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Constitutional Analysis of the Judgment of the Constitutional Court of Romania No. 32/2024 Annulling the Presidential Elections

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Abstract: *This analytical approach aims at interpreting the reasoning of the CCR Decision no. 32 of December 6, 2024, which annuls the presidential elections, orders the resumption of the electoral process in its entirety and extends the mandate of the incumbent president until new elections are held and a new president is validated.*
Democracy is a fundamental element of the national constitutional order and of the European constitutional heritage, and the right to free elections is unanimously considered as the most profound expression of the organization of a democratic society (see also Decision No 242 of 3 June 2020, published in the Official Journal of Romania, Part I, No 504 of 12 June 2020, paragraph 105), being essential and determining for the democratic system.
The right to vote and the right to be elected are crucial for establishing and maintaining the foundations of a genuine and effective constitutional democracy governed by the rule of law (see, mutatis mutandis, judgment of May 17, 2016, Karácsony and Others v. Hungary, paragraph 141), and are guaranteed by the Constitution. Thus, the Court holds that electoral rights are fundamental rights of a political nature, are a sine qua non of democracy and the democratic functioning of the State and are exercised in compliance with the requirements of the Constitution and the laws.

Keywords: *the right to vote, electoral rights, free vote, Code of Good Practice in Electoral Matters, annulment of the entire electoral process, powers of the Constitutional Court.*

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The Constitutional Court of Romania. Short presentation

When **the 1991 Constitution was** drafted, the **European** (Kelsenian or continental) **model of** constitutionality control was enshrined, namely the regulation of a special and specialized institution called the Constitutional Court. The main influences were the Constitutions of France and Italy (Iorgovan, 1998). Monumental works that record the debates of that time, namely **Genesis of the Romanian Constitution, including the work of the Constituent Assembly and The Odyssey of the Constitution - "facts, documents, people and characters, chronicle and explanations, revelations and meditations"** (Safta, 2016) are witnesses over time of the foundations of that decision, in step with developments at European and global level, where the dominant option is to set up a special institution of constitutionality control (Toader & Safta, 2020).

The CCR is not a court of law in the strict sense of this concept, nor does it fall into any of the three classic functions of the legislative, executive and judicial branches of power. The role of the Court is that of **guarantor of the supremacy of the Constitution** and it **is in this key that all its powers must be interpreted**. In exercising this role, the Court has been entrusted with the task of supporting the proper functioning of the public powers within the framework of constitutional relations of separation, balance, cooperation and mutual control, while at the same time providing effective legal protection of the fundamental rights and freedoms of citizens (Safta, 2022).

The Constitutional Court of Romania (CCR) is composed of **9 judges appointed for a term of 9** years (three - Chamber of Deputies, three - Senate and three - President of Romania (Article 142 paragraph (3) of the Constitution). Beyond the specific nature of the European model itself, which means the appointment of judges by authorities of constitutional rank (Toader & Safta, 2020), the option for this mode of appointment can be approached in correlation with the idea of legitimacy of the Court, in the sense of **the appointment of judges by directly representative authorities**, through which national sovereignty is expressed, according to Article 2 of the Constitution. The conditions for appointment are laid down by the Constitution, some of which are objective in nature (legal seniority), while others **are within the discretion of the appointing authorities** ("*high professional competence*").

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Powers of the Constitutional Court of Romania

*For an overview and for a comparative observation of **the terminology** used by the legislator for the purpose of expressly circumscribing the powers which are conferred only upon the referral of matters expressly and restrictively provided for by the Constitution*

Powers relating to the constitutionality review of legislation (Venice Commission. 2024)

- shall rule on the constitutionality of the laws, before their promulgation [lit. a) sentence I]: upon the request of qualified subjects: the President of Romania, one of the Presidents of the two Chambers of the Parliament, the Government, the High Court of Cassation and Justice, the Ombudsman, a number of at least 50 Members of the Parliament or at least 25 Senators;

- it rules, ex officio, on initiatives to revise the Constitution (lit. a) second sentence) and on the revision law adopted by the Parliament (Art. 23 of Law no. 47/1992):

- it shall rule on the constitutionality of treaties or other international agreements [lit. b)]: at the request of one of the Presidents of the two Chambers of Parliament, of at least 50 Members of Parliament or at least 25 Senators;

- shall rule on the constitutionality of Parliament's Rules of Procedure [lit. c)]: at the request of one of the Presidents of the two Chambers of Parliament, a parliamentary group, at least 50 Members of Parliament or at least 25 Senators;

