, and that there is therefore no direct correlation between both situations. Indeed, there are only very few countries in which the pre-trial detention of mayors automatically leads to their suspension. At the other end of the spectrum, there are only few countries in which no regulations exist which would provide for the suspension of a mayor in pre-trial detention. The vast majority of countries in fact adopts an approach that falls in between: Either they provide for a discretionary decision – whether by the municipal council, a judge or the administration – on whether or not to impose suspension; or they treat pre-trial as a form of “absence” of the mayor, which allows for suspension. Importantly, a range of countries provide for the possibility to suspend a mayor in case of criminal charges brought against them – irrespective of their placement in pre-trial detention.

71. It is of further note that, where temporary suspension may be imposed, countries have implemented a range of safeguards to ensure the rights of the concerned mayor are preserved. They include limiting the possibility to impose suspension to specific offences; the right to administrative and/or judicial review; defence rights (including the right to be heard); right to a

of parliament but also one of the leaders of the political opposition in Türkiye, whose performance of his parliamentary duties called for a high level of protection

⁹⁷ ECtHR, [Selahattin Demirtaş v. Turkey \(no. 2\) \[GC\]](#), *op. cit.*, para. 396.

⁹⁸ Venice Commission, [CDL-AD\(2023\)050](#), *op. cit.*, paras. 27, 29, with further references; the Commission has further established that the removal of elected officials may exceptionally be justified by the need to prevent them from abusing their office to favour terrorist activities (Venice Commission, [CDL-AD\(2020\)011](#), *op. cit.*, para. 74).

reasoned decision; limited duration of the suspension; application of the general principles of impartiality and proportionality; specifics regarding the relevant majority (where the decision is taken by the municipal council); right to continuous salary and/or compensation. This practice is instructive and should guide the Venice Commission in its present assessment.

72. The Commission has said in the past that the conditions under which the powers of a municipal councillor can be suspended and the verification procedure should be established in a clear and precise manner, and consistently with the principle that the dismissal of an elected representative is an exceptional measure to be applied only in cases of serious failures. All procedural guarantees, including the intervention of a court, should be expressly provided for.⁹⁹ The Commission has provided guidance on suspension due to administrative offences¹⁰⁰, which *a minima*, should apply in the context of criminal offences, as well as on suspension due to criminal offences.¹⁰¹ Importantly, for both administrative and criminal offences, the Commission stressed the necessity for the application of a proportionality test. The Commission further takes due note of the particularly instructive findings of the Constitutional Courts of Estonia,¹⁰² Lithuania,¹⁰³ and Moldova¹⁰⁴ on the present subject-matter.

⁹⁹ Venice Commission, [CDL-AD\(2009\)049](#), Opinion on the Draft Law on Additions to the Law on the Status of Municipalities of the Republic of Azerbaijan, para. 27.

¹⁰⁰ The Commission opined that the following elements should be taken into account: the gravity of the offences, balancing the aim of the protection of the democratic order and the right to stand for elections, considering the nature of the offence and the relevant sanctions. It stressed the need for the existence of a time-limit for the measure applied, for a judicial decision, as well as for judicial review (Venice Commission, [CDL-AD\(2023\)050](#), *op. cit.*, paras. 27, 29, 30-32, 34).

¹⁰¹ On substantive requirements, the Commission noted the application of the standards of a criminal code, together with the concrete definition of the suspected crime, to serve as a benchmark for the relevant assessment. Where the definition chosen was broad and included a range of crimes, safeguards should be provided by requiring that the seriousness of the alleged offence be established. On procedural requirements, the Commission recommended that they be clearly stipulated, including specifying the body competent to make the initial request, and the one competent to render a decision thereon. It further recommended treating suspension as an *administrative* rather than *coercive* measure, thus making it less incriminating to the potential suspect and more respectful of the presumption of innocence. It recommended including a general proportionality test to suspension, as well as a right to appeal. Finally, it recommended including a regulation on the payment of salary during the period of suspension as well as their rights in the event of acquittal (Venice Commission, [CDL-AD\(2020\)008](#), Kosovo - Opinion on Certain Provisions of the Draft Criminal Procedure Code, Namely Trial *in Absentia* (Art. 306) and Suspension of Officials from Office (Art. 177), paras. 45-62).

