

Election Merging in the Vision of the Venice Commission

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Abstract

The year 2024 was marked by the simultaneous organization and holding of the European and local elections in Romania on June 9th. The regulatory framework for the elections on June 9th was composed of the Government Emergency Ordinance no. 21/2024², Law 33/2007³ on the organization of elections for the European Parliament and Law no. 115/2015 on the election of local public administration authorities. The decision of the national authorities to modify the normal election calendar had implications on the electoral legislation and practice, as well as on the citizens, electoral competitors and the entities involved in the electoral process. This is not the only time when the governments have resorted to such methods. In the past, attempts have been made to merge local elections with parliamentary elections, or state practice has known the situation of simultaneously organizing general elections with presidential elections. In the case of the 2024 elections, the merge decision was adopted by Emergency Ordinance, and the period of time between the adoption of the ordinance and the date of the elections was very short, aspects that made certain social actors consider the approach unconstitutional or that it violated the international standards on electoral matters. This led to the referral of the Constitutional Court of Romania and the referral of the European Commission for Democracy through Law (the Venice Commission). The present article analyses the opinion of the Venice Commission on the decision to merge local and European elections through Government Emergency Ordinance No. 21/2024.

Keywords: elections, constitutional court, Venice Commission, emergency ordinance.

JEL Classification: K23, K33

1. Introduction

The legislative changes in electoral matters that occur in election years are “the subject of heated discussions and debates related to timing, necessity, and opportunity”⁴. If we follow state practice in the thirty-five years since the Revolution, we will find that election years were preferred by the rulers to make changes to electoral legislation, and these were made by emergency ordinance⁵.

By Emergency Ordinance no. 21/2024, the Romanian Government modified the normal electoral calendar for 2024, which began with the European elections, continued

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² Published in the Official Gazette of Romania, Part I, issue 195 of 8 March 2024.

³ Republished in the Official Gazette of Romania, Part I, issue 627 of 31 August 2012.

⁴ Flavia Lucia Ghencea, *Dreptatea socială a principiului eligibilității: între înțelepciunea legiuitorului și curajul cumpătat al administrației* (The social justice of the eligibility principle: between the wisdom of the legislator and the sober courage of the administration), “Revista de Drept Public”. Supliment (The Journal of Public Law Supplement) 2024, p. 74.

⁵ Ștefan Deaconu, Marian Enache, *Votul la români. O incursiune în evoluția sistemelor electorale din România* (The Romanian vote. An exploration into the evolution of electoral systems in Romania), C.H.Beck Publishing, Bucharest, 2019, p. 69.

with local elections, presidential elections and ended with parliamentary elections, establishing the date of June 9th, 2024, as the day for the simultaneous organization of local elections with the European elections. Practically, through this decision, local elections were organized 3 months earlier. Moreover, 3 months earlier than the election date, the electoral legislation was also modified, the Constitutional Court specifying in its jurisprudence⁶ that, if the legislative amendment is close to the date of the organization of the elections, it is presumed that the said amendment was intended to benefit the political party that adopted it, being dictated by its imminent interests and resulting in the manipulation of the electorate.

However, in order not to affect the current term of office of local authorities, in the sense of reducing the 4-year period, which is the term of office for local authorities⁷, it was ruled that local authorities elected on June 9th enter into office after September 27th⁸. At the same time, in order not to violate the right to vote and the right to be elected, electoral rights mentioned in the Constitution, holding a special significance in the evolution of contemporary states⁹, the right of a person to run for both the European Parliament and local public administration authorities was recognized, the voting period was extended, and a local elected official was given the opportunity to migrate from one political party to another without losing their mandate¹⁰.