- rules on the constitutionality of the decisions of the plenary of the Chamber of Deputies, of the Senate or of the two Chambers of the Parliament [lit. l)]: same rules as for the power covered by Art. 146 lit. (c) of the Constitution (i.e. on referral);

- rules on objections of unconstitutionality concerning laws and ordinances raised before the courts or commercial arbitration courts (lit. d), first sentence): a posteriori, concrete, indirect constitutionality review by way of exception; the act of referral is the conclusion of the court or commercial arbitration court;

- rules on exceptions of unconstitutionality concerning laws and ordinances, raised directly by the People's Advocate (lit. d) second sentence); (thus, at the People's Advocate's referral).

Duties concerning the constitutionality of activities, behavior, attitudes:

- settles legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, one of the Presidents of the two Chambers of the Parliament, the Prime Minister or the President of the Superior Council of Magistracy (lit. e));

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- *ensures* compliance with the procedure for the election of the President of Romania and confirms the results of the vote [lit. f)];

- shall ascertain the existence of circumstances justifying the interim in the exercise of the office of President of Romania and shall communicate its findings to the Parliament and the Government [lit. g)];

- gives an advisory opinion on the proposal to suspend the President of Romania from office (lit. h);

- *ensures* that the procedure for organizing and holding the referendum is followed and confirms its results (lit. i));

- verifies the fulfillment of the conditions for citizens to exercise the legislative initiative (lit. j);

- shall rule on challenges to the constitutionality of a political party (lit. k)). (Law No. 47/1992 on the Organization and Functioning of the Constitutional Court)

CCR - ensures the respect of electoral procedures

The powers that determine the characterization of the CCR as ”electoral judge” are the following:

- ensures compliance with the procedure for the election of the President of Romania and confirms the results of the vote (Article 146(f) of the Constitution);

- ensures the observance of the procedure for organizing and holding the referendum and confirms its results (Article 146(i) of the Constitution);

As regards the meaning of the concept that the Constitution uses in the wording of the texts concerning the attributions of the CCR as electoral judge (***VEGH EAZĂ***), the Court ruled in **Decision No. 70/1999** (Official Gazette of Romania, 1999) when it held that ***the scope of the right conferred by the Constitution to "watch"*** *the observance of the procedures for organizing and conducting the referendum also includes the* ***possibility of the Court to take the matter*** *into* ***its own motion*** *when it finds directly or when it has information (from citizens, the press, non-governmental organizations, etc.) about non-compliance with these rules and procedures*; *"in the event of fraud which casts doubt on the fairness of the referendum result, the Court does not confirm the result. The significance of non-confirmation, which is a legal act with serious consequences, is that of declaring the national referendum null and void."* (Official Gazette of Romania, 1999)

In this respect, it should be noted ***the distinction between the powers of the*** Constitutional ***Court*** (established by the Constitution and Law no. 47/1992 on the organization and functioning of the Constitutional Court) and ***the competence of the Constitutional Court to exercise these powers***.

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In this regard, Article 3 of Law no. 47/1992 establishes the following:

(1) The powers of the Constitutional Court are those established by the Constitution ***and*** *by the present law.*

(2) In the exercise of its powers, the Constitutional Court ***shall be the only court entitled to decide on its competence****. (2)* ***may not be challenged by any public authority*** (Law No. 47/1992 on the Organization and Functioning of the Constitutional Court)

The Romanian regulation is similar to that existing in other countries, in the sense that the Court is free to establish its jurisdiction in the exercise of its powers provided by law, without any public authority being able to challenge (and therefore not to attack the jurisdictional acts of the CCR).

Elections for the office of President of Romania in 2024. Competence of the Constitutional Court of Romania

"CCR judgment no. 31 of December 2, which confirmed and validated the results of the first round was published in M, Of, no. 1214 of December 3. In this context, can the CCR reverse the judgment and annul the already validated elections?"; "but what if irregularities were found after the newly elected President had been sworn in?" (Constitutional Court of Romania, 2024a).

1. The jurisprudential distinction between the "*express component*" and the "*implicit component*" in the exercise of the power laid down by Article 146 f) of the Constitution

By ***Judgment no. 65/2019*** (which we have signaled as a jurisprudential revival) (Safta, 2024), the CCR established that "***the general wording*** (NN. shall ensure) *contained in the Constitution* ***cannot be limited*** *to only two* ***specific situations*** *described in Law no. 47/1992*"; "*the Constitutional Court's power provided by art. 146 lit. f) of the Constitution* ***involves an express component provided for*** *by Article 38 of Law No 47/1992 and* ***an implicit*** *component which intervenes when the interested parties have no other remedy available to them to correct an alleged situation of non-compliance with Law No 370/2004*' (para. 22)

2. "Express component" of the competence of the CCR (powers expressly provided by law)

This component is laid down by express legal provisions which also set out in detail the special settlement procedures.

