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

**ROMANIA**

**OPINION**

**ON**

**THE EMERGENCY ORDINANCE REGARDING THE MERGER  
OF THE 2024 ELECTIONS FOR THE EUROPEAN PARLIAMENT  
AND FOR THE LOCAL AUTHORITIES**

**Approved by the Council for Democratic Elections at its  
82<sup>nd</sup> meeting (Venice, 13 March 2025)  
and adopted by the Venice Commission at its  
142<sup>nd</sup> Plenary Session (Venice, 14-15 March 2025)**

**On the basis of comments by**

**Ms Renata DESKOSKA (Member, North Macedonia)  
Mr Michael FRENDI (Member, Malta)  
Ms Katharina PABEL (Substitute Member, Austria)**

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## I. Introduction

1. By letter of 11 March 2024, the President of the Parliamentary Assembly of the Council of Europe (PACE) requested an Opinion of the Venice Commission on the Emergency Ordinance regarding some measures for the organisation and conduct of the elections for members from Romania in the European Parliament in 2024 and the elections for local public administration authorities in 2024 ([CDL-REF\(2025\)009](#), Government Emergency Ordinance GEO 21/2024, hereinafter “GEO 21/2024”). Enclosed with his request was a letter from Mr Iulian Bulai, a Member of the Chamber of Deputies of the Romanian Parliament and of PACE, which put the emphasis on aspects of the text he considered problematic. The Bureau of the Venice Commission decided to postpone the adoption of the Opinion pending the 2024 elections in Romania (European Parliament and local elections in June, presidential and legislative elections in November and December).

2. Ms Deskoska, Mr Frendo and Ms Pabel acted as rapporteurs for this opinion.

3. On 3 and 11 February 2025, a delegation of the Commission composed of Ms Deskoska, Mr Frendo and Ms Pabel, accompanied by Mr Pierre Garrone from the Secretariat, had online meetings with representatives of the political groups represented in Parliament; the Ministries of Internal Affairs; Foreign Affairs; Development, Public Works and Administration; and Justice; the Secretariat General of the Government; and the Permanent Electoral Authority; as well as with civil society organisations. The Commission is grateful to the Romanian authorities for the excellent organisation of these online meetings.

4. This Opinion was prepared in reliance on the English translation of the Emergency Ordinance. The translation may not accurately reflect the original version on all points.

5. This Opinion was drafted on the basis of comments by the rapporteurs and the results of the online meetings on 3 and 11 February 2025. The draft opinion was approved by the Council for Democratic Elections at its 82<sup>nd</sup> meeting on 13 March 2025. Following an exchange of views with Mr Mihnea Claudiu Drumea, Secretary General of the Government of Romania, it was adopted by the Venice Commission at its 142<sup>nd</sup> Plenary Session (Venice, 14-15 March 2025).

## II. Background and scope of the Opinion

6. In 2024, according to schedule, the following elections had to take place in Romania:

- The elections to the European Parliament;
- The local elections;
- The presidential elections – if the majority of votes of the voters registered in the electoral lists is not obtained in the first round of voting, a second round of voting is organised, according to Art. 81 of the Constitution;
- The parliamentary elections (held simultaneously for the Chamber of Deputies and the Senate).

7. Since the mandate of the President is five years, and those of the Romanian Parliament – both Houses -, of the local authorities and of the European Parliament are four years, such a “super-election year” should take place in Romania every twenty years, unless early elections are called. None of the 2024 elections in Romania were early elections, so this schedule has been known for years.

8. GEO 21/2024 was adopted on 8 March 2024 on the basis of Art. 115 para. 4 of the Constitution of Romania on emergency ordinances. Such ordinances can be adopted by the Government “in exceptional cases, the regulation of which cannot be postponed”. The announcement of the holding of a public debate was made on the website of the Ministry of Internal Affairs on 1 March 2024 and the public debate was organised by the said Ministry on