All these legislative amendments allowed the aforementioned ordinance to pass the constitutionality test, the Constitutional Court finding, in Decision no. 252/2024¹¹, that the normative act does not infringe electoral rights. Electoral rights must benefit from special protection because they are rights by which representative bodies are constituted and through which the people exercise their sovereignty¹². Electoral rights are considered by the constitutional court as a distinct category among the rights and freedoms of citizens, being both the rights provided for by the Constitution and among those stipulated in infra-constitutional legislation¹³. The Constitutional Court emphasizes, in its decision, that the Government's adaptation of the legislative framework in electoral matters was intended to respect the electoral rights of persons wishing to run for the two types of elections, not to affect the duration of the current mandates of local elected officials and to ensure the smooth conduct of the electoral

⁶ Decision no. 426/2023, published in the Official Gazette of Romania, Part I, issue 1150 of 19 December 2023.

⁷ Dan Constantin Măță, *Durata mandatului aleșilor locali și principiul periodicității alegerilor (The term of office of local elected officials and the principle of periodicity of elections)*, in "Revista de Drept Public"/Supliment (The Journal of Public Law Supplement) 2024, p. 39.

⁸ Dana Apostol Tofan, *Drept administrativ, vol.I, Partea introductivă. Administrația publică*, Ed. C.H.Beck, Bucharest, 2024, p. 224.

⁹ Ioan Laurențiu Vedinaș, Verginia Vedinaș, *Alegerile, între legalitate și moralitate. Deviații, perturbări, aspirații (The elections, between legality and morality. Deviations, disruptions, aspirations)*, in "Revista de Drept Public"/Supliment (The Journal of Public Law Supplement) 2024, p. 14.

¹⁰ See also Mihai Cristian Apostolache, *Comasarea alegerilor - reflectare juridică, consecințe, învățăminte (Merging elections - legal reflection, consequences, lessons learned)* in "Revista de Drept Public Supliment" (The Journal of Public Law Supplement) 2024, p. 66.

¹¹ Published in the Official Gazette of Romania, Part I, issue 863 of 28 August 2024.

¹² Mihai Cristian Apostolache, *Legea pentru alegerea autorităților administrației publice locale comentată și adnotată (The Law on the Election of Local Public Administration Authorities Commented and Annotated)*, University Publishing, Bucharest, 2020, p. 370.

¹³ Decision no. 150 of 12 March 2020, published in the Official Gazette of Romania, Part I, issue 215 of 17 March 2020.

process for the two types of elections. The political decision to organize local elections simultaneously with those for the European Parliament, the Court shows, “determined the need to establish a set of common and homogeneous rules for the proper conduct of the elections”. Finally, the constitutional court emphasizes that the emergency ordinance complies with the constitutional provisions on 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.

While the constitutionality of Emergency Ordinance no. 21/2024 was reviewed by the Constitutional Court of Romania, which was notified with an exception of unconstitutionality and which has an exclusive¹⁴ competence to verify the constitutionality of provisions in laws and ordinances, the compliance with international standards in electoral matters was reviewed by the Venice Commission. At its 142nd plenary session, held in Venice on 14th-15th March 2025, the European Commission for Democracy through Law¹⁵, the consultative body of the Council of Europe, adopted Opinion no. 1178/2024 on certain measures for the organisation and conduct of the elections of members for the European Parliament in Romania in 2024 and the elections for local public administration authorities in 2024¹⁶. The Opinion of the Venice Commission falls into the category of *soft law*¹⁷ instruments, as it has no normative legal force. However, the Constitutional Court of Romania has established that the documents issued by this European body have landmark value in the framework of constitutional review¹⁸ and, therefore, cannot be ignored¹⁹.

2. The vision of the European Commission for Democracy through Law (Venice Commission) regarding the merging of elections and the normative act that sanctioned this merging

The Venice Commission was notified of Government Emergency Ordinance No. 21/2024, a normative act that provided the legal framework for the organization of local and European Parliament elections on the same day. In outlining its opinion, the Commission followed the following themes: on the merits, the merger of the elections

¹⁴ Cătălin-Silviu Săraru, *Legea contenciosului administrativ nr. 554/2004. Examen critic al deciziilor Curții Constituționale 2004-2014 (The Law on Administrative Litigation No. 554/2004. Critical examination of the decisions of the Constitutional Court 2004-2014)*, C.H.Beck Publishing, Bucharest, 2015, p. 12.