Based on the analysis of Law no. 47/1992 on the organization and functioning of the Constitutional Court and Law no. 370/2004 for the election of the President of Romania, we consider that they are circumscribed to the express component mentioned:

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*- the settlement of **appeals** concerning the registration or rejection of the registration of candidates or electoral signs* (Article 38 of Law no. 47/1992 and Article 31 paragraph (1) of Law no. 370/2004);

*- to deal with **appeals** concerning the prevention of a political party, a political group or a candidate from conducting their electoral campaign in accordance with the law* (Art. 38 of Law no. 47/1992 and Art. 42 paragraph (7) of Law no. 370/2004);

*- the settlement of **applications for** annulment of elections* (Article 37 paragraph (1) of Law 47/1992 and Article 52 of Law 370/2004);

- confirmation and validation of the result of each ballot [Art. 37 para. (1) of Law 47/1992, Art. 53 para. (1) and Art. (2) of Law 370/2004];

- validation of the election results for the elected President [Art. 37 para. (2) of Law 47/1992 and Art. 53 para. (1) of Law 370/2004]

3. The implicit component of the competence of the CCR (within the discretion of the CCR - *what are the limits of this competence?*)

This component is characterized by the CCR as follows:

CCR Judgment No 66/2019

"*Article 146, letter f) of the Constitution establishes the **competence of the Constitutional Court to verify, in the last instance, all electoral operations** concerning the procedure for the election of the President of Romania during the entire period between the start of the election procedure and its finalization.*" (para. 23)

Decision No 32/2024 (Constitutional Court of Romania, 2024b).

***"The purpose of the constitutional power provided for in Article 146 letter f) is to ensure respect for the principle of the supremacy of the Constitution, provided for in Article 1 para. (5), throughout the presidential elections, as well as the constitutional values set out in Article 1 para. (3) and Art. (1) of the Constitution**, which characterize the Romanian State and which the President of Romania has the duty to respect and defend. The Constitutional Court's duty to 'ensure compliance with the procedure for the election of the President', regulated by Article 146(f) of the Constitution, cannot be interpreted restrictively. **The provisions of Article 146(f) of the Constitution must be read in conjunction with those of Article 142 para. (1) of the Constitution and Article 1 para. (2) of Law No 47/1992, since the Constitutional Court's power to ensure compliance with the procedure for the election of the President cannot be dissociated from the role of the Constitutional Court in the constitutional architecture, that of guarantor of the supremacy of the Constitution."** (para. 4)*

In view of these developments and jurisprudential distinctions, it follows that in the 2024 electoral process we are not discussing a "reversal" of the CCR on the decision to validate the first round, but the exercise of its implicit competence, based directly on Art. 146 lit. f) of the Constitution interpreted in the set of constitutional provisions that configure the role of

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the CCR, and which allows it to intervene "*during the entire period between the start of the election procedure and its finalization",* regardless of the stages and the moment in this interval, to verify and sanction violations of the Constitution and the law in relation to the presidential election (Safta, 2023).

As it also follows from the case law cited, **the power to "keep watch" is circumscribed to the period between the start of the electoral procedures and the finalization of the presidential elections, and cannot be exercised after that moment**. As a result, if irregularities are subsequently discovered, the powers of the public authorities will be brought into play, in accordance with the mechanisms and levers that the Constitution provides for in relations between authorities, and perhaps even those of the Constitutional Court in the exercise of other powers, as the case may be (Safta, 2024).

The recent case law of 2024 motivates and at the same time emphasizes the limits of this competence of the CCR, with reference to *the requirements of the rule of law, national sovereignty and the role of the CCR as guarantor of the Constitution.* It is a very general formulation that takes the discussion into the sphere of constitutional principles, in particular that of **constitutional loyalty**, by which all public authorities are bound.

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Procedure for the settlement of cases within the framework of the power provided for by Article 146 i of the Constitution

"*How did they take the decision to cancel the votes?",* expression of the idea of "*informality of the meeting* "procedural participants in this procedure

1. General rules applicable to the procedure before the JRC

Chapter V of Law no. 47/1992 lays down **specific procedural rules for proceedings before the Constitutional Court**

According to ***Article 52 of Law no. 47/1992***

"(1) All the judges of the Constitutional Court shall attend the Plenum sittings, unless some of them are absent for justified reasons.