4 March, in person and online. GEO 21/2024 merged the European Parliament elections (scheduled to be held on 9 June 2024) and the local elections (which should have taken place in September 2024), scheduling them to be both held on 9 June 2024. The Draft Law for the approval of the Government's Emergency Ordinance 21/2024 was adopted by the Senate (the first notified Chamber of the Parliament) as a result of exceeding the deadline for adoption (Article 75 (2) of the Constitution) and then sent to the Chamber of Deputies, the decision-making Chamber of the Parliament in this matter, which had not yet voted on it. The local elections were brought forward by three months but the date of taking office of the local authorities was not. The merger was decided by the Government, shortly before the deadline for issuing decisions on the organisation of the European Parliament elections. In addition to establishing the legal framework for the merger of elections, GEO 21/2024 introduced changes of substance to the electoral legislation, mainly amending the composition of the electoral administration – which in principle is not the same for the local and the European Parliament elections – and reducing the length of residence for voting at a new place of residence. As a justification for the emergency procedure, the Government referred in the preamble to the ordinance to the challenges put to the European Union and its states in 2024 and the defining role of the 2024 European Parliament elections for the future of the Union, and thus to the importance of a better representation of Romania in the European Parliament through an increased turnout which would be made possible by the merger of the elections.

9. The elections of 9 June 2024 for local authorities and the European Parliament were governed by GEO 21/2024 and, to the extent that they did not conflict with GEO 21/2024, the following pieces of legislation were applied: Law 33/2007 on the organisation of elections for the European Parliament; Law No. 115/2015 for the election of local public administration authorities, amending the Law of local public administration No. 215/2001.<sup>1</sup>

10. Several NGOs and opposition politicians criticised the adoption of GEO 21/2024, including the decision to merge the elections,<sup>2</sup> specific provisions within the ordinance, the timing of its adoption, and the use of an emergency ordinance to amend electoral legislation.<sup>3</sup>

11. GEO 21/2024 was assessed by the Constitutional Court of Romania as part of an *a priori* constitutional review upon request by the Supreme Court of Justice, which was itself acting at the request of a political party challenging the composition of the Central Electoral Bureau for the elections of 9 June 2024.<sup>4</sup> On 14 May 2024, the Constitutional Court ruled that GEO 21/2024 is constitutional with regard to the justification of urgency, the use of the emergency procedure, and the modifications to the formation of the Central Electoral Bureau.<sup>5</sup> In essence, regarding the pleas of unconstitutionality related to the Emergency Ordinance as a whole, the Court held that the reasons outlined in its preamble (see above) justified the existence of an extraordinary situation, that is a situation of urgency that required immediate regulation. Given the scale and number of elections held in 2024, the merger of the elections would enable avoiding a risk to the proper exercise of fundamental rights and freedoms. Moreover, when deciding to hold elections

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<sup>1</sup> Article 37 of GEO 21/2024. The following normative acts were also applied: Law No. 334/2006 on the financing of political parties and electoral campaigns (updated); Government Decision No. 10/2016, approving methodological norms for applying Law No. 334/2006 (updated); CNA – National Council of the Audiovisual - Decision No. 150 (3 April 2024) on rules for local election campaigns; CNA Decision No. 149 (3 April 2024) on rules for European Parliament election campaigns; CNA Instruction No. 1 (16 April 2024) on audiovisual electoral content for on-demand media services.

<sup>2</sup> <https://expertforum.ro/en/merging-elections-ep/>; <https://expertforum.ro/en/merge-elections-chaos/>

<sup>3</sup> Vot Corect: Final observation report on the local and EP elections, 9 June 2024, <https://epde.org/wp-content/uploads/2024/10/Final-observation-report-June-2024.pdf>.

<sup>4</sup> According to Art. 146 letter d) of the Constitution, the review over the Government Emergency Ordinance (GEO) is carried out in the framework of proceedings pending before a court, in this case the High Court of Cassation and Justice; the objection as to the constitutionality of the GEO being invoked in the file pending before the court by a party to the proceedings – in the present case a political party, and the referral to the Constitutional Court being made by the High Court.

