

RULING No 32 of 6 December 2024

on the annulment of the electoral process for the election of the President of Romania in 2024

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Cristian Deliorga	-	Judge
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Laura-Iuliana Scânteii	-	Judge
Gheorghe Stan	-	Judge
Livia Doina Stanciu	-	Judge
Elena-Simina Tănăsescu	-	Judge
Varga Attila	-	Judge
Benke Károly	-	First Assistant-Magistrate

1. On the Court's docket is the review of the aspects related to the fairness and legality of the electoral process for the election of the President of Romania in 2024, publicised on 4 December 2024 by the declassification of the content of the "Information Notes" of the Ministry of Interior – General Directorate for Internal Security, of the Foreign Intelligence Service, of the Romanian Intelligence Service and of the Special Telecommunications Service, registered with the 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 DSN1/1701/2.12.2024.

2. The case is the subject matter of Case File No 3771F/2024 established by the interlocutory order of the Constitutional Court of 6 December 2024.

THE COURT,

having examined the case in the light of the provisions of the Constitution, of Law No 47/1992 on the organization and functioning of the Constitutional Court, and of Law No 370/2004 on the election of the President of Romania, ruled as follows:

3. According to the provisions of Article 146 (f) of the Constitution, of Article 37 (1) of Law No 47/1992, republished in the Official Gazette of Romania, Part I, No 807 of 3 December 2010, and of Article 3 of Law No 370/2004 on the election of the President of Romania, republished in the Official Gazette of Romania, Part I, No 650 of 12 September 2011, the Constitutional Court ensures the observance of the procedure for the election of the President of Romania and confirms the ballot returns.

4. The purpose of the constitutional prerogative provided for in Article 146 (f) is to ensure the observance of the principle of supremacy of the Constitution, provided for in Article 1 (5), throughout the presidential elections, as well as of the constitutional values provided for in Article 1 (3) and Article 2 (1) of the Constitution, which characterise the Romanian State and which the President of Romania is bound to respect and defend. The Constitutional Court's prerogative to "*ensure the observance of the procedure for the election of the President*", governed 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 (1) of the Constitution and with those of Article 1 (2) of Law No 47/1992, since the Constitutional Court's prerogative to ensure the observance of the procedure for the election of the President cannot be dissociated from the Constitutional Court's role in the constitutional architecture, i.e., of guarantor of the supremacy of the Constitution.

5. In exercising this prerogative, following the declassification, on 4 December 2024, of the documents presented at the meeting of the Supreme Council of National Defence of 28 November 2024 and their publicisation, the Court took note of their content. With regard to what is presented in the

“Information Notes” of the Ministry of Interior – General Directorate for Internal Security, of the Foreign Intelligence Service, of the Romanian Intelligence Service and of the Special Telecommunications Service, registered with the 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 DSN1/1701/2.12.2024, the Court finds that the electoral process for the election of the President of Romania has been vitiated, throughout its entire length and at all its stages, by numerous irregularities and violations of the electoral legislation, which distorted the free and correct nature of the vote cast by the citizens and the equal opportunities of the electoral competitors, affected the transparency and fairness of the electoral campaign, and disregarded the legal provisions relating to the funding of electoral campaigns. All these aspects have had a converging effect of disregard for the essential principles of democratic elections.

6. 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 organisation of a democratic society (see also Decision No 242 of 3 June 2020, published in the Official Gazette of Romania, Part I, No 504 of 12 June 2020, para. 105), being essential and decisive for the democratic system.

7. The right to vote and the right to be elected are essential for establishing and maintaining the foundations of a genuine and effective constitutional democracy, governed by the rule of law (see, *mutatis mutandis*, Judgment of 17 May 2016, in the case of *Karácsony and Others v. Hungary*, para. 141), and are guaranteed by the Constitution. Thus, the Court considers that electoral rights are fundamental rights of a political nature, that they represent a prerequisite for democracy and the democratic functioning of the State, and that they are exercised in accordance with the requirements of the Constitution and the laws.

8. Article 1 (3) of the Constitution provides that Romania is a democratic and social State governed by the rule of law, in which human dignity, the rights and freedoms of citizens, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989, and shall be guaranteed. This constitutional text expressly establishes the values underlying the Romanian State, being a corollary of its existence over time. Similarly, Article 10 (3) of the Constitution specifies that these values must be understood and applied “*in the spirit of the democratic traditions of the Romanian people and the ideals of the Revolution of December 1989*”.