¹⁰² The Supreme Court (Constitutional Review Chamber) of Estonia held that “as the position of city or rural municipality mayor is a political office and that person carries out the political will of the majority of the council while in office, their suspension from the office of city or rural municipality mayor also constitutes interference with political choices. Suspension of a city or rural municipality mayor may significantly hamper opportunities to carry out the programmatic positions of the political force that received the people’s mandate” ([Constitutional judgment 3-4-1-30-15](#), 15 January 2016, para. 20).

¹⁰³ The Constitutional Court of Lithuania held that competent courts must ensure that a suspension is applied only in cases where it is necessary to reach the objectives established in the law (to enable the speedy disclosure and thorough investigation of criminal acts, or to prevent new criminal acts), as well as that the application of this measure does not restrict the rights or freedoms of the person more than necessary to reach the specified objectives. A decision to apply this procedural coercive measure to a mayor must be based, among other things, on the evaluation of the nature of the office and the nature of the crime they are suspected of. (Constitutional Court of Lithuania, Ruling [KT7-N4/2016](#) of 17 February 2016); In the same context, the Supreme Court of Lithuania opined that where the possibly committed criminal act is related to the use of the official authority exercised by the suspected person, this circumstance may imply the need to remove this person from office (Supreme Court of Lithuania, Ruling of 13 November 2015 and 18 December 2015 in cases no 3K-3-572-969/2015 and no e3K-3-670-378/2015).

¹⁰⁴ The Constitutional Court of Moldova held that the court’s discretionary decision must assess the grounds for suspension, justify its appropriateness, and explain its decision considering the specific circumstances of each case, rather than relying on general or abstract reasoning (Constitutional Court of Moldova, Decisions Nos. 96/2017 and 89/2017 on inadmissibility); It further emphasized that a mayor cannot be suspended from office unless there is a direct and substantive link between the alleged criminal offence and their position, and that such a suspension may be necessary to protect the public institution from the risk of continued unlawful behaviour and prevent further harmful consequences resulting from the alleged criminal offence (Constitutional Court of Moldova, Judgment No. 6 of 3 March 2016).

73. Bearing in mind the above and the particular emphasis on the proportionality test as the main common European standard to be applied for the loss of mandate, a decision whether to suspend a mayor against whom criminal charges are pending should allow for the application of the proportionality test. In this context, it would be also advisable to establish clear legislation regarding the grounds for which a mayor may be suspended, so as to avoid a politization of the judiciary. Finally, it would be preferable for such a decision to be taken by the judiciary, lest it be prone to political influence if left to a municipal council.¹⁰⁵

74. In legislation providing for either automatic suspension, or no suspension at all, such a test may not be applied. This being noted, where the suspension is automatic, in case of pre-trial detention or where limited to very specific offences, it may be the case that the competent legislator has established that, given the offences in question, the option not to suspend is no longer a possibility (*“Ermessensreduzierung auf Null”*) and there is therefore no room to apply the proportionality test.

75. In the light of the above as well as of the fundamental principles of the Rule of Law,¹⁰⁶ the Commission concludes that – where countries provide for the suspension of a mayor against whom criminal charges are brought –, it is recommended that such a decision be taken by the judiciary, allowing for the application of the proportionality test and that the following standards be taken into account in relevant regulations:

- a. The possibility to suspend a mayor should be clearly regulated in law, including:
 - A clear definition of the crimes allowing for a suspension;
 - A clear definition of the burden of proof to be applied in respect of the relevant crime(s);
 - Inclusion of a general proportionality test to be taken into account in the assessment;
 - Inclusion of a time-limit, as well as clear provision regarding any extension;
 - Inclusion of a clear procedure, including the competent authority to request suspension, to render the initial decision and to review the latter by way of remedy.
- b. In addition, the decision to suspend a mayor shall be linked to clear safeguards, which should include:
 - i. The right for the mayor to be heard;
 - ii. The right to a reasoned decision;
 - iii. The right to legal or administrative review, depending upon the body competent to render the suspension decision;
 - iv. Regulations regarding the payment of salary during the suspension;
 - v. The rights of the suspended official in the event of an acquittal or discontinuation of proceedings.