(2) The meetings shall be chaired by the President of the Constitutional Court. In the absence of the President of the Court, sittings shall be chaired by a judge designated by the President. The sittings shall be attended by the Assistant Magistrate assigned to the Judge-Rapporteur and, in the cases provided for by law, by the representative of the Public Prosecutor's Office and other persons or authorities notified for this purpose.

(3) ***The debates shall take place with the participation only of the judges of the Constitutional Court, on the basis of the application and the other documents on file and, except in the cases provided for in Article 146, letters d), e) and k) of the Constitution, republished, without the parties being notified****. The President of the Court may invite any persons he deems necessary to attend the proceedings.*

It should be noted that, in order to fulfill the task regulated by Art. 146 lit. f) of the Constitution, Law no. 47/1992 requires that **the hearing and debates be held only with the participation of the Constitutional Court judges and the assistant magistrate assigned to the judge-reporter** (i.e. not public hearings; these are established by law exclusively for the resolution of exceptions of unconstitutionality, legal conflicts of a constitutional nature and challenges concerning the unconstitutionality of political parties). Only in "*cases provided for by law*" (i.e., in the context of elections, those which have an explicit component and have express procedural rules requiring the presence of other participants, such as the representative of the Public Prosecutor's Office), the Court is obliged to ensure that the invitation/appointment is made; nothing prevents the President of the Court from inviting "*for relations, persons deemed necessary*".

Dress is only required for public meetings.

Article 54 *"During public sittings, judges, assistant magistrates, prosecutors and lawyers shall wear robes".*

As regards the **resolution of** electoral disputes, this is done by **judgment,** in which sense are the provisions of Art. 11 para. 1 of Law no. 47/1992, according to which the Court pronounces

"B. Judgments in cases where:

a) ensures that the procedure for the election of the President of Romania is observed and confirms the results of the vote".

Regarding the taking of the decision**, Article 58 para. (1) of Law no. 47/1992** establishes that *"(1)* ***The deliberation shall be held in secret and only the judges who participated in the debates shall be present. The assistant judge*** *who prepared the deliberations and participated in them may be consulted."*

According to **Article 59 of Law no. 47/1992,**

"(1) The result of the deliberations shall be recorded in minutes, which shall be signed by the judges who took part in the hearing and by the assistant magistrate.

(2) The assistant-magistrate shall immediately record the decisions given in the minutes of the hearing, which shall be signed by the judges.

(3) ***The judge who voted against may deliver a separate opinion. A concurring opinion may be given on the reasoning of the*** *decision. The dissenting opinion and, where appropriate, the concurring opinion shall be published in the Official Journal of Romania, Part I, together with the decision.".* (judgment, see Art. 60 which refers to all acts adopted in judicial matters, i.e. decisions, judgments, opinions).

Note **the legal distinction between the dissenting opinion** (which means voting against the majority's solution) and the **concurring opinion**

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(which means the same vote as the majority on the solution adopted, but a different approach to the reasoning leading to that solution) (Safta, 2016).

2. Special rules applicable to electoral procedures ("explicit" component)

It should be noted that, in these cases, the special laws (Law No 47/1992 and Law No 370/2004) clearly set out the applicable procedures (who is responsible for the applications, deadlines for submitting them, deadlines for their settlement, etc.). As special rules, they are of strict application, i.e. the procedures laid down therein cannot be extended to what the CCR has described as the 'implicit' component of the duty to act as guardian which, in the absence of special rules, entails following the general rules for the settlement of cases laid down in Law No 47/1992.

Thus**, in the case of explicit attributions, the** Court settles, within the time limits provided for by special laws:

- appeals against the registration or rejection of registration of candidates or electoral signs - **at the request of** candidates, political parties, organizations of citizens belonging to national minorities, political alliances, electoral alliances and voters (Art. 31 of Law no. 370/2004 and Art. 38 of Law no. 47/1992);

- challenges concerning the prevention of a political party, a political organization or a candidate from conducting their electoral campaign in accordance with the law - **at the request of the** aforementioned subjects (art. 42 of Law no. 370/2004 and art. 38 of Law no. 47/1992);

- applications for annulment of elections - **at the request of** political parties, political alliances, electoral alliances, organizations of citizens belonging to national minorities represented in the Council of National Minorities and candidates who participated in the elections (Art. 52 of Law no. 370/2004).