9. According to Article 2 (1) of the Constitution, “*National sovereignty belongs to the Romanian people, who shall exercise it through their representative bodies, resulting from free, periodic and fair elections, as well as by referendum*”. Therefore, fair elections are an expression of sovereignty and a fundamental principle of the Romanian State, which underpins the establishment of the result of the elections for the office of President of Romania. As such, the State is bound to ensure a transparent electoral process in all its components so as to guarantee the integrity and impartiality of the elections, which are the premises of a genuine constitutional democracy, of the democratic evolution of the State, and of a guarantee of the existence of the rule of law.

10. The State has a positive responsibility to prevent any undue interference in the electoral process with regard to the constitutional principles. On the other hand, the State also has a duty of neutrality, which also includes the obligation to build resilience among voters, including by raising public awareness about the use of digital technologies in elections, including by providing appropriate information and support. Therefore, the State should address the challenges and risks posed by organized information disorders, which are likely to undermine the integrity of electoral processes [see also, in this regard, points 14, 17 and 20 of the Interpretative Declaration of the Code of Good Practice in Electoral Matters as Concerns Digital Technologies and Artificial Intelligence, adopted by the European Commission for Democracy through Law (Venice Commission) on 6 December 2024].

11. In this case, the Court notes that, according to the above-mentioned “Information Notes”, the main aspects attributed to the electoral process for the election of the President of Romania in 2024 refer to the manipulation of the electors’ vote and the distortion of the equality of opportunity for the electoral competitors, through the non-transparent use of digital technologies and artificial intelligence in the electoral campaign in violation of the electoral legislation, and through the funding from unreported sources of the electoral campaign, including the online one.

12. According to Article 81 (1) of the Constitution, the President of Romania is elected by universal, equal, direct, secret and freely expressed suffrage. The Court notes that the way in which the

electoral process for the election of the President of Romania in 2024 was conducted affected the free expression of the citizens' vote.

13. The voters' freedom to form an opinion includes the right to be properly informed before making a decision. More specifically, the voters' freedom to form an opinion implies the right to obtain accurate information about the candidates and the electoral process from all sources, including online, as well as the protection against undue influence, through illegal and disproportionate acts/facts, on the voting behaviour. Political advertising can sometimes turn into a "vector of disinformation, in particular where [...] does not disclose its political nature, comes from sponsors outside of the Union or is subject to targeting techniques or ad-delivery techniques" [see also Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising, point 4]. Therefore, interference by State or non-State entities in carrying out propaganda or electoral disinformation campaigns must be excluded.

14. In this case, the free expression of the vote was violated by the fact that the voters were misinformed through an electoral campaign in which one of the candidates was aggressively promoted, carried out by circumventing 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 intended to promote a candidate did not bear the specific symbols of electoral advertising, in accordance with Law No 370/2004. Moreover, the candidate also received preferential treatment on social media platforms, which led to a distortion of the voters' expression of will.

15. Equality of opportunity should be ensured between all candidates and all parties and should prompt the State to adopt an objective and impartial attitude towards them and to apply the same legislation uniformly to all. Spending on electoral advertising may be limited in order to ensure equal opportunities [see also points 18 and 21 of the Explanatory Report in the Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report, adopted by the European Commission for Democracy through Law (Venice Commission) at its 52nd session (Venice, 18-19 October 2002)]. Furthermore, equal opportunities must also be assessed from the perspective of the competitors' electoral behaviour as to the use of social networks, new technologies, artificial intelligence systems and campaign funding.

16. In this case, in view of the provisions of Article 37 of the Constitution, the Court considers that the equality of opportunity of the electoral competitors has been affected, which reflects an alteration of the very right to be elected. Irregularities in the election campaign had an impact on the electoral competitors, as they created a clear inequality between the candidate who manipulated digital technologies and the other candidates participating in the electoral process. Thus, the considerable exposure of one candidate led to the directly proportional reduction of the online media exposure of the other candidates in the electoral process. However, the use of digital technologies and artificial intelligence, both by electoral candidates or competitors, and by political parties, supporters or their sympathisers, must be transparent in order to ensure the integrity and impartiality of the elections. Otherwise, voters are hindered in their ability to form an opinion about the candidates and electoral alternatives, or may be misled about the identity and quality of a certain candidate, or about the voting procedures. Therefore, the use of such practices in an electoral process by electoral competitors, including political parties, authorises the competent public authorities, in accordance with the law, to verify, observe and, where appropriate, sanction such behaviour.