<sup>5</sup> Constitutional Court of Romania, Decision No. 252/2024. See PRESS RELEASE, 14 May 2024, <https://www.ccr.ro/en/press-release-14-may-2024/>.

of different types on the same date, it was necessary for the state bodies involved in the electoral process – bodies that should be, by nature, common to elections organised simultaneously – and in particular the Central Electoral Bureau, to be organised according to uniform criteria. This approach was intended to ensure organisational cohesion and legal certainty within the electoral process. The Court held that even though the normative act was adopted less than a year before the elections and altered the composition of the Central Electoral Bureau, it did not create legal uncertainty for electoral competitors. The Court concluded that the emergency ordinance did not violate constitutional provisions regarding legal certainty, the separation and balance of state powers, the role of Parliament as the sole legislative authority of the country, the conditions for adopting emergency ordinances, or the decisions of the Constitutional Court. The Court further ruled that the composition of the Central Electoral Bureau, as outlined in the ordinance, was not directly related to electoral rights and did not form part of either the substantive or procedural components of those rights. The contested regulation did not affect the primary purpose of establishing the Central Electoral Bureau, which is to ensure that the electoral process is conducted in a democratic, transparent, and multi-party manner. Therefore, the Court concluded that these provisions did not violate the constitutional prohibition on restricting the exercise of electoral rights through emergency ordinances.

12. The Opinion of the Venice Commission does not aim to provide a comprehensive analysis of electoral regulations in Romania or of all the changes introduced by GEO 21/2024; nor will it address the issue of their constitutionality which was settled by the Constitutional Court. The Venice Commission will address the following issues from the perspective of international standards: on the substance, the merger of European Parliament and local elections, the early date of the local elections and the delay in taking office, the reduction of the length of residence for voting at a new place of residence and the modification of the composition of the electoral commissions; concerning the procedure, the late amendments and the issue of the stability of electoral law, and the use of an emergency ordinance to adopt the regulations at stake. The focus of the Venice Commission in this Opinion shall be related to the concerns raised during the adoption and implementation of GEO 21/2024, including those raised in the letter enclosed with the request. The absence of comments on other provisions of the Emergency Ordinance should not be seen as tacit approval of these provisions.

### **III. Analysis**

#### **A. Issues of substance**

13. GEO 21/2024 provided for the merger of local and European Parliament elections. The local elections, which should have taken place in September 2024, were thus brought forward by more than three months, while the newly elected local authorities took office in October as per the original schedule. The composition of the electoral administration, which is provided for in a different way in Law 33/2007 on the organisation of elections for the European Parliament and Law No. 115/2015 for the election of local public administration authorities, was changed in order to be uniform for both elections (European Parliament and local). The length of residence for voting at a new place of residence was also reduced for the 9 June 2024 elections. The Venice Commission will now examine the conformity of these amendments with international standards.

#### **1. The merger of local elections and elections to the European Parliament**

14. Holding jointly, at the same time, elections to the European Parliament and Local Government elections is practice in a number of European Union states, such as Belgium, Cyprus, Ireland, Italy and Malta, and does not, as such, go against any international standards.<sup>6</sup>

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<sup>6</sup> The Congress of Local and Regional Authorities has been critical at several occasions of the merger of local and other elections: see <https://rm.coe.int/recurring-issues-based-on-assessments-resulting-from-congress-monitori/1680b1ccaf>, para. 99; <https://search.coe.int/cm?i=0900001680acf49c> (Armenia);

15. The reasons adduced for the merger of elections were the following: the overlap of a number of elections in a short period of time (four or five rounds of elections in the same year, which should not happen again for another 20 years) and the possibility of substantive savings on the cost of the elections. In addition, there was a concern of low turnout, as citizens could be overwhelmed by so many elections. These reasons appear, in principle, to be justified.

## 2. The early date of the local elections

16. The previous local elections were held at the end of September 2020, and the term of office for local elected representatives was four years starting from the start of their mandate in October 2020, thus ending in October 2024. Concerns were raised, in particular in the letter enclosed with the request, that holding an early election in June could create confusion regarding the commencement of the mandates, which was not brought forward. According to the normal procedure of the Administrative Code, local councils must be constituted within 60 days of the election date.<sup>7</sup> While the Government and the Permanent Electoral Authority considered the changes to be of a mere technical nature, opposition representatives alleged that the results of the local elections could have been different had they not been brought forward; NGOs referred to decisions “imposed” on their successors by the incumbents during the period between the elections and the new local authorities taking office (such as contracts).