Article 68 para. (1) of Law no. 47/1992 concerning the "*mandatory participation of the public prosecutor*".

The Court also:

- confirms and validates the election results for each ballot (Art. 53 of Law 370/2004 and Art. 37 of Law 47/1992);

- validates the result of the elections for the elected President (Art. 53 of Law 370/2004 and Art. 37 of Law 47/1992).

3. Considerations on the cases in which Judgments No 30/2024 and No 32/2024 were delivered

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With regard to ***Judgment no. 30/2024*** **-** the question of the majority with which it was taken, in the light of the concurring opinions of two of the judges of the Constitutional Court - it is noted from the above-mentioned legal texts that **the concurring opinions do not refer to and do not affect the solution taken by the Court, in the sense that the judgment states that it was taken "by unanimous vote"** (para. 32). According to the law, the concurring opinions concern the reasoning of the decision/judgment, if any, and not the solution adopted (Safta, 2024; Constitutional Court of Romania, 2024a).

As regards ***Judgment no. 32/2024 - the*** aspect concerning the organization and conduct of the meeting of the Plenary of the CCR **-** it is noted from the above-mentioned texts that the law requires in the case of the task provided for in Article 146 f) **the meeting to be held in a non-public session, in the presence only of the CCR judges and the assistant magistrate appointed to the case file**. A reading of the judgment published in the Official Gazette shows that, in accordance with the law, all the judges of the CCR and the first assistant magistrate attended the hearing at which it was delivered (Constitutional Court of Romania, 2024b).

It is also noted that the **procedural act that formed the basis of the case** having as its object "*the examination of the issues relating to the fairness and legality of the electoral process regarding the elections for the President of Romania in 2024, brought to public knowledge on December 4, 2024 by declassifying the content of the "Information Notes" of the Ministry of Internal Affairs - General Directorate of Internal Protection, the Foreign Intelligence Service, the Romanian Intelligence Service and the Special Telecommunications Service, which were registered at the Presidential Administration under no. DSN1/1.741/4.12.2024, no. DSN1/1.740/4.12.2024, no. DSN1/1.742/4.12.2024 and no. DSN1/1.743/4.12.2024, respectively no. DSN1/1.701/2.12.2024*" is a **Court Conclusion** *"The case is the subject of File no. 3771F/2024 constituted by the Constitutional Court Conclusion of December 6, 2024. "*As the content of the said conclusion is not public, we do not know how it was substantiated. There are, however, the aforementioned case law precedents, which state that in the case of implied jurisdiction, the CCR may be referred to or may refer the matter to itself, which is the meaning of the considerations further stated by the CCR in the same judgment. The judgment was delivered unanimously, without any dissenting opinion; it is, as stated in the operative part of the judgment, '*final and generally binding*', was published in the Official Journal and was brought to the attention of the public. Therefore, as I also stated at the event, it is difficult to understand what the idea of "informal" might refer to in relation to it - perhaps it is more a

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misunderstanding/lack of knowledge of the procedure followed by the Court in an unprecedented and socially high impact situation.

From this perspective, a detailing in the judgment of the manner and basis of the inves investiture/aitoinvestigation of the CCR in this case would have served the better understanding of the procedural aspects by all its addressees. The generally binding nature of the CCR's acts imposes greater requirements of clarity and transparency, similar to those of normative acts, all the more so when there is no clear precedent on the matter and all the more so since Article 14 of Law 47/1992 establishes that *'The jurisdictional procedure provided for by this law is supplemented by the rules of civil procedure, insofar as they are compatible with the nature of the procedure before the Constitutional Court. **Compatibility shall be decided exclusively by the Court"***

Decision No 30 of December 2, 2024 on the request for annulment of the elections for the office of President of Romania of November 24, 2024, submitted by Mr. Cristian-Vasile Terheş

The grounds on which the CCR ordered this measure are set out in the judgment as follows:

"*taking into account the **inconsistencies indicated with regard to the valid votes cast and their recording in the minutes in the case of candidates Elena-Valerica Lasconi and Ludovic Orban and their potential impact on the election result**, the Court, pursuant to Article 146 letter f) of the Constitution, Art. 37 and 76 of Law No. 47/1992 and Article 3 of Law No. 370/2004, ordered, by unanimous vote, the rechecking and recounting of all ballot papers containing the valid and invalid votes cast in the elections for the office of President of Romania on November 24, 2024. **The Court ordered this measure in order to remove any doubts as to the fairness of the above-mentioned elections and to ensure the effectiveness and objectivity of the Constitutional Court's examination of the fairness of the elections**, since the fairness of the elections is an expression of the sovereignty and a fundamental principle of the Romanian State which underlies the determination of the outcome of the elections for the office of President of Romania* (para. 21)

