



Strasbourg, 5 September 2012

**Opinion 685/2012**

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Engl. only

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

**CONSTITUTIONAL ISSUES**

**IN ROMANIA**

**GOVERNMENT EMERGENCY ORDINANCES  
PARLIAMENT DECISIONS AND LAWS**

**(Translations from Romanian  
provided by the Romanian Authorities)**

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**GOVERNMENT EMERGENCY ORDINANCE no. 38 of 4 July 2012 for amending Law no. 47/1992 concerning the Organization and Functioning of the Constitutional Court**

Published in the Official Journal of Romania no. 445 of 4 July 2012

Having regard to the provisions of Article 27 (1) of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, republished, as amended by Law no. 177/2010, for the amendment and completion of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, of the Code of Civil Procedure and of the Code of Criminal Procedure of Romania, to the effect that the competence of the Constitutional Court to decide on the constitutional character of Parliament regulations was extended to also cover the decisions of the Chamber of Deputies, of the Senate, as well as of the plenum of the two reunited Chambers,

taking into account the fact that the decisions of the Parliament are not adopted in exercising the legislative competence vested by the Constitution, but other activities are envisaged, such as appointment or those relating to the Parliament's ordinary activity,

in consideration of the fact that the amendment operated in 2010 and the conferral to the Constitutional Court of the competence to decide on Parliament decisions is likely to generate inconsistencies in the Parliamentary activity,

taking into account the fact that the reasons set forth hereinabove, namely that the failure to immediately enact certain measures of a legislative nature, able to create the legal framework necessary for fundamental institutions to act under appropriate conditions, in accordance with their duties, as regulated under the Constitution of Romania, republished, lead to an extraordinary situation, the regulation of which may not be postponed,

in accordance with Article 115 (4) of the Constitution of Romania, republished,

The Government of Romania hereby adopts this emergency ordinance.

**SINGLE ARTICLE**

Paragraph (1) of Article 27 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, republished in the Official Journal of Romania, Part I, no. 807 of 3 December 2010, as subsequently amended and completed, is hereby amended and shall read as follows:

**"ARTICLE 27**

(1) The Constitutional Court shall decide on the consistency with the Constitution of the Parliament's regulations, upon request of one of the chairpersons of the two Chambers, of a Parliamentary group or of a number of at least 50 deputies or at least 25 senators."

*he*

**PRIME-MINISTER  
VICTOR-VIOREL PONTA**

Counter-signatories:  
The Ministry of Justice,  
Titus Corlăţean

Bucharest, 4 July 2012.  
No. 38.

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**GOVERNMENT EMERGENCY ORDINANCE no. 41 of 5 July 2012 for amending Law no. 3/2000 concerning the Organization of the Referendum**

Published in the Official Journal of Romania no. 452 of 5 July 2012

Taking into consideration the necessity to ensure the good organization of the referendum, in a timely manner, as well as the insufficient regulatory framework,  
for the purpose of preventing inconsistencies in the undergoing activities for the preparation of the national referendum,  
given that it is mandatory to immediately adopt the legal and technical measures required to ensure, under best conditions, consultation of the electorate,  
taking into account that it is necessary to set forth a course of the procedure for the organization of the referendum,  
taking into consideration the necessity to ensure a coherent election process, all of the above concerning the public interest and amounting to an extraordinary situation, the regulation of which may not be postponed,  
In accordance with Article 115 (4) of the Constitution of Romania, republished,

The Government of Romania hereby adopts this emergency ordinance.

**ARTICLE I**

Law no. 3/2000 on the Organization of the Referendum, as published in the Official Journal of Romania, Part I, no. 84 of 24 February 2000, as subsequently amended and completed, shall be amended and completed as follows:

1. Article 10 shall be amended and shall read as follows:

**"ARTICLE 10**

By derogation from Article 5 (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes of the citizens that took part in the referendum."