17. The Commission observes that, according to the Act concerning the election of the members of the European Parliament by direct universal suffrage, the elections to the European Parliament had to take place in June 2024; only the date of the local elections could be changed in case of a merger. While the date of the elections was brought forward, the mandate of the incumbent officials was not modified (they remained in office until the end of the term for which they had originally been elected) and the new mandates started to run on the date of the expiry of the original ones. The merger of the elections therefore did not have any impact on the duration of the mandates of the members of local authorities elected in the last election and of the newly elected members (which could have raised issues under democratic standards). Nevertheless, it is true that the “cohabitation” of the incumbent with the newly elected officials lasted more than four months (between the election and taking office), which is a long period of time, amounting to the double of the maximum timeframe provided for by the Administrative Code. This cohabitation may indeed have created confusion and possibly tensions, as reported by stakeholders met during online meetings.

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<https://search.coe.int/cm?i=0900001680aa5Ebb> (Bosnia and Herzegovina); <https://search.coe.int/cm?i=0900001680a85c28> (Serbia). See also Committee on the Monitoring of the implementation of the European Charter of Local Self-Government and on the respect of Human Rights and the Rule of Law at local and regional levels (Monitoring Committee), Fact-finding mission on local elections in Bucharest (9 June 2024), [CG/MON\(2025\)05](#). See European Parliament Elections, 6-9 June 2024, ODIHR Special Election Assessment Mission [Final Report](#), p. 10: national or local elections were held at the same time as the 2024 European Parliament elections in nine countries.

<sup>7</sup> The Venice Commission considers that “it can be useful to determine a minimum and a maximum period between the decision on the date of the elections and the elections themselves”: Venice Commission, Report on choosing the date of an election, [CDL-AD\(2007\)037](#), para. 36. This is intended at limiting the duration of the electoral process and thus the timeframe between the calling of elections and the day when the elected authorities take their positions; limiting the period during which an incumbent authority is in charge while the future ones have already been elected appears still more justified. Moreover, according to the Venice Commission, the postponement of elections should only take place in exceptional cases: Venice Commission, Albania - Opinion on the powers of the President to set the dates of elections, [CDL-AD\(2019\)019](#); Kyrgyzstan - Urgent amicus curiae brief relating to the postponement of elections motivated by constitutional reform, [CDL-AD\(2020\)040](#). Similarly to the postponement of elections, the postponement of taking office also raises the issue of the extension in time of the powers of an elected body. However, it must be reminded that, in the present case, taking office was not postponed, while the elections were put forward.

### **3. The reduction of the length of residence for voting at a new place of residence**

18. The reduction of the length of residence for voting at a new place of residence just before the elections (Article 14 GEO 21/2024) is another concern raised in the letter enclosed with the request. Voters who moved to another commune/town/municipality less than 60 days before E-day, could only vote in the municipality where they were domiciled. There is a distinction here between the place of domicile and the place of residence. For local and regional elections, a length of residence requirement not exceeding six months does not go against international standards.<sup>8</sup> The previous requirement was six months (Article 18(4<sup>1</sup>) of Law 115/2015 amended very recently – in 2023), and the reduction of the length of residence requirement is welcome since it is in principle favourable to the voters. However, such a change close to the elections may have led to confusion among voters, since voters who registered with their residency in the Electoral Register before GEO 21/2024 was adopted were required to have obtained residency at least six months before the election.<sup>9</sup>

### **4. The modification of the composition of the electoral commissions**

19. One of the concerns expressed in particular in the letter enclosed to the request by election observers was that the composition of the electoral commissions was changed through GEO 21/2024, thus excluding two parties that had obtained mandates in the European Parliament in previous elections.

20. According to Article 2(14) of GEO 21/2024, for the elections of 9 June 2024, with the exception of the electoral bureau for polling stations and the electoral bureaus abroad, the electoral bureaus shall be completed in three stages:

- Stage 1: Representatives from parliamentary political parties and organisations of citizens belonging to national minorities with parliamentary groups in the 2020 elections.
- Stage 2: Representatives from political parties and organisations of citizens belonging to national minorities that won seats in the 2019 European Parliament elections.
- Stage 3: If there are still vacancies, representatives from political parties or organisations belonging to non-parliamentary national minorities, ranked by the number of candidates they have in the relevant constituency.

21. By way of comparison, Law No.115/2015 (as amended in 2020) provides for four stages for the formation of electoral bureaus for local elections:

- Stage 1: Representatives from political parties, political alliances, and organisations of national minorities with parliamentary groups in both chambers of Parliament.
- Stage 2: Representatives from parties or organisations that have at least 7 senators or 10 deputies, and national minority groups represented in the Chamber of Deputies.
- Stage 3: Representatives from political formations with parliamentary representation from previous elections.
- Stage 4: Additional representatives based on the number of candidates proposed, ranked by the number of candidates in the constituency.

