

THE PROCESS FOR ELECTING THE PRESIDENT OF ROMANIA

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Abstract

In 2024, the Constitutional Court of Romania delivered two landmark decisions in electoral matters, as it is the first time that the Court has significantly intervened in the electoral process for the election of the President. In the first of these decisions, the Court ruled the exclusion of a candidate from the electoral race due to the anti-European discourse and conduct, which demonstrated disregard for the democratic values and principles that underpin the organization and functioning of the Romanian State and that are directly reflected in the text of the Constitution. By the second decision, the Court annulled the entire electoral process for the election of the President and ordered its resumption, on the basis of declassified "Information Notes" initially presented at the meeting of the Supreme Council of National Defense, which indicated that the electoral campaign conducted by the winning candidate in the first round was likely to affect the free and fair nature of the citizens' vote and the equality of opportunity of the other electoral competitors.

Keywords: *Presidential elections; the annulment of the electoral process; Constitutional Court of Romania; registration of a candidate; defense of constitutional democracy; free and fair elections.*

I. Introduction

Elections are the basis of any democratic political system. In Romania, as in other countries around the world, 2024 was considered a genuine election year, as all types of elections were to be organized in the same year. Elections for the European Parliament and Local Government were held on the same day, June 9. The presidential and parliamentary elections were to be held at the end of the year, in three consecutive weeks, with the elections for the new Parliament scheduled on the National Day (December 1), between the two rounds of the elections for the President of Romania. According to Article 81 of the Constitution, the President is elected in a single round or in two rounds of elections. In order to be elected President in the first round, the

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candidate must obtain a majority of the votes of the voters registered on the electoral lists. If none of the candidates is in this position, a second round of voting is held two weeks after the first round between the top two candidates ranked in descending order of the number of votes obtained in the first ballot. It is for the Constitutional Court to confirm the number of valid votes cast for each candidate and to decide which candidates participate in the second round. The Constitutional Court rules on this in a decision within 24 hours of receiving the protocols from the Central Electoral Bureau. In the second ballot, the candidate who receives the highest number of votes from voters who turned out at the polls is declared the winner.

The post-Decembrist constitutional history of Romania has demonstrated the electorate's increased interest in presidential elections, given the voter turnout figures. The institution of the Head of State thus enjoys a prominent position in the collective mind, but also generates numerous debates and controversies in the national doctrine of constitutional law on the extent of the President's prerogatives and the way in which they are exercised. Without referring in detail to these aspects, we nevertheless considered them worthy of mention in our attempt to understand the echo produced at national level (and not only) by the two recent decisions of the Constitutional Court of Romania with particular relevance to the electoral process concerning the election of the President.

II. Decision No. 2 of October 5, 2024 on the admissibility of the complaint regarding the registration of Diana Iovanovici-Soșoacă as a candidate in the presidential elections²

1. Facts of the Case

According to art. 29 of Law no. 370/2004 for the election of the President of Romania, the Central Electoral Bureau, after verifying the substantive and formal conditions provided for by law, shall decide on the registration or rejection of a candidate, within 48 hours of its submission. Within 24 hours of the expiry of this deadline, complaints concerning the registration or rejection of the registration of a candidacy may be drawn up. The complaints are settled by the Constitutional Court. In the present case, Mrs. AB lodged a complaint against the Decision of the Central Electoral Bureau No. 18/D of October 3, 2024 on the registration of the candidacy and electoral sign of Mrs. DI-S for the elections for the President of Romania in 2024.

2. Main arguments of the complaint

The author of the complaint requests the rejection of the registration of the candidate in question, referring to a number of considerations that the Central

² Not published. <https://www.ccr.ro/wp-content/uploads/2024/10/HOTARAREA-nr.2.pdf> (Accessed on 12.01.2024).

Electoral Bureau should have taken into account when analyzing the legal substantive and formal conditions that must be met in order to register the candidates for the office of President.

First of all, the candidacy in question should be rejected because the formal, objective condition of the minimum number of signatures required is not fulfilled, since '[some of the signatures] presented as belonging to different persons contain elements of obvious similarity and some of them are photocopies'.