Decision No. 32 of December 6, 2024 on the annulment of the electoral process regarding the election of the President of Romania in 2024

The main reason given by the CCR for annulling the elections: the electoral process was flawed throughout the electoral process

"*after the declassification on December 4, 2024 of the documents presented at the meeting of the Supreme Council for National Defense on November 28, 2024 and their public disclosure, the Court took note of their content. Having regard to the information contained in the "Information Notes" of the Ministry of Internal Affairs - General Directorate of Internal Protection, the Foreign Intelligence Service, the Romanian Intelligence Service and the Special Telecommunications Service, which were registered with the*

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Presidential Administration under Nos. DSN1/1741/4.12.2024, DSN1/1740/4.12.2024, DSN1/1742/4.12.2024 and DSN1/1743/4.12.2024, respectively No. DSN1/1701/2.12.2024, the Court finds that the ***electoral process for the election of the President of Romania was marred throughout its entire duration*** *and at all stages by multiple irregularities and violations of electoral legislation that* ***distorted the free and fair nature of the vote cast by citizens and the equality of chances of the electoral competitors, affected the transparent and fair nature of the electoral campaign and disregarded the legal regulations on*** *its* ***financing****. All these aspects had the converging effect of disregarding the essential principles of democratic elections."* (para 5)

How the electoral process was flawed, according to the CCR ruling:

- Infringement of the freely cast vote

"12. According to Art. 81 para. (1) of the Constitution, the President of Romania shall be elected by universal, equal, direct, secret and freely expressed vote. The Court observes that the electoral process for the election of the President of Romania in 2024 was conducted in such a way as to affect the freely expressed nature of the citizens' vote (...).

14. In the present case, the ***freely expressed nature of the vote was violated*** *by the fact that voters were misinformed by means of an electoral campaign in which one of the candidates benefited from an aggressive promotion, carried out in circumvention of national electoral legislation and by abusing the algorithms of social media platforms. The manipulation of the vote was all the more evident as the electoral materials promoting one candidate did not bear the specific sign of electoral advertising in accordance with Law No 370/2004. In addition, the candidate also benefited from preferential treatment on social media platforms, which had the effect of distorting the voters' expression of will."*

- Altering the right to be elected by infringing the equal opportunities of electoral competitors

"16. In the present case, in the light of the provisions of Article 37 of the Constitution, the Court holds that the equality of the electoral contestants' chances has been affected, which reflects ***an alteration of the very right to be elected****. The irregularities in the electoral campaign affected the electoral competitors, since they created a manifest inequality between the candidate who manipulated the digital technologies and the other candidates participating in the electoral process. Thus, the significant exposure of one candidate led to a directly proportional reduction in the online media exposure of the other candidates in the electoral process. However, the use of digital technologies and artificial intelligence, both by candidates or electoral contestants and by political parties, their supporters or sympathizers, must be transparent in order to guarantee the integrity and impartiality of elections. Otherwise, voters are prevented from forming an opinion about candidates and electoral alternatives or may be misled as to the identity and quality of the candidate or voting procedures. Therefore, the use of such practices in an electoral process by electoral contestants, including political parties, in an electoral process, gives the competent*

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public authorities, in accordance with the law, the duty to verify, establish and, where appropriate, sanction such conduct."

- Violation of the legislation on legal and transparent campaign financing

"18. In the present case, the Court takes note of the fact that a candidate violated the electoral legislation on campaign financing for the presidential elections. Thus, the statements submitted to the Permanent Electoral Authority by one of the candidates concerning his campaign budget, which he reported as 0 lei, contradict the data presented in the 'Information Notes' of the Ministry of Internal Affairs - General Directorate of Internal Protection and the Romanian Intelligence Service."

The reasoning is consistently based on the documents of the Venice Commission, namely **the Code of Good Practice in Electoral Matters** (Venice Commission, 2024), which details the democratic requirements of the electoral process, the exercise of the right to vote and the right to be elected. We refer at length to the views of the author Marta-Claudia Safta on the role of the Venice Commission in the constitutional architecture and reasoning of the acts of the CCR (Safta, 2022; Law No. 370/2004 on the Election of the President of Romania).