2. Article 23 shall be amended and shall read as follows:

**"ARTICLE 23**

For the purpose of organizing the referendum, the following entities shall be set up within 5 days from the date when the referendum day is decided, as the case may be: Central Electoral Bureau, constituency electoral bureaus, electoral offices, electoral bureaus for polling stations organized abroad, as well as electoral bureaus of the polling stations."

3. In Article 25, after paragraph (2) two new paragraphs, *i.e.* paragraphs (21) and (22), shall be inserted, reading as follows:

"(21) In exercising the powers vested in it, the Central Electoral Bureau shall adopt resolutions made known in public session and by any publicity means. The resolutions of the Central Electoral Bureau shall be binding upon all public authorities and institutions, electoral bureaus, as well as upon all bodies holding powers related to the referendum, starting from the date when such resolutions are made known in public session.

(22) For the appropriate conduct of the referendum, the Central Electoral Bureau shall issue resolutions in interpretation of the law, resolutions to be published in the Official Journal of Romania, Part I."

4. In Article 26, paragraphs (1) and (2) shall be amended and shall read as follows:

**"ARTICLE 26**

(1) In the case of a national referendum, the constituency electoral bureaus of the counties and of the Bucharest Municipality, the electoral offices and the electoral bureau for polling stations organized abroad shall consist of a chairperson and no more than 6 representatives of the political parties whose members are elected in the Parliament; in the case of a local referendum, the constituency electoral bureaus of the counties and of Bucharest Municipality, of communes, towns and municipalities, of the districts of Bucharest Municipality, as well as the electoral bureaus of polling stations shall consist of a chairperson and no more than 6 representatives of the political parties whose members are elected in the local or county council.

(2) The chairpersons of constituency electoral bureaus of the counties and of the Bucharest Municipality, of the electoral bureau for polling stations organized abroad, as well as those of

electoral offices shall be appointed by the chairperson of the tribunal of the relevant county or of the Bucharest Municipality, as appropriate, no later than 3 days from the day when the referendum date is decided, by draw of lots.”

5. In Article 26, after paragraph (1) a new paragraph, *i.e.* paragraph (11), shall be inserted, reading as follows:

“(11) For the organization of a national referendum, constituency electoral bureaus shall only be set up at the level of the counties and of Bucharest Municipality, electoral bureau for the polling stations organized abroad, as well as district electoral bureaus in Bucharest Municipality.”

6. Article 35 shall be amended and shall read as follows:

“ARTICLE 35

The citizens participating in the referendum shall receive a ballot paper, whose dimensions shall be determined by the Central Electoral Bureau, in the case of a referendum at national level, respectively by the constituency electoral bureau, in the case of a local referendum. The square comprising the ballots <<YES>> or <<NO>> shall have a 4 cm side. The templates for the ballot papers are given in annexes no. 1A and 1B.”

7. Annexes no. 2, 3 and 4 shall be amended and replaced by annexes no. 1, 2 and 3, forming an integral part hereof.

ARTICLE II

Law no. 3/2000 on the Organization of the Referendum, as published in the Official Journal of Romania, Part I, no. 84 dated February 24, 2000, as subsequently amended and supplemented, and also as amended and supplemented in accordance with this emergency ordinance, shall be republished in the Official Journal of Romania, Part I, after this is approved by law, and the texts shall be renumbered.

PRIME-MINISTER  
VICTOR-VIOREL PONTA

Counter-signatories:  
The Minister of Administration and Interior,  
Ioan Rus

The Delegated Minister for Administration,  
Victor Paul Dobre

General Secretary of the Government,  
Ion Moraru

Bucharest, 5 July 2012.  
No. 41.

ANNEX 1  
(Annex no. 2 to Law no. 3/2000)

County\*) .....  
Commune (town, municipality, district of Bucharest Municipality) .....  
Polling station no. ....

PROTOCOL  
regarding the results of the national referendum on .....

1. Number of persons appearing on the referendum list .....
2. Number of participants \*\*) .....
3. Number of ballot papers received in order to be used.....
4. Number of ballot papers remained unused.....
5. Number of votes validly expressed in favour of the ballot “YES” .....
6. Number of votes validly expressed in favour of the ballot “NO” .....