Secondly, the author refers to a series of implicit conditions relating to Romania's irreversible Euro-Atlantic integration and Western trajectory, which can be deduced from the constitutional provisions as a whole and which describe the attachment to "the principles of freedom, democracy and respect for human rights, fundamental freedoms and the rule of law". As values which define us as a state, these must be promoted by any candidate who aspires to the office of President of Romania, since conduct contrary to these values and principles would also be conduct contrary to the Constitution. However, the person in question, whose candidacy is the subject of the complaint, has often displayed verbally or even physically aggressive behavior towards journalists, police officers or other fellow dignitaries in the Romanian Parliament or the European Parliament. In her numerous statements, Mrs. Șoșoacă has tackled anti-Western and pro-Russian topics, often taking content elements from Russian propaganda in relation to the EU bloc and significantly diminishing the importance of Romania's accession to the European Union and NATO, even though the Euro-Atlantic integration has been enshrined in the Constitution (Articles 148 and 149). Among other things, the person in question portrayed Romania as a "slave state" and NATO as "the most aggressive, exciting, dangerous and potentially destructive military alliance". Such threatening, aggressive statements with an extremist, anti-democratic undertone were not just isolated exceptions, but have become "the rule in Mrs. S's public discourse". The "friendly" relations of the person in question with Russia are also notorious, as she participated on numerous occasions in receptions organized by the Russian Embassy in Bucharest or gave interviews to Russian publications in which she promoted anti-Western messages, in line with the Russian propaganda narrative.

3. Relevant Provisions. Ruling of the Constitutional Court

"The right to vote and the right to be elected [as fundamental rights of a political nature] are crucial to the establishment and maintenance of the foundations of a genuine and effective constitutional democracy." These rights are not absolute and may be subject to limitations, and the right to be elected may be subject to stronger limitations and conditions than those imposed on the right to vote.

In Art. 146 lit. f) of the Constitution (repeated in Art. 37 para. (1) of Law no. 47/1992) stipulates that the Court "shall guard the observance of the procedure for the election of the President of Romania and confirm the ballot returns". Subsequently, according

to art. 38 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, the Court settles, by the vote of the majority of the judges, the complaints regarding the registration or non-registration of the candidates for the office of President of Romania, within the time limits provided for by the law for the election of the President of Romania.

The Court exemplifies, one by one, the formal (written form of the candidacy proposal, the signature, the candidate's identification data, the submission of the declaration of acceptance of candidacy, of the declaration of assets, of the declaration of interests, etc.) and substantive conditions laid down by the Constitution and Law no. 370/2004, which must be met by persons running for the office of President. It also subclassifies the substantive conditions into general and special.

The general substantive conditions derive from the democratic values and principles enshrined in the Constitution, which reveal "the democratic traditions and aspirations of the Romanian people [since the Revolution of 1989]" and "constitute [at the same time] a constant, intrinsic and everlasting element in [the Romanian people's] consciousness, mentality and aspirations". These values, principles, requirements or procedures of a constitutional nature are binding on all subjects of the law, all the more so for those who run for the office of President, from which it follows that, in their conduct, they are bound to respect them and to prove their loyalty to the Constitution, its values and the citizens. The denial of these values, all the more so on behalf of a candidate for the office of President, could not be accepted, since they are likely to "repudiate the very idea of Constitution and constitutionalism, which characterizes the existence of the rule of law". Thus, the Court considers that "the democratic instruments cannot be used to distort/ challenge the constitutional order itself or Romania's European integration path".

In order to emphasize that "there can be no fundamental value inconsistencies of a constitutional nature between the status of candidate and that of elected", the Court refers to the oath of faith that the winning candidate must take at the time of investiture, from the content of which two fundamental obligations emerge. These can be converted into conditions that must be verified for each possible candidate for the supreme office in the State: (1) respect for the Constitution, respectively (2) defense of constitutional democracy.

With regard to the first mandatory condition relating to compliance with the text of the Basic Law, this "must not be judged in terms of the time at which the oath is sworn, [which coincides with the time at which] the person enters the exercise of the mandate", but must be treated from a twofold temporal perspective: before taking office, when, like every citizen, the candidate is under a general and individual obligation to behave in a responsible and unequivocal constitutional manner, and after taking office, when the aforementioned obligation is realized and actually exercised. Accordingly, a candidate for the office of President must adopt a coherent public discourse, oriented

towards respect for the Constitution and a constitutionally loyal conduct characterized by the readiness to engage in dialogue and debate.

As regards the second essential condition of eligibility, which provides for active conduct in defense of democracy, this also concerns "a legitimate aim, namely to ensure that the mandate is exercised in accordance with the Constitution and the requirements of constitutional democracy and to prevent the misuse of the office to undermine the democratic foundations of the State".

The two conditions laid down in the text of the oath of faith expressly enshrined in the Constitution are accessible and foreseeable, and their examination is carried out only by the CCR. The Court states that "failure to meet these general constitutional conditions leads to the rejection of the registration of the candidate" as an appropriate measure to ensure the preservation of a "fair balance between the interests of the state and society, to develop on democratic bases, and the individual interest, to accede to the supreme office in the state".