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Effects of the judgment of the Constitutional Court of Romania no. 32/2024

1. The RCC acts and their effects

Concerning the acts of the JRC, we distinguish between **jurisdictional acts and administrative acts.** The details of their regime are laid down by Law No. 47/1992 on the organization and functioning of the Constitutional Court.

As regards the **jurisdictional acts of the CCR** (i.e. those which give expression to the special and specialized competence of the CCR as guarantor of the supremacy of the Constitution and which are not subject to appeal), Article 11 of Law no. 47/1992 lists the decisions, decisions and opinions. According to Art. 11 para. (3) of **Law no. 47/1992** - *"(3) **Decisions, rulings and opinions of the** Constitutional Court shall be published in the Official Gazette of Romania, Part I. **Decisions and rulings of the Constitutional Court are generally binding and have force only for the future."***

Judgments adopted in jurisdictional matters are not to be confused with judgments in administrative matters, which have a separate legal regime and regulation (see Art. 51 para. 2 of Law No. 47/1992 "*The decisions adopted by the Constitutional Court in the exercise of **its jurisdictional powers** shall be recorded in the minutes of the hearings, while in **administrative matters***

they shall be recorded, for each hearing, in minutes on the basis of which a judgment is issued, signed by the President of the Court and countersigned by the Secretary General").

2. Judgment No 32/2024 (Constitutional Court of Romania, 2024b).

2.1. Full resumption of the electoral process;

The government is to set a new date and timetable for the Romanian presidential elections

Solution justified by the finding that the entire electoral process was flawed

According to CCR:

"19. In light of the above, ***the Court annuls the entire electoral process regarding the election of the President of*** *Romania, conducted on the basis of Government Decision No. 756/2024 on setting the date of the elections for the President of Romania in 2024 and Government Decision No. 1061/2024 on the approval of the Calendar Program for the implementation of the actions necessary for the election of the President of Romania in 2024. The effect of this Decision shall cover all electoral operations carried out on the basis of the two Government Decisions, including the votes already cast in the second round of voting.*

20. Therefore, ***the electoral process for the election of the President of Romania will be resumed in its entirety and the Government will set a new date for the election of the President of Romania, as well as a new timetable for the necessary actions.*** *All these aspects include the setting up of new electoral offices, the re-submission of candidacies to be validated by the new Central Electoral Bureau and the conduct of a new fair and transparent electoral campaign, in line with constitutional principles and values.*

21. By carrying out this constitutional and democratic control over the electoral process, the Court fulfills its task of ensuring compliance with the procedure for the election of the President of Romania, whose ultimate purpose is to restore citizens' confidence in the democratic legitimacy of public authorities, in the legality and fairness of the elections, as well as to remove any suspicions of the nature of those found in the present case. This protects both the electoral rights of citizens (the right to vote and the right to be elected) and the foundations of the constitutional order, which are essential prerequisites for maintaining Romania's democratic character and the rule of law."

Decision no. 32/2024 presents the constitutional implications of the information presented in the CSAT documents that have been declassified.

These implications affect individual rights (the right to vote, the right to be elected), entail positive obligations of state institutions (the obligation to ensure a transparent electoral process, campaign financing, the duty of neutrality, the integrity of the democratic process), and generally relate to the structure of the democratic process (social media in the electoral process, the

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use of artificial intelligence). Many of the CCR formulations in this part of the reasoning are not the happiest, but being that the interferences identified at a general level (disinformation of candidates, use of social media or AI) are part of general phenomena that cannot be suppressed within the electoral process. These are problems faced by all constitutional democracies (Perju, 2024).

2.2. Exercising the mandate of the President of Romania after its term of office has expired

We note that in the judgment no. 32/2024 the CCR noted the following: *'The Court, taking into account the complexity and the length of time of the electoral operations necessary after the delivery of this judgment,* ***finds that Article 83 para. (2) of the Constitution, according to which the incumbent President of Romania "shall hold office until the swearing in of the newly-elected President"*** (para. 22). Again, an elaboration of the legal reasoning underlying this provision would have been more than beneficial, for the sake of clarity and legal certainty in such an important and visibly socially and politically contested context.

In the absence of an argument, we will set out our own interpretation of the constitutional text to which the CCR refers. Article 83 of the Constitution reads as follows:

Art. 83 - Term of office

(1) The term of office of the President of Romania shall be 5 years and shall begin on the date of taking the oath of office.

(2) The President of Romania shall remain in office until the newly elected President takes the oath of office.