17. The legal and transparent funding of the electoral campaign is an important factor in the regularity of the electoral process, and the funding of online activities must also be transparent (points 107 and 108 of the Explanatory Report on the Code of Good Practice in Electoral Matters and paragraph 46 of the Interpretative Declaration of the Code of Good Practice in Electoral Matters as Concerns Digital Technologies and Intelligence artificial). Online electoral advertising must always be identified as such and be transparent, both in terms of the identity of its sponsor and the dissemination technique used. Social media platforms should be required to consistently disclose data on political advertising and their sponsors (see also point 46 of the Interpretative Declaration of the Code of Good Practice in Electoral Matters as Concerns Digital Technologies and Artificial Intelligence).

18. In this case, the Court finds that a candidate has infringed the electoral legislation relating to the funding of the electoral campaign relating to the presidential elections. Thus, the statements submitted to the Permanent Electoral Authority by one of the candidates regarding his campaign budget, which he declared to be 0 lei, contradict the data presented in the "Information Notes" of the Ministry of Interior – General Directorate for Internal Security and of the Romanian Intelligence Service. However, it is well known that an electoral campaign involves considerable costs and expenses,

and the situation analysed reveals an obvious incongruity between the size of the campaign conducted and the absence, assumed by the candidate, of all expenses. Therefore, the principle of transparency of the funding of electoral campaigns was violated, thus raising suspicions about the fairness of the elections.

19. In view of the above, the Court annuls the entire electoral process for the election of the President of Romania, conducted on the basis of Government Decision No 756/2024 establishing the date of the elections for the office of President of Romania in 2024, and of Government Decision No 1061/2024 approving the timetable for the implementation of the necessary actions for the election of the President of Romania in 2024. The effect of this ruling applies to all the electoral operations carried out on the basis of the two Government decisions, including to the votes already cast in the second round of the elections.

20. Therefore, the electoral process for the election of the President of Romania shall be resumed in its entirety and the Government shall set a new date for the election of the President of Romania, as well as a new timetable for the implementation of the necessary actions. All these aspects also include the establishment of new electoral offices, the resubmission of the candidatures for evaluation by the new Central Electoral Office and the conduct of a new fair and transparent electoral campaign, in accordance with the constitutional principles and values.

21. By exercising this constitutional and democratic review of the electoral process, the Court fulfils its duty to ensure the observance of the procedure for the election of the President of Romania, the ultimate objective of which is to restore citizens' confidence in the democratic legitimacy of public authorities, in the legality and fairness of the elections, as well as to dispel any suspicion similar to the elements identified in this case. Thus, the electoral rights of citizens (the right to vote and the right to be elected) and the foundations of the constitutional order are protected, which are essential premises for maintaining the democratic nature of the Romanian State as a State governed by the rule of law.

22. In view of the complexity and duration of the electoral operations required after the delivery of this ruling, the Court concludes to the applicability of the provisions of Article 83 (2) of the Constitution, according to which the President of Romania "*shall exercise his term until the new President-elect takes the oath*".

23. For the above reasons, in accordance with Article 146 (f) of the Constitution, Article 37 (1) of Law No 47/1992, as well as Article 3 of Law No 370/2004, unanimously,

**THE CONSTITUTIONAL COURT,
In the name of the law,
DECIDES:**

1. In accordance with Article 146 (f) of the Constitution, annuls the entire electoral process for the election of the President of Romania, conducted on the basis of Government Decision No 756/2024 establishing the date of the elections for the office of President of Romania in 2024, and of Government Decision No 1061/2024 approving the timetable for the implementation of the necessary actions for the election of the President of Romania in 2024.

2. The electoral process for the election of the President of Romania shall be resumed in its entirety, the Government shall set a new date for the election of the President of Romania, as well as a new timetable for the implementation of the necessary actions.

3. This ruling is final and generally binding, it is published in the Official Gazette of Romania, Part I, and it is hereby publicised.

Delivered at the hearing of 6 December 2024.