¹⁵ See also Mihai Cristian Apostolache, *The review of constitutional norms concerning local public administration in the view of the European Commission for Democracy through Law (Venice Commission)* in “Journal of Law and Administrative Sciences” issue 3/2015, <https://jolas.ro/wp-content/uploads/2015/03/jolas3a9.pdf>.

¹⁶ https://www.coe.int/en/web/venice-commission/-/cdl-ad-2025-014-e?p_1_back_url=%2Fen%2Fweb%2Fvenice-commission%2Fdocuments, accessed on 20.05. 2025.

¹⁷ Ioan Muraru, Elena Simina Tănăsescu, in Ioan Muraru, Elena Simina Tănăsescu (coord.), *Constituția României. Comentariu pe articole (The Constitution of Romania. Commentary on articles)*, 3rd ed., C.H. Beck Publishing, Bucharest, 2022, p. 25.

¹⁸ Decision no. 799/2015, published in the Official Gazette of Romania, Part I, issue 862 of 19 November 2015; Decision no. 334/2013, published in the Official Gazette of Romania, Part I, issue 407 of 5 July 2013; Decision no. 150 of 12 March 2020, published in the Official Gazette of Romania, Part I, issue 215 of 17 March 2020.

¹⁹ Decision no. 51 of 25 January 2012, published in the Official Gazette of Romania, Part I, issue 90 of 3 February 2012.

for the European Parliament and local elections, the anticipated date of local elections and the delay in taking office, the reduction of the residence period for voting in a new place of residence and the change in the composition of electoral commissions; on the procedure, the late amendments and the issue of the stability of electoral legislation, as well as the use of an emergency ordinance for the adoption of the regulations in question.

In the adopted document²⁰, the Venice Commission showed that the simultaneous organization of local and European parliamentary elections is also practised in other European states, such as Belgium, Cyprus, Ireland, Italy, Malta and is compatible with international standards in electoral matters. The Commission also emphasizes that the remaining amendments made by Emergency Ordinance No. 21/2024 to the electoral legislation did not affect international standards.

What the Commission strongly criticizes, however, is the solution chosen to regulate by emergency ordinance, the legislation by involving the delegated legislator, especially in the electoral field, creates legal uncertainty, weakens the control mechanisms over the Government, limits public consultation, concentrates power in the executive branch and violates the principle of separation of powers in the state. The Commission points out that “in electoral matters, an open and transparent process of consultation and preparation of legislative amendments increases trust in the adopted legislation and, in general, in state institutions”²¹. Also, the electoral reform must be done “early enough so that candidates and voters understand the changes, and electoral bodies understand and apply them”²².

The argument of the Romanian Government according to which the high number of electoral rounds in 2024 determined the legislation by emergency ordinance is contested by the Venice Commission, its representatives highlighting that this was a situation known for a very long time and could have been regulated in advance. In this way, the untimely revision of electoral norms could have been avoided, ensuring stability of the legislation, an essential condition for the credibility of the electoral process. For example, in Malta, a country that simultaneously organized local and European elections in 2019, the modification of the legislative framework was made 4 years prior to the electoral moment.

The European Commission for Democracy through Law believes that by adopting the emergency ordinance three months before the election date, the Government ignored the international standard contained in the Code of Good Practice on Electoral Matters²³, which stipulates that the legislative interventions in the electoral field must be made at least one year before the elections. Changing electoral rules shortly before the elections creates confusion²⁴ among voters, who come to believe that the

²⁰ https://www.coe.int/en/web/venice-commission/-/cdl-ad-2025-014-e?p_1_back_url=%2Fen%2Fweb%2Fvenice-commission%2Fdocuments, accessed on 20.05. 2025.