(3) The term of office of the President of Romania may be extended, by organic law, in the event of war or disaster.

A logical interpretation of Article 83 of the Constitution shows that it regulates *one rule (in paragraph 1) and two exceptions (paragraphs 2 and 3).* Exceptions are situations in which the term of office of the President, which runs from the date of taking the oath of office, does not overlap exactly with the five-year period laid down by the rule in para. (1). The exceptions are, *according to the rules of legal interpretation, of strict interpretation and application.*

What can **the exception provided for in para. (2)**, which is relevant in this case according to what the CCR has ruled? In the absence of elements pointing to a specific situation (as in paragraph 3), it follows that it relates to the conduct of the electoral process itself. The purpose of such an exception to the rule laid down in para. (1) is to ensure the **stability and continuity of the presidential function until the end of the electoral process**, regardless of the stages and elements which, **according to the law**, may intervene during

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this process. According to the special laws and the Constitution (which gives the CCR the power to oversee the electoral process), elections may be annulled during the electoral process. Therefore, the exception provided for by para. (2) of Article 83 also covers the exercise of the presidential office during the reorganization of the elections, up to the moment when the elected President is sworn in.

For this reason, we consider that the institution of interim does not apply, in the sense that on the expiry of the 5-year term provided for by the general rule established by para. (1) of Article 83 would vacate the office of President. If this were so, the constituent legislator would have established in para. (2) that the President of Romania shall hold office until the swearing in of the newly elected President, but not more than 5 years after the swearing in. The text is not worded in this way. Since the institution of the interim does not affect the interim, its consequences, namely the occupation of the presidential office by other political actors, are not affected (Safta, 2024).

In the case of the December 2024 elections, the CCR no longer assessed the constitutionality of the procedure followed, but assessed the will of the citizens as politically inappropriate, allegedly as a result of the perversion of their discernment by an allegedly inappropriate electoral campaign, and decided to annul it. The CCR not only did not verify the constitutionality of the electoral procedure, which it was called upon to oversee, in order to provide constitutional guidance to the judicial or administrative courts competent to ascertain and penalize violations thereof, but proceeded to investigate and certify the factual situation created by the acts of certain specific persons, and not with the hearing of those involved and interested, nor with respect for their rights of defense, nor even with the administration, even unilaterally, of material evidence capable of supporting certain accusations to the level of a conviction beyond reasonable doubt. The only evidence invoked were some informative reports drafted by the Romanian intelligence and counterintelligence services, in a heap, with no judicial value, but, above all, with no probative consistency; "evidence" which, normally, any court would have rejected as inconclusive. (...) (Severin, 2024).

In other words, the **reorganization of the elections in the event of their annulment must be established immediately, in the shortest legal and possible time**, so that the exercise of the mandate beyond the 5-year term of office is the minimum necessary to complete the electoral process and elect a new President. Such an obligation of all actors involved in the procedure of organizing and conducting the elections derives from the interpretation and application of the Constitution according to the **principle of constitutional loyalty.** As far as the CCR is concerned, we consider that

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it could not have set deadlines in this respect in its judgment, as this would have meant legislating in violation of the constitutional competence of other authorities. We consider, however, that it is clear that, since the judgment was generally binding from the date of its publication in the Official Gazette, it entailed compliance, from that moment, with its operative part and the recitals.

Conclusions

Regarding the decisions adopted by the CCR in this electoral exercise, according to the law they are final and generally binding, including for the CCR itself. A deviation by the CCR from what has been stated can be made by way of and under the conditions of jurisprudential reversal, i.e. by clearly indicating the possible reversal and giving a well-founded reason for it in the recitals of the acts pronounced.

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Retraction Issued by:
Editors of *European Journal of Law and Public Administration*

Following a voluntarily request from both authors, Razvan Viorescu and Diego Varela, this article has been retracted from *European Journal of Law and Public Administration*. Both authors fully agree with and support this retraction.

Reason for Retraction:
The retraction was requested by the authors after it was discovered that, due to a regrettable error in communication and file transmission, a preliminary and unfinalized draft of the article was submitted and subsequently published. The authors have informed us that the initially submitted manuscript was sent in error and contains major inaccuracies. These errors, once corrected, significantly alter the article's conclusions. The authors noted that the research and methodology remain valid and are not compromised by these corrections. The final, revised version of the article—free of these issues—was not transmitted to the journal in error.
Both authors have expressed their good faith and regret for this oversight and have requested immediate retraction of the article.
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