76. It is the Commission's position that, where *a minima* the above-mentioned safeguards are provided, this would ensure that any restrictions applied to the right to sit as an elected person would meet the requirements of the principle of proportionality thus reducing the risk of an impact on the above-mentioned fundamental rights. In addition, such safeguards are also in the broader interest of the citizens, whose rights to choose their representatives and to participate in the

¹⁰⁵ Cf. the Supreme Court (Constitutional Review Chamber) of Estonia, which held “[s]uspension from office of a city or rural municipality mayor is decided by an independent court and the ruling is appealable both to the Court of Appeal and the Supreme Court. Following from the principles of a democratic state governed by rule of law and the unitary state, the legal framework of judicial proceedings in respect of city and rural municipality mayors should apply uniformly. The conduct of criminal proceedings cannot depend on the discretion of a local authority in granting authorisation for suspension from office of a city or rural municipality mayor. Even though local authorities do exist in the interests of decentralising public authority and circumscribing and balancing state authority, in line with the Constitution they are not meant to be “states within a state”” ([Constitutional judgment 3-4-1-30-15](#), 15 January 2016, para. 29).

¹⁰⁶ Cf. Venice Commission, [CDL-AD\(2016\)007](#), Rule of Law Checklist, including notably the principles of Legality and Legal Certainty.

conduct of public affairs are at stake where a mayor is suspended. Where such a suspension upholds the above-mentioned standards and safeguards, it ensures that it is in fact implemented in the interest of the citizens.

B. Assessment of replacement mechanisms

77. The different types of replacement mechanisms identified through the comparative analysis above will be analysed taking into account two key considerations, namely the horizontal separation of powers (i.e., relations between the mayor, the assembly, and the citizens) and the vertical separation of power (i.e., relations between local authorities and central government).

1. Replacement by deputy mayor or by second-placed candidate

78. This replacement mechanism undoubtedly appears as the most frequently used throughout the surveyed countries. This includes the replacement by the deputy mayor, or by the second-placed candidate from the same party or list. It is noted that deputy mayors will in most cases come from the same party or list as the mayor and the two situations are therefore jointly addressed for the purposes of the present report.

79. The system of replacement by the second elected candidate is not in itself objectionable – but may be more appropriate in the case of parliamentary elections with lists of different parties. In such circumstances, there is nothing to prevent the second candidate on the list of the party in question from taking up the vacant post. The will of the citizens who exercised their right to vote is respected in the sense that at least one member of the party in question takes up the post. However, such a replacement mechanism may be deemed problematic when it comes to replacing an executive post.

80. On the one hand, depending on how the mayor and deputy mayor are initially elected or appointed, the replacement by a deputy mayor may not fully take into consideration the rights of voters. For example, it may be that the mayor is directly elected and later appoints the deputy mayor. When replaced, the new mayor would thus no longer be represented by a directly elected representative. On the other hand, such a solution ensures political continuity within a municipal council and its executive, since the deputy mayor will in most case either be from the same political party as the initial mayor – or at the very least from a coalition party. As for second-placed candidates, in the surveyed countries, they will come from the same list or party.

81. While the Commission has not been made aware of any country providing for the second-runner to an election to take up the position of mayor, it nevertheless deems it necessary to note that such a solution would be highly problematic in its view. In a similar situation, it has in the past observed that it is “crucial for the proper functioning of democracy that the candidates who received the highest number of votes are deemed elected, and not second placed candidates from other political parties”¹⁰⁷ and that such a decision would be “contrary to the basic democratic principle that the candidate with the highest number of votes is considered elected and [...] interferes with the rights and interests of the candidates, of their parties and of the electorate.”¹⁰⁸

2. Repeat elections or initial nomination procedure

82. The method, applied in a range of surveyed countries, is certainly the simplest and most organic. Given the principles and spirit of the Charter, it is the only mechanism that fully respects them and ensures that the horizontal separation of powers is fully preserved. In a relevant case,

¹⁰⁷ Venice Commission, [CDL-AD\(2020\)011](#), *op. cit.*, para. 74.

¹⁰⁸ Venice Commission, [CDL-AD\(2020\)011](#), *op. cit.*, paras. 52, 74, where the Commission further opined that “[w]hile the removal of elected officials may exceptionally be justified by the need to prevent them from abusing their office to favour terrorist activities, replacing elected officials by candidates who lost the election, without fresh elections, cannot be justified on that basis”.

the Commission has in the past observed that a solution which respects the will of the voters would be *inter alia* to repeat elections in relevant electoral zones.¹⁰⁹

83. The Commission does deem it necessary to stress that this solution would be the most appropriate either in situations of permanent removal, or of suspension for a duration going beyond the time-frame during which a municipal council could reasonably be expected to deliver its mandate to the population's satisfaction without a mayor at its helmet.