22. In its turn, Law No. 33/2012 specifies three stages for the formation of electoral bureaus for European elections:

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<sup>8</sup> Venice Commission Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor](#), I.1.c.iii-iv.

<sup>9</sup> Vot Corect: Final observation report on the local and EP elections, 9 June 2024, <https://epde.org/wp-content/uploads/2024/10/Final-observation-report-June-2024.pdf>, p.12. See also above III.A on the stability of electoral law.

Stage 1: One representative from each political party, organisation of citizens belonging to national minorities, or political/electoral alliance that participates in the elections and has members in the European Parliament.

Stage 2: One representative from each political party, organisation of citizens belonging to national minorities, or political/electoral alliance that participates in the elections but has no members in the European Parliament.

Stage 3: If a political organisation in Stage 1 or 2 is entitled to a representative but has not submitted one, the next organisation in line (from Stage 1 or 2) that has submitted a representative will be allocated the position.

23. The solution adopted by the authorities appears as a compromise between the rules applying to local elections and those applying to the elections of the European Parliament. The merger of two different types of elections rendered it necessary to apply *ad hoc* rules instead of those relating to only one type of elections.

24. The main difference between the composition of the electoral bureaus applicable to local elections and GEO 21/2024 is that, in 2024, political parties and organisations of citizens belonging to national minorities that had won seats in the previous European Parliament elections were represented in the electoral bureaus while some parties without a parliamentary group were not. The main difference between the composition of the electoral bureaus applicable to European Parliament elections and GEO 21/2024 was that, in 2024, parties that obtained seats in national elections were represented in the electoral bureaus.

25. The Code of Good Practice in Electoral Matters provides that, should there be a representation of political parties in the electoral commissions, they “must be equally represented on electoral commissions or must be able to observe the work of the impartial body”.<sup>10</sup> Equality may be construed strictly or on a proportional basis. GEO 21/2024 provides for a strict equal representation of political parties with seats in the national and European Parliaments and possible representation of other parties. This is in line with international standards.

26. In general, the substance of the revision does not go against international standards. In particular, the merger of local elections and European Parliament elections may be justified in a year where an exceptional number of elections took place. Taking office several months after the elections is acceptable as long as the mandate of the incumbent authority is not extended. More than four months however is a long period of time. This cohabitation may indeed have created confusion and possibly tensions. The reduction of the length of residence requirement is also acceptable in principle, as well as the modification of the composition of the electoral administration which was unavoidable due to the merger of elections.

## **B. Regulatory levels: the use of emergency ordinances to legislate**

### **1. In general**

27. The Venice Commission has already criticised Romania's frequent reliance on emergency ordinances (GEOs), describing it as a practice that undermines legislative quality, legal certainty, and democratic principles.<sup>11</sup> The Commission has highlighted that accelerated procedures, bypassing the usual parliamentary deliberations, often used to adopt GEOs, lack proper deliberation and consultation with opposition, experts, and civil society. The Venice Commission is “highly critical of rushed adoption of acts of Parliament. [...] This manner of law-making raises doubts as regards the soundness of the substantive outcomes of the reform. And this is a fortiori true where legislative amendments are adopted not by an act of

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<sup>10</sup> Venice Commission Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor.](#), II.3.1.e.

<sup>11</sup> Venice Commission, Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 Amending the Laws of Justice, [CDL-AD\(2019\)014](#), paras. 9-21.



Parliament, but by the Government, through ‘emergency’ ordinances which acquire the force of law without any discussion in Parliament.”<sup>12</sup> and has led to laws requiring subsequent amendments.