III. Ruling No. 32 of December 6, 2024 on the annulment of the electoral process regarding the election of the President of Romania in 2024³

1. Facts of the Case

One week after the first round of the presidential elections, on November 24, 2024, the Constitutional Court validated the results of the elections by Decision no.31 of December 2, 2024⁴, after having previously ordered the rechecking and recounting of all ballots containing valid and invalid votes. As there were suspicions about the conduct of the electoral process, the incumbent President convened the Supreme Council of National Defence (CSAT), and some of the documents presented at the CSAT meeting (the "Information Notes" of the Ministry of Internal Affairs - General Directorate of Internal Protection, of the Foreign Intelligence Service, of the Romanian Intelligence Service and of the Special Telecommunications Service) were declassified on 4 December 2024.

Taking note of the content of these "Information Notes", the Court took the matter *ex officio* and reversed the initial validation decision by annulling the electoral process, on the basis of Article 146 letter f) of the Constitution. This article regulates the Court's power to examine, in the last instance, the correctness and legality of all electoral operations: "[The Court shall] guard the observance of the procedure for the election of the President of Romania and confirm the ballot returns". This power cannot be interpreted restrictively and cannot be reduced only to a control of legality, which

³ Decision published in the Official Gazette of Romania, Part I, no. 1231 of December 6, 2024. https://www.ccr.ro/wp-content/uploads/2024/12/Hotarare_32_2024.pdf (Accessed on: 12.01.2024).

⁴ Decision published in the Official Gazette of Romania, Part I, no. 1214 of December 3, 2024. https://www.ccr.ro/wp-content/uploads/2024/12/Hotarare_31_2024.pdf (Accessed on: 13.01.2024).

is subsumed to compliance with Law 370/2004, but has to be combined with the constitutionality control that only the Constitutional Court can exercise⁵.

2. Relevant Provisions. Ruling of the Constitutional Court

In view of what is set out in the "Information Notes", the Court observes that "the electoral process for the election of the President of Romania was marred throughout its duration and in all stages by multiple irregularities and violations of electoral legislation which distorted the free and fair nature of the vote cast by citizens and the equality of opportunity of the electoral competitors".

According to the Court, *the fairness of the elections* is an expression of sovereignty and a fundamental principle underlying the results of the presidential elections. Thus, the State has an obligation (1) to ensure a transparent electoral process in all its components and (2) to prevent any undue interference in the electoral process, thereby countering the many challenges and risks posed by disinformation campaigns that may affect the integrity of electoral processes and strengthening voter resilience by conducting awareness campaigns or providing adequate information and support to the electorate on these issues. However, according to the above-mentioned "Information Notes", the electoral process for the election of the President was manipulated and the will of the voters was distorted by "the non-transparent use of digital technologies and artificial intelligence in the conduct of the electoral campaign in violation of electoral legislation".

With regard to *the freely expressed nature of the citizens' vote*, the Court observes that it was profoundly altered by exposing citizens to disinformation through an aggressive election campaign run by one of the candidates "in circumvention of national electoral legislation and by abusing the algorithms of social media platforms". This candidate's election materials were not marked as such in accordance with legal provisions. Moreover, the candidate in question "also benefited from preferential treatment on social media platforms", as his materials were prioritized on certain platforms.

The Court considers that *the equal opportunity principle for the electoral contestants* has also to be analyzed in the light of their "use of social networks, new technologies, artificial intelligence systems and campaign financing". Thus, the level playing field was affected by one candidate's manipulation of digital technologies in order to gain significantly greater exposure, which "led to a directly proportional reduction in the online media exposure of the other candidates". "The use of digital technologies and artificial intelligence must be transparent, [...] Otherwise, voters are hindered from forming an opinion about candidates and electoral alternatives or they may be misled about the identity and quality of the candidate."

⁵ T. Toader, M. Safta, *Ghid de admisibilitate la Curtea Constituțională a României*, 2nd Edition, Hamangiu Publishing House, Bucharest, 2020.

A distinct component of the equal opportunity principle refers to the legal and transparent financing of the electoral campaign, including promotional activities carried out online, by indicating the amounts of money spent and the sponsors, since "it is common knowledge that an electoral campaign entails significant costs and expenses". However, the content of the 'Information Notes' shows a clear discrepancy between the candidate's statements that his campaign budget was 0 lei and the extent of the online campaign. All this reveals a violation of the "principle of transparency of the electoral campaign financing, raising suspicions as to the fairness of the elections".

Noting these irregularities, the Court ordered, on the basis of Article 146 letter f) of the Constitution, *the annulment of the entire electoral process regarding the election of the President of Romania and its full resumption*. Therefore, "the Government shall set a new date for the election of the President of Romania, as well as a new calendar program for the implementation of the necessary actions".