3. Position left vacant until next elections

84. Amongst the surveyed countries, this solution is rare – and incumbent upon the time-frame left until next elections. The Commission is of the view that such a solution could be envisaged if the time elapsed since the last election is longer than the time until the next election, provided the overall duration of the mandate does not make this solution unviable. For example, where the mandate of a mayor goes beyond a period of five years, it could be deemed problematic to keep a mayor's position vacant for more than two years.

85. At this juncture, the Commission recalls Article 3(1) of the Charter, which stresses that local self-government denotes *inter alia* the ability of local authorities to manage a substantial share of public affairs under their own responsibility and in the interests of the local population. Keeping the position of mayor vacant until the next elections should therefore be dependent upon the municipal body's ability to perform its functions in the interests of the local population despite the mayor's absence.

4. Replacement appointed by municipal body

86. The following observations solely concern situations where a mayor – who is initially directly elected – is replaced through appointment by the municipal body.¹¹⁰ This solution, which consists of leaving it up to the municipality itself to appoint a representative until the next elections, is a delicate one. At issue is the position of mayor, who is the head of a local executive body. The concerns raised in relation to the first method also apply to this mechanism.¹¹¹ In principle, it would therefore need to be seen as a breach of the horizontal separation of powers for the assembly to be authorised to appoint a replacement for a directly elected mayor.

87. However, these rights are not absolute. The Commission notes Congress' position regarding the practice that an elected mayor legitimately removed from office be replaced by a new mayor elected by the municipal council is a "sufficient safeguard against unlawful activity and deserves to be retained."¹¹² The Commission itself has indicated in the past that one alternate solution to reinstating a suspended mayor would be "allowing respective municipal councils to choose replacement mayors."¹¹³ And whilst the municipal council is a local executive organ, at least it can claim proximity to and roots in the local population in its favour.

88. In the light of this, the Commission concludes that it may be that such an appointment by the municipal council may be justified in particular circumstances. In any event, the above comparative research indicates that it is only in a limited number of countries – in most cases either only on a temporary basis, or in case the deputy mayor does not step in – that this mechanism is applied.

¹⁰⁹ Venice Commission, [CDL-AD\(2020\)011](#), *op. cit.*, paras. 69, 76.

¹¹⁰ Where the mayor is indirectly elected/appointed by the municipal council, and this procedure is also followed in case of replacement, this situation is dealt with above under **V.B.1.**

¹¹¹ For example, depending upon the distribution of political forces, an opposition may find itself deprived of any representation at the local level. If the opposition is weak and the member to be replaced is the only representative or is in a minority position, the result will be contrary to the will of the voters. But there is more: it would be necessary to justify why the right to elect a local representative is transferred from the citizen to the body itself.

¹¹² [Congress Recommendation 397 \(2017\)](#).

¹¹³ Venice Commission, [CDL-AD\(2020\)011](#), *op. cit.*, para. 76.

5. Replacement appointed by government

89. This mechanism is clearly the most flawed in light of the Charter. Local democracy depends on three elements: the integrity of the electoral mandate, accountability to voters and continuity of administration. Replacing elected mayors with centrally appointed trustees effectively overrides the will expressed by the electorate, eroding the very foundation of municipal democracy, but it also severs all ties between the locality and its mayor, since it is the central government that makes the decision. Notably, this approach would contravene the vertical separation of power, thus weakening the operational autonomy of local authorities, disrupting the balance of decentralisation, contrary to the spirit of the Charter's preamble and Article 2. In addition, it is contrary to those principles expressed at Article 8 of the Charter, namely related to the nature of administrative supervision of local authorities' activities. In effect, replacement by unelected trustees undermines the principle that local authority derives from the people's will and substitutes that will with a decision of the central authority, thereby breaching both the principle of representative democracy at the local level and eroding the broader concept of local self-government.