28. The Commission has emphasised the detrimental effect of GEOs on legal certainty, noting that frequent changes "make it increasingly difficult to explain what the current status quo is,"<sup>13</sup> even for legal experts. The lack of coherence in the legislative framework is compounded by the absence of mandatory parliamentary review and the immediate enforceability of GEOs, which limits effective constitutional oversight. The Commission has warned that this practice not only "disturbs legal certainty, [but also] weakens external checks on the Government, and disregards the principle of the separation of powers."<sup>14</sup>

29. Furthermore, the Commission has criticised the Government’s interpretation of Article 115 of the Constitution, which permits GEOs but has been used too frequently in view of the nature of recourse to this procedure, which should be exceptional. It has argued that the "nearly constant use of government emergency ordinances is [...] not the appropriate way"<sup>15</sup> to address urgent legislative needs, calling for a drastic reduction in their use. To restore democratic balance and ensure legislative stability, the Commission has recommended envisaging the revision of Article 115 to define more narrowly the circumstances under which GEOs can be issued and to introduce stronger oversight mechanisms.<sup>16</sup>

## 2. In the electoral field

30. The use of GEOs in election matters is even more problematic than in other legal areas. The Venice Commission has consistently expressed the view that any successful changes to electoral legislation should be built on at least the following three essential elements:

- 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations;
- 2) the adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and
- 3) the political commitment to fully implement such legislation in good faith, with adequate procedural and judicial safeguards and means by which to timely evaluate any alleged failure to do so.

31. In this regard, the Venice Commission has stated that “[i]f the process of changing the electoral rules is not sufficiently inclusive and transparent, that is if all relevant stakeholders are not involved in the proper way, new electoral rules risk being seen as intended more at favouring incumbents than at improving the electoral system”.<sup>17</sup>

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<sup>12</sup> Venice Commission Opinion in Emergency Ordinances GEO No. 7 and GEO No. 12 Amending the Laws of Justice, [CDL-AD\(2019\)014](#), para.11

<sup>13</sup> Venice Commission, Opinion on Emergency Ordinances GEO No. 7 and GEO No. 12 Amending the Laws of Justice, [CDL-AD\(2019\)014](#), para. 14.

<sup>14</sup> Venice Commission Opinion on Emergency Ordinances GEO No.7 and GEO No.12 Amending the Laws of Justice, [CDL-AD\(2019\)014](#), para. 21.

<sup>15</sup> Venice Commission, Opinion on the compatibility with Constitutional principles and the Rule of Law of actions taken by the Government and the Parliament of Romania in respect of other State institutions and on the Government emergency ordinance on amendment to the Law N° 47/1992 regarding the organisation and functioning of the Constitutional Court and on the Government emergency ordinance on amending and completing the Law N° 3/2000 regarding the organisation of a referendum of Romania, [CDL-AD\(2012\)026](#), para. 16.

<sup>16</sup> Venice Commission, Opinion on Emergency Ordinances GEO No.7 and GEO No.12 Amending the Laws of Justice, [CDL-AD\(2019\)014](#), para. 21.

<sup>17</sup> Venice Commission and ODIHR, Türkiye - Joint Opinion on the amendments to the electoral legislation by Law No. 7393 of 31 March 2022, [CDL-AD\(2022\)016](#), para. 21; Venice Commission, Georgia – Opinion on amendments to the election code which abolish gender quotas, [CDL-AD\(2024\)023](#), paras. 15-16.

32. The amendments to the electoral legislation were adopted by way of an emergency ordinance. By its very nature, an emergency procedure does not allow a comprehensive dialogue with all stakeholders, not even with the parties represented in Parliament. Although a public debate on draft GEO 21/2024 took place, the Commission notes that it was held only eight days before the adoption of the ordinance, too short a timeframe for a meaningful consideration of the inputs received. The Rule of Law Checklist provides that the public should have “a meaningful opportunity to provide input”.<sup>18</sup> In electoral matters in particular, an open and transparent process of consultation and preparation of legislative amendments increases confidence and trust in the adopted legislation and in the State institutions in general.<sup>19</sup>

33. The Commission has previously warned that the use of GEOs for elections, by sidestepping the normal legislative process, concentrates power in the executive branch and undermines the principle of separation of powers. This is particularly problematic in the field of elections, which are at the core of democracy. For this reason, the Venice Commission’s Code of Good practice in Electoral Matters recommends that “[a]part from rules on technical matters and details – which may be included in regulations of the executive – rules of electoral law must have at least the rank of a statute.”<sup>20</sup>

34. The Commission observes that it is rare that so many elections take place the same year, but it is not necessarily unexpected: the possibility could and should be envisaged by legislation, in particular due to the possibility of early elections. Codification of electoral legislation may help avoiding frequent revisions of the legislation – including late revisions through emergency ordinances –, to ensure completeness and consistency of the legal framework and therefore to improve trust in the electoral process.