²¹ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)016](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)016), accessed on 20.05. 2025.

²² Venice Commission Revised Interpretative Declaration on the Stability of Electoral Law, CDL-AD (2024)027, B.6.b

²³ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev2-cor-e), accessed on 20.05.2025.

²⁴ Claudia Gilia, *O radiografie a alegerilor locale din 9 iunie 2024. Între mize electorale, discursuri politice și lacune legislative (An X-ray of the local elections of 9th June 2024. Between electoral stakes, political speeches and legislative loopholes)* in “Revista de Drept Public”/ Supliment (The Journal of Public Law Supplement) 2024, p. 55.

electoral law is just a tool in the hands of the powerful and that their votes partially influence the election results²⁵.

The Commission concludes that the amendments to the electoral legislation, done by emergency ordinance shortly before the elections, violate the principle of stability of electoral legislation and, more broadly, of legal certainty. Moreover, stability and predictability in electoral matters are of particular importance. At the same time, they affect the separation of powers and the balance between the executive and legislative branches of government in an area that is at the heart of democracy, namely elections. The Commission states that legislation by means of emergency ordinances affects its quality, legal certainty and democratic principles, including the principle of separation of powers. In order to comply with international standards in electoral matters, the electoral process must be regulated by law and at least one year before the date of the elections, the emergency ordinance being able to be used, by exception, only for technical aspects²⁶.

3. Conclusions

The entry into the legal landscape of the Government Emergency Ordinance no. 21/2024²⁷ generated discussions regarding the constitutionality of this normative act adopted by the delegated legislator and its compatibility with European requirements in electoral matters. Having been notified of an exception of unconstitutionality that concerned certain provisions of Government Emergency Ordinance no. 21/2024 regarding certain measures for the organization and conduct of the elections for members of the European Parliament in Romania in 2024 and the elections for local public administration authorities in 2024, as well as the normative act as a whole, the Constitutional Court of Romania analysed both the criticisms of extrinsic unconstitutionality, with reference, among others, to the non-compliance with the provisions of Article 115 paragraph 4 of the Constitution, and the criticisms of intrinsic unconstitutionality. The Constitutional Court assessed that, from the point of view of both extrinsic and intrinsic constitutionality, the analysed normative act complies with the constitutional requirements. In contrast, the European Commission for Democracy through Law (Venice Commission), called upon to analyse the compatibility of the normative act adopted within the framework of the legislative delegation procedure with international standards in the electoral field, criticized the practice of legislating through emergency ordinances, considering it a practice that undermines legislative quality, legal certainty and democratic principles²⁸.

The regulation by emergency ordinances becomes even more problematic in

²⁵ Venice Commission, Code of Good Practice in Electoral Matters, CDL-AD(2002)023rev2-cor, para. 63. [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023rev2-cor-e), accessed on 20.05.2025.

²⁶ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)027](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)027), accessed on 20.05.2025.

²⁷ Cristina Cornelia Feurdean, *Provocări ale autorităților administrației publice locale în procesul electoral (Challenges of local public administration authorities in the electoral process)* in "Revista de Drept Public"/Supliment (The Journal of Public Law Supplement) 2024, p. 87.

²⁸ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)014](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)014), accessed on 20.05.2025.

electoral matters, as it circumvents parliamentary debate and excludes comprehensive dialogue with all stakeholders. The Commission points out that, in electoral matters, “an open and transparent process of consultation and preparation of legislative amendments increases trust in the adopted legislation and, more generally, in state institutions”²⁹. In its opinion, the Commission points out that Government Emergency Ordinance No. 21/2024 was neither consensual, nor the result of adequate public consultation, as it was adopted only one week after the consultation was launched and three months before the electoral moment. An electoral reform carried out three months before the elections is not in line with international standards in the field, as late legislative amendments undermine public trust in the electoral process and make it difficult for voters, electoral competitors or electoral bodies to understand the new rules.