90. The Commission has consistently criticised the practice of replacement of mayors by the government. It previously held that the replacement of "free elections by people as a way to designate local representatives and form local authorities, with appointments made by state authorities alters, in respect of the concerned local communities, the very nature of local authorities as representative of the will and the choice of the local population, and the legitimacy of their action. This also raises issues of accountability, towards the local community/population, of those who fill the vacant position by way of appointment."¹¹⁴ The Commission further noted that this resulted in a breach of Article 3(1) of the Charter, as it undermined the right and the ability of elected local authorities, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.¹¹⁵ Equally, the European Parliament, drawing upon the Commission's recommendations, condemned the practice of replacing elected mayors with unelected trustees as a violation of democratic norms.¹¹⁶

91. The comparative analysis undertaken shows that there is in fact only one comparable situation amongst the surveyed countries: in this particular case, regulated in Italy, the entire municipality may be placed under special administration by the national authorities, with a commission chosen by the government to manage the municipality until new elections are held. This occurs in extraordinary circumstances, such as suspected mafia infiltration, and follows an extensive and detailed administrative procedure.¹¹⁷ It is therefore clear that – whilst such situations may indeed be foreseen –, they remain exceptional and must be tied to very clearly regulated circumstances and safeguards.

¹¹⁴ Venice Commission, [CDL-AD\(2017\)021](#), *op. cit.*, para. 80.

¹¹⁵ Venice Commission, [CDL-AD\(2020\)011](#), *op. cit.*, para. 65.

¹¹⁶ European Parliament, [Resolution 2025/2546\(RSP\)](#), on the recent dismissals and arrests of mayors in Türkiye, 13 February 2025.

¹¹⁷ Cf. *infra* Section IV.B.5., *Italy*, Articles 143 of the Legislative Decree 267/2000, which requires that concrete, unequivocal, and relevant evidence emerges regarding direct or indirect links or form of influence between local administrators and organized crime. In order to verify this, the prefect must conduct all appropriate investigations and appoint an investigatory commission composed of three public administration officials. As a safeguard, strict time limits are foreseen throughout the entire procedure. Within three months (renewable once), the commission has to complete its investigations and submit its findings to the prefect. Within forty-five days, the prefect, after consulting the provincial committee for public order and safety, with the participation of the competent public prosecutor, must submit a report to the Minister of the Interior. To pass the scrutiny, the report has to be very detailed. After receiving the report, the Minister of the Interior might propose the government (council of ministers) to adopt a resolution demanding the President of Republic to adopt the dissolution decree. As a further safeguard, the acts are transmitted to the Chambers of Parliament. The dissolution decree remains in effect for a period of twelve to eighteen months, extendable up to a maximum of twenty-four months in exceptional cases, with notification to the competent parliamentary committees, in order to ensure the proper functioning of the services entrusted to the administrations, in compliance with the principles of impartiality and proper administrative action. Once such a special administration has come to an end, elections for the bodies dissolved are held.

92. As a final note, given the real risk of severe violations of the rights guaranteed in the Charter through such regulations, it would be of further significant concern if such regulations be adopted through emergency legislation. In a similar situation, the Commission has in the past noted its particular concerns “that, through an emergency legislation, the central authorities are enabled [...] to appoint unelected mayors [...] and exercise, without judicial control, discretionary control over the functioning of the concerned municipalities.” This was found all the more problematic as the new rules, introduced through decree-law in the framework of the emergency regime, were introducing changes of structural nature, which were not limited in time, to the system of local government concerned.¹¹⁸

93. Fundamentally, the fact that the incumbent mayor may have lost his capacity to fulfil his functions – such as in case of criminal conviction –, does not absolve a state of its obligations under the Charter. These include the fact that the mandate of a local representative must be the result of free, secret, equal, direct and universal suffrage. A replacement must remain as close as possible to a state’s obligations under the Charter. This is not the case where a mayor’s replacement is appointed by the government, without further safeguards. A replacement by the government bears a real risk of a major interference with local governance, irrespective of the legitimacy of the suspension – in essence, the voters could gain the impression that their vote is rendered meaningless by the fact that their chosen candidate is substituted by an individual selected by the government. This concern applies *a fortiori* where there is a pattern to target mayors belonging to the opposition and when the replacement of mayors is a reoccurring feature.