### C. Stability of electoral law

35. Stability of electoral law is a requirement of legal certainty – a fundamental aspect of the Rule of Law – essential to ensuring trust in elections and “ownership” of the electoral system by as many as possible in society.

36. The Code of Good Practice in Electoral Matters requires that the fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election.<sup>21</sup> According to the explanatory report to that Code, “[s]tability of the law is crucial to credibility of the electoral process, which is itself vital to consolidating democracy. Rules which change frequently – and especially rules which are complicated – may confuse voters. Above all, voters may conclude, rightly or wrongly, that electoral law is simply a tool in the hands of the powerful, and that their own votes have little weight in deciding the results of elections.”<sup>22</sup> The stability of electoral law prevents the manipulation of electoral rules for partisan advantage and plays an important role in the preservation of the integrity of democratic processes.<sup>23</sup>

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<sup>18</sup> Venice Commission, Rule of Law Checklist, [CDL-AD\(2016\)007](#), II.5.iv. See, in particular, on Romania, Venice Commission, Opinion on draft amendments to the Criminal Code and the Criminal Procedure Code, [CDL-AD\(2018\)021](#), para. 39.

<sup>19</sup> See, for example, Venice Commission and ODIHR, Türkiye - Joint opinion on the amendments to the electoral legislation by Law No. 7393 of 31 March 2022, [CDL-AD\(2022\)016](#), para. 20.

<sup>20</sup> Venice Commission Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor.](#), II.2.a.

<sup>21</sup> Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor.](#), II.2.b.

<sup>22</sup> Venice Commission, Code of Good Practice in Electoral Matters, [CDL-AD\(2002\)023rev2-cor.](#), para. 63.

<sup>23</sup> In its *amicus curiae* brief for the European Court of Human Rights in the case of *Staderini and Others v. Italy* on the stability of electoral legislation and some features of a mixed electoral system ([CDL-AD\(2024\)037](#), para. 13), the Venice Commission explained that stability of electoral law is not an end in itself, but rather a safeguard to achieve free elections being “the free expression of the opinion of the people”, in the terms of Article 3 of Protocol No. 1 of the ECHR.

37. The principle of stability of electoral law applies in particular to rules relating to the membership, independence and impartiality of election commissions.<sup>24</sup> More generally, it is essential that voters, candidates, and electoral bodies understand the rules well in advance of elections. “Confidence in democratic elections in line with international standards should not be undermined by late amendments to primary or secondary legislation.”<sup>25</sup> In the present case, the composition of election commissions was modified by GEO 21/2024.

38. While the Commission agrees that holding four or five elections during the same year may be problematic, it notes that this schedule had been known for years, as none of these elections was extraordinary or early. It remains therefore problematic that the Parliament or the relevant authorities (including the ministries and the CEC) did not react earlier and did not take the initiative for amending the electoral provisions in advance. By way of comparison, the legislative revision in view of the merger of the 2019 European Parliament and local elections in Malta had taken place already in 2015, that is four years in advance of the elections. As already said, the possibility of many elections taking place the same year could and should be envisaged by legislation. The danger of infringing the principle of stability could have been reduced if the Romanian authorities had formally announced at an earlier point what emergency provisions were intended so that the stakeholders could plan accordingly, but it appears that the proposals were only seen during the short and belated consultation process.

39. GEO 21/2024 was neither consensual nor the result of adequate public consultation, since it was adopted only one week after the consultation had been launched. Its adoption therefore did not fall under the exception to the one-year principle for amendments adopted by consensus between the government and the opposition and on the basis of broad public consultations.<sup>26</sup>

40. The period of one year before elections, as referred to in the Code of good practice in electoral matters, was significantly undercut by the adoption of the ordinance only three months before the elections took place. The amendments became effective during the pre-election period. This has led to an infringement of the principle of stability of electoral law.

41. The Venice Commission also stresses that reforms intended for use in an election must occur “early enough to allow candidates and voters to understand the changes and the electoral management bodies to understand and apply them.”<sup>27</sup> While, during the online meetings, the authorities, including the Permanent Electoral Authority, stated that the process was clear for the election administration and the citizens in spite of the late amendments, other stakeholders referred to some confusion over procedures on E-day.<sup>28</sup> The Venice Commission notes that late amendments increase the risk for the election administration and voters not to be correctly acquainted with the procedure.