- 7. Number of null votes.....
- 8. Number of challenged votes.....
- 9. Number of complaints and claims received.....
- 10. Number of settled complaints and claims.....
- 11. Number of complaints and claims submitted to the constituency electoral bureau.....
- 12. Brief description of the manner in which the complaints and claims were settled.....

Chairperson of the Electoral Bureau,                      Members:  
 .....  
 (surname, name, signature and seal)    (surname, name and signature)

Date .....

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 \*) Bucharest Municipality, if the polling station is located in this Municipality.  
 \*\*) The number of participants must be equal to the sum resulting from the addition of the numbers at items 5, 6 and 7.

ANNEX 2  
 (Annex no. 3 to Law no. 3/2000)

Constituency Electoral Bureau  
 .....

PROTOCOL  
 regarding the results of the national referendum on.....

- 1. Number of persons appearing on the referendum list.....
- 2. Number of participants \*).....
- 3. Number of ballot papers received in order to be used.....
- 4. Number of ballot papers remained unused.....
- 5. Number of votes validly expressed in favour of the ballot "YES" .....
- 6. Number of votes validly expressed in favour of the ballot "NO" .....
- 7. Number of null votes.....
- 8. Number of challenged votes.....
- 9. Overall number of complaints and claims.....
- 10. Number of complaints and claims settled by the electoral bureaus of polling stations.....
- 11. Brief description of the manner in which the complaints and claims were settled by the electoral bureaus of polling stations .....
- 12. Number of complaints and claims submitted to the constituency electoral bureau.....
- 13. Brief description of the manner in which the complaints and claims were settled by the constituency electoral bureau.....

Chairperson of the Electoral Bureau,                      Members:  
 .....  
 (surname, name, signature and seal)    (surname, name and signature)

Date .....

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 \*) The number of participants must be equal to the sum resulting from the addition of the numbers at items 5, 6 and 7.

ANNEX 3  
(Annex no. 4 to Law no. 3/2000)

Central Electoral Bureau  
.....

PROTOCOL

regarding the results of the national referendum on.....

1. Number of persons appearing on the referendum list.....
2. Number of participants \*) .....
3. Number of ballot papers received in order to be used.....
4. Number of ballot papers remained unused.....
5. Number of votes validly expressed in favour of the ballot "YES" .....
6. Number of votes validly expressed in favour of the ballot "NO" .....
7. Number of null votes.....
8. Number of challenged votes.....
9. Overall number of complaints and claims.....
10. Number of complaints and claims settled by the constituency electoral bureaus.....
11. Brief description of the manner in which the complaints and claims were settled by the constituency electoral bureaus .....
12. Number of complaints and claims submitted to the Central Electoral Bureau.....
13. Brief description of the manner in which the complaints and claims were settled by the Central Electoral Bureau .....

Chairperson of the Central Electoral Bureau,           Members:  
 .....  
 (surname, name, signature and seal)   (surname, name and signature)

Date .....

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 \*) The number of participants must be equal to the sum resulting from the addition of the numbers at items 5, 6 and 7.

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**DECISION No. 33 of 6 July 2012 of the Parliament of Romania concerning the Suspension from Office of the President of Romania**

Published in the Official Journal of Romania no. 457 of 6 July 2012

Having regard to the provisions of [Article 95](#) and [Article 146](#) letter g) from the Constitution of Romania, republished,

The Parliament of Romania adopts the present decision.

Article 1

Mr. Traian Băsescu shall be suspended from his position as President of Romania.

Article 2

The present decision shall be communicated to the Constitutional Court in order to ascertain the existence of the circumstances justifying the *ad interim* the exercise of the office of President of Romania.

The present decision was adopted by the Chamber of Deputies and the Senate in the joint session of 6 July 2012, having regard to the provisions [Article 95](#) paragraph (1) of the Constitution of Romania, republished.