VI. Conclusion

94. By letter of 5 June 2025, the President of the Congress requested an opinion of the Commission on the impact of prolonged pre-trial detention of opposition mayors on the exercise of local democratic governance in Türkiye. By letter of 2 September 2025, the Commission informed the Congress of its decision, in light of two previous opinions issued on similar matters, to prepare the present Report, which assesses the impact of mayors’ pre-trial detention on local democratic governance in general.

95. The impact of the pre-trial detention of mayors is two-fold: not only may it impact the individual rights of the affected mayor but also it impacts the rights of the voters, whose choice as expressed in democratic elections may be frustrated through the nomination of a mayor who does not align with their choice. It therefore interferes with the rights of the citizens to participate in local affairs.

96. As far as the pre-trial detention of mayors is concerned, it is clear from the above that the prolonged detention of elected representatives may call into question multiple convention rights, including Articles 5, 10, 11 and 18 of the Convention – as well as contravene principles established in Article 3 of Protocol No. 1, despite not being directly applicable, as well as in Article 25(b) of the ICCPR. Accordingly, the Venice Commission finds that any mechanisms for the suspension and replacement of mayors in pre-trial detention call for a strict scrutiny, both on the side of the legislator to ensure that the mechanisms adopted conform with relevant standards, as well as on the side of the judiciary, to ensure that relevant standards are adequately applied to avoid the risks to the above-mentioned rights.

97. As far as the suspension of mayors is concerned, the comparative analysis undertaken by the Commission allowed for the following conclusions:

- a. Very few countries provide for the automatic suspension of a mayor in pre-trial detention; Similarly, very few do not provide for the possibility of a suspension in such cases;
- b. In most countries, the decision to suspend a mayor in pre-trial detention is a discretionary one, taken either by the municipal council, by a judge or by the

¹¹⁸ Venice Commission, [CDL-AD\(2017\)021](#), *op. cit.*, paras. 95-99; [CDL-AD\(2020\)011](#), *op. cit.*, paras. 71, 75.

administration; other countries treat pre-trial detention as the absence of a mayor which would make them unable to perform their duties;

- c. Some countries provide for the possibility to suspend a mayor even if they are not in pre-trial detention;
- d. Most countries surveyed provide for the possibility to remove a mayor from office upon a final criminal conviction;
- e. Most countries provide for specific procedural safeguards in case a mayor is suspended, irrespective of whether or not they are in pre-trial detention.

98. On that basis and taking into account the principle of proportionality as the main common European standard to be applied for the loss of mandate, the Commission has expressed the recommendation that any decision to suspend a mayor should be taken ideally by the judiciary and allowing for the most fulsome application of the proportionality test. In addition, the Commission has expressed concrete recommendations concerning safeguards to be applied in case of suspension of mayors from their office. The Commission underlines the fundamental relevance of such safeguards, in ensuring that the principle of proportionality is met and incidentally in reducing the risk of violations of the above-mentioned rights, and stresses that these considerations are applicable irrespective of whether mayors are directly or indirectly elected, or appointed.

99. As far as replacement mechanisms for removed mayors are concerned, the comparative analysis undertaken by the Commission provides the following conclusions:

- a. Replacement by deputy mayor or second-placed from the same party or list (cf. *infra* paragraphs 78-81): despite this being the most frequently used mechanism, it may be problematic that such a replacement does not take into account the rights of voters; however, it has the benefit of ensuring political continuity;
- b. Repeat elections or initial nomination procedure: used less frequently, this method is the one which ensures the full preservation of the horizontal separation of powers and the Commission recommends its use, certainly in cases of permanent removal or suspension beyond a reasonable period of time, as exposed above;
- c. Leave position vacant until next elections: rarely used, this solution would depend upon the municipal body's capacity to perform its functions despite the vacancy;
- d. Replacement appointed by municipal body: equally rarely used, it may be justified in certain circumstances despite not fully aligning with the principle of horizontal separation of powers;
- e. Replacement appointed by government: this solution, used only in two surveyed instances, raises fundamental issues concerning the vertical separation of powers; unless linked to very strictly regulated circumstances and safeguards, it should be avoided.

100. Fundamentally, it is in the interest of the citizens that any mechanisms in place – both for mayors' suspension and replacement – be applied in line with international standards, lest the citizens' rights to participate in the conduct of local affairs be disproportionately interfered with.

101. The Venice Commission remains at the disposal of Congress for further assistance in this matter.