42. In conclusion, the use of emergency ordinances in the electoral field leads to last minute amendments going against the principle of the stability of electoral law and more broadly against legal certainty. It also affects the separation of powers and the balance between the executive and legislative branches of government in a field which is at the core of democracy. The Venice Commission therefore recommends not to legislate in the future on electoral matters through (emergency) ordinances, except when adopting rules on technical matters and details.

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<sup>24</sup> Venice Commission, Revised Interpretative Declaration on the Stability of Electoral Law, [CDL-AD\(2024\)027](#).

<sup>25</sup> Venice Commission, Revised Interpretative Declaration on the Stability of Electoral Law, [CDL-AD\(2024\)027](#), B.3.

<sup>26</sup> Venice Commission Revised Interpretative Declaration on the Stability of Electoral Law, [CDL-AD\(2024\)027](#), B.2.

<sup>27</sup> Venice Commission Revised Interpretative Declaration on the Stability of Electoral Law, [CDL-AD\(2024\)027](#), B.6.b.

<sup>28</sup> *Vot Corect*: Final observation report on the local and EP elections, 9 June 2024, <https://epde.org/wp-content/uploads/2024/10/Final-observation-report-June-2024.pdf>, pp. 37-38, and references.

#### IV. Conclusion

43. By letter of 11 March 2024, the President of the Parliamentary Assembly of the Council of Europe requested an opinion of the Venice Commission on the Emergency Ordinance regarding some measures for the organisation and conduct of the elections for members from Romania in the European Parliament in 2024 and the elections for local public administration authorities in 2024. Enclosed with his request was a letter from Mr Iulian Bulai, a Member of the Chamber of Deputies of the Romanian Parliament and of PACE, which put the emphasis on aspects of the text he considered problematic.

44. The substance of the revision does not go against international standards. In particular, the merger of local elections and European Parliament elections may be justified in a year where an exceptional number of elections took place. Taking office several months after the elections is acceptable as long as the mandate of the incumbent authority is not extended. More than four months however is a long period of time. This cohabitation may indeed have created confusion and possibly tensions. The reduction of the length of residence requirement is also acceptable in principle, as well as the modification of the composition of the electoral administration which was unavoidable due to the merger of elections.

45. Stability of electoral law is a requirement of legal certainty – a fundamental aspect of the Rule of Law – essential to ensuring trust in elections and “ownership” of the electoral system by as many as possible in society. The Code of Good Practice in Electoral Matters requires that the fundamental elements of electoral law, in particular membership of electoral commissions, should not be open to amendment less than one year before an election. In the present case, the composition of the electoral commissions was modified by GEO 21/2024 three months before the elections, which is very late. This infringement of the principle of stability of electoral law is substantive due to the very late adoption of the ordinance. The Venice Commission also recalls that reforms intended for use in an election must occur early enough to allow candidates and voters to understand the changes and the electoral management bodies to understand and apply them. According to some Romanian stakeholders, this was not the case. The Venice Commission notes that late amendments increase the risk for the election administration and voters not to be correctly acquainted with the procedure.

46. As already remarked in a number of previous opinions of the Venice Commission, Romania's frequent reliance on emergency ordinances (GEOs) undermines legislative quality, legal certainty, and democratic principles, including the principle of the separation of powers. This is particularly problematic in the field of elections, which are at the core of democracy. Contrary to international standards, the adoption of GEO 21/2024 was neither consensual nor the result of adequate public consultation.

47. Codification of electoral legislation may help avoiding frequent revisions of the legislation – including late revisions through emergency ordinances –, to ensure completeness and consistency of the legal framework and therefore to improve trust in the electoral process.

48. The Venice Commission therefore recommends to the Romanian authorities:

- Refraining in the future from legislating on electoral matters through emergency ordinances, except when adopting rules on technical matters and details;
- Regulating in statutory law the merger of elections, should this need arise in the future, well in advance of the date of the relevant elections.

49. The Venice Commission remains at the disposal of the Romanian authorities and the Parliamentary Assembly for further assistance in this matter.