PRESIDENT OF THE CHAMBER OF DEPUTIES  
VALERIU ȘTEFAN ZGONEA

PRESIDENT OF THE SENATE  
GEORGE-CRIN LAURENȚIU ANTONESCU

Done in Bucharest, on 6 July 2012.

No. 33.

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**LAW no. 131 of 17 July 2012 for amending Article 10 of Law no. 3/2000 concerning the Organization of the Referendum**

Published in the Official Journal of Romania no. 489 of 17 July 2012

The Parliament of Romania adopts the following law.

Sole Article – Article 10 of Law no. 3/2000 on the Organisation of the Referendum, published in the Official Journal of Romania, Part I, no. 84 of 24 February 2000, as subsequently amended, shall be modified and shall read as follows:

“Art. 10 – The dismissal of the President of Romania shall be approved if, following the conduct of the referendum, the proposal meets the majority of the votes validly expressed.”

*This law was adopted by the Romanian Parliament on the basis of the provisions of art. 75 and of art. 76 paragraph (1) of the Constitution of Romania, republished.*

**LAW no. 153 of 24 July 2012 for approving the Government Emergency Ordinance no. 41/2012 amending Law no. 3/2000 concerning the Organization of the Referendum**

Published in the Official Journal of Romania no. 511 of 24 July 2012

The Parliament of Romania adopts the following law.

Sole Article – the Government Emergency Ordinance no. 41 of 5 July 2012 amending Law no. 3/2000 on the Organisation of the Referendum, published in the Official Journal of Romania, Part I, no. 452 of 5 July 2012, shall be approved with the following changes and amendments:

1. At Article I, position 1 shall be repealed.
2. At Article I position 2, art. 23 shall be amended and shall read as follows:

“Article 23 – For the purpose of the organization of the referendum, within 5 days from the date on which the date of the referendum was decided, there shall be established, as the case may be: the Central Electoral Bureau, electoral bureaus of circumscription, electoral offices for the divisions of the municipality of Bucharest, electoral bureaus for the voting sections organized abroad, as well as electoral bureaus for the voting sections.”

3. At Article I position 4, paragraphs (1) and (2) of art. 26 shall be amended and shall read as follows:

“Article 26 – (1) In the case of the national referendum, the electoral bureaus of circumscription for the counties and for the municipality of Bucharest, the electoral offices for the districts of the municipality of Bucharest and the electoral bureau for the voting sections organized abroad shall include a president and no more than 6 delegates from the political parties represented in the Parliament; in case of the local referendum, the electoral bureaus of circumscription for the counties and for the municipality of Bucharest, for the villages, for the towns and municipalities, for the districts of the municipality of Bucharest, as well as the electoral bureaus of the voting sections shall include a president and no more than 6 delegates from the political parties represented in the local or county council.

(2) The presidents of the electoral bureaus of circumscription for the counties and for the districts of the municipality of Bucharest, of the electoral bureau for the voting sections organized abroad, as well as of the electoral offices for the districts of the municipality of Bucharest are appointed, by lot, by the president of the county tribunal or of the tribunal of the municipality of Bucharest, as the case may be, within 3 days from the setting of the date of the referendum.”

4. At article I, after position 5 two new positions shall be inserted, positions 5<sup>1</sup> and 5<sup>2</sup>, which shall read as follows:

“5<sup>1</sup>. At Article 32, paragraph (1) shall be amended and shall read as follows:

“Article 32 – (1) On the date of the referendum, at 6 o'clock, the president of the electoral bureau of the voting section, in the presence of the other members, shall verify the urns, the existence of the electoral lists and of the stamps, and, thereafter, shall seal the urns by applying the control stamp of the voting section.”

5<sup>2</sup>. Article 34 shall be amended and shall read as follows:

“Article 34 – The voting shall commence at 7 o'clock and shall cease at 11 o'clock.”

*This law was adopted by the Romanian Parliament on the basis of the provisions of Article 75 and of Article 76 paragraph (1) of the Constitution of Romania, republished.*