A successful electoral law reform is based, according to the Commission, on at least three essential elements: 1) a clear and comprehensive legislation, which complies with international obligations and standards and addresses previous recommendations; 2) the adoption of the legislation by broad consensus after extensive public consultations with all relevant stakeholders; 3) the political commitment to fully implement this legislation in good faith, with adequate procedural and judicial safeguards and means to assess in a timely manner any alleged failure to meet this objective.

By acting in this manner, amending the electoral legislation by emergency ordinance three months before the election, the Government violated the international standards on the matter contained in the Code of Good Practice in Electoral Matters. Even though the Constitutional Court considered that the late legislative intervention was justified because a series of unforeseen problems generated by the organization of local and European elections on the same date had to be remedied, and in order to avoid institutional, administrative and financial dysfunctions that would have resulted in the absence of specific legislation, derogating from the framework legislation, the Venice Commission emphasized that these legislative amendments could have been made in advance by the Parliament in order not to violate the principle of stability of electoral legislation.

The stability of electoral legislation is a guarantee for free elections and has the role of preventing the manipulation of electoral rules for partisan advantage. It also plays an important role in preserving the integrity of democratic processes³⁰. Regarding the compliance with the one-year deadline for amending electoral legislation, established by the Venice Commission in the Code of Good Practice in Electoral Matters, the Constitutional Court states that, through its practice, it has not made this deadline absolute, as it is possible to violate it in certain circumstances, for example, if it is necessary to remedy unforeseen problems by legislative means³¹. The Venice Commission, however, considered that the one-year period before the elections, provided for as a rule in the Code of Good Practice in Electoral Matters, was significantly undermined by the adoption of the ordinance three months before the elections, leading

²⁹ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2022\)016](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)016), accessed on 20.05. 2025.

³⁰ [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2024\)037](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2024)037), accessed on 20.05. 2025.

³¹ Decision no. 148 of 20 March 2024, published in the Official Gazette of Romania, Part I, issue 408 of 30 April 2024.

to a violation of the principle of stability of electoral legislation.

From the analysis of the conduct of the two bodies (the Constitutional Court and the Venice Commission) it results that, compared to the European body which showed that the use of emergency ordinances, especially in the electoral field, undermines the legislative quality, legal certainty and democratic principles, the constitutional court was quite permissive, accepting the amendment of electoral legislation through the legislative delegation procedure three months prior the elections. The institution of legislative delegation, in its exceptional nature³², must be employed with caution in order not to destabilize the balance of power. Even though, in its jurisprudence³³, the Court has emphasized the need for stability of laws in electoral matters, as an expression of the principle of legal security, and has drawn attention to the danger of favouring the parties in power³⁴, in the present situation it considered the Government's legislative intervention through an emergency ordinance justified even three months before the election date.

In order to ensure the coherence of the legislative framework in electoral matters and increase trust in the electoral process, the Venice Commission recommends that national authorities codify the electoral legislation and bring improvements only by law and well in advance of the electoral moment, considering the essential role of the Parliament in any democratic system³⁵, whilst emergency ordinances may be used, by way of exception, to regulate technical aspects.

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³² Bogdan Dima, *Conflictul dintre palate, Raporturile de putere dintre Parlament, Guvern și Președinte în România postcomunistă (The conflict between the palaces, the power relations between the Parliament, the Government and the President in post-communist Romania)*, Hamangiu Publishing, Bucharest, 2014, p. 143.

³³ Decision no. 51 of 25 January 2012, published in the Official Gazette of Romania, Part I, issue 90 of 3 February 2012.

³⁴ Decision no. 150 of 12 March 2020, published in the Official Gazette of Romania, Part I, issue 215 of 17 March 2020.

³⁵ Mihaela Adina Apostolache, *Rolul parlamentelor naționale în elaborarea și aplicarea dreptului European (The role of national parliaments in the development and application of European law)*, Universul Juridic Publishing House, Bucharest, 2013, p. 11.

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