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Preliminary Observations on the
Romanian Constitutional Court's
Annulment of the First Round of
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Abstract [En]: This article examines the decision issued by the Constitutional Court of Romania on December 6th, 2024, which annulled the first round of the presidential elections held in November, situating it within the concept, typologies, and role of electoral dispute resolution mechanisms, with particular emphasis on those of a jurisdictional nature. This case provides valuable insights for comparative legal analysis and general reflections on legal developments due to new technologies and fake news.

Titolo: Osservazioni preliminari sull'annullamento da parte della Corte costituzionale rumena del primo turno delle elezioni presidenziali del 2024

Abstract [It]: Questo articolo analizza brevemente la sentenza, adottata dalla Corte costituzionale rumena il 6 dicembre 2024, che ha annullato il primo turno delle elezioni presidenziali tenutesi a novembre, inquadrandola nell'ambito della concettualizzazione, delle tipologie e del ruolo dei meccanismi di risoluzione delle controversie elettorali, con particolare attenzione a quelli di natura giurisdizionale. Questo caso offre spunti significativi per l'analisi giuridica comparata e per riflessioni generali sugli sviluppi giurisprudenziali in risposta alle sfide poste dalle nuove tecnologie e dalle *fake news*.

Keywords: Electoral Justice, Constitutional Court of Romania, Judicial Activism, Democratic Legitimacy, Digital Disinformation.

Parole chiave: Giustizia elettorale, Corte costituzionale della Romania, Attivismo giudiziario, Legittimità democratica, Disinformazione digitale.

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1. Jurisdictional Guarantees in Electoral Processes in Times of on-line Campaigning

Ensuring the fairness, integrity, and legality of electoral processes is a keystone for every democracy. Each system provides different methods to achieve this target, spanning from internal control (by MPs on MPs for instance) up to autonomous and independent bodies established with that purpose¹.

Current developments in terms of misinformation (generally speaking, the spread of false or misleading information), disinformation (false information spread to deliberately mislead, deceive, or harm), shed a

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¹ On the models of electoral control and their possible taxonomy, see L. PEGORARO, G. PAVANI (eds), S. RAGONE (coord.), *El guardián de las elecciones. El control electoral en perspectiva comparada*, Universidad Libre, Bogotá, 2015. On different ways to assess electoral fairness, see the proposal by J. ELKLIT, A. REYNOLDS, *A framework for the systematic study of election quality*, in *Democratization*, n. 2, 2025, pp. 147-162.

totally new light on these instruments. The growing importance of the information that voters and the public acquire through social media is also reflected in international and supranational standards, such as the Council of Europe's policy document *Resisting disinformation: 10 building blocks to strengthen information integrity* approved in December 2025 by the Steering Committee on Media and Information Society (CDMSI). The CDMSI had also adopted in 2023 the *Guidance Note on countering the spread of online mis- and disinformation through fact-checking and platform design solutions in a human rights compliant manner* which had been elaborated by its subordinate body, Committee of Experts on the integrity of online information (MSI-INF). The note has three fundamental elements, namely, fact-checking, platform-design solutions and user empowerment, and offers practical guidance and recommendations to policymakers and stakeholders on how to combat online misinformation and disinformation.

In 2022, the European Union adopted the *Digital Services Act* (DSA), which establishes a framework aimed at improving transparency, mitigating systemic risks, and strengthening safeguards with respect to online political advertising and electoral processes. The DSA imposes obligations on large online platforms to increase transparency in advertising systems, including the identification of sponsors and the disclosure of meaningful information about ad targeting (in Romania, national legislation was adopted to operationalize the enforcement of the DSA through law 50/2024).

In February 2025, the European Commission, together with the European Board for Digital Services, validated the integration of the voluntary *Code of Practice on Disinformation* into the framework of the DSA. This Code represents an innovative framework developed through the cooperation of a wide range of stakeholders, including online platforms, search engines, actors in the advertising sector, fact-checkers, and civil society. Initially passed in 2018, the Code was substantially strengthened in 2022, with the objective of evolving into an instrument under the DSA. These regulatory developments unfolded alongside parallel shifts in platform policy, which fall outside the scope of this paper.

Subsequently, with concerns about online campaigning and micro-targeting intensifying, the EU adopted the *Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising*, which introduces stricter transparency requirements, mandating that political advertisements clearly identify their sponsor, mention funding and associated spending, as well as specify the electoral or political context in which they are presented. It also imposes restrictions on targeting practices, particularly the use of personal data for micro-targeting, which is permitted only under certain conditions and with appropriate safeguards. Although the regulation entered into force shortly after its adoption, it became fully applicable on the 10th of October 2025. As such, it did not directly govern the prior electoral processes. It aims to establish a harmonized framework, reducing

fragmentation across Member States and particularly raising standards in jurisdictions with previously lighter regulation.

Divergences are a pattern in this respect and show different approaches to the issue. As scholars have pointed out, a discernible gradient of regulatory intensity can be observed across Europe, with Ireland standing out as one of the countries with the most developed legislative frameworks. Western Europe exhibits considerable regulatory heterogeneity overall and limited inclination toward explicit spending limits on online political advertising². France occupies one of the most extreme positions along this continuum between permissiveness and prohibition, having implemented a particularly stringent and far-reaching regulatory framework governing political advertising (both online and offline) during official campaign periods³. Recent scholarship has highlighted that, by comparison, countries such as Germany, Spain, and Portugal have maintained relatively permissive approaches to online electoral advertising, while Belgium and Malta have proven less prone to passing regulatory provisions; the “frugal” group (Austria, Denmark, the Netherlands, and Sweden) generally applies more limited restrictions on online political advertising⁴.

As noted in the literature, Eastern European States (among them Latvia, Lithuania, Slovakia, Poland, and Romania itself) are frequently distinguished by a fairly proactive approach to safeguarding electoral integrity on formal terms and being more prone to pass measures to prevent the misuse of online political advertising during electoral campaigns⁵.

Still, this remains a major challenge that EU Member States (and not only) must face. It is proved, for instance, by the report issued by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) at the end of the Needs Assessment Mission (NAM) undertaken in February 2026 with respect to the upcoming Bulgarian elections. The report explicitly addresses the concerns on the lack of regulation on inline campaigning online and by third parties as a problem, and criticizes the fact that social networks are not legally equated to media service providers for the purposes of campaign regulation⁶. Currently, Bulgaria, like many other countries, lacks a dedicated inter-institutional framework for systematically exchanging information on emerging cyber and information-related threats in the electoral context. It also does not have a coordinated mechanism for public awareness initiatives or for

² International IDEA. 2023. “Winning the Elections the Right Way: Online Political Advertising Rules in Europe and Selected Countries Globally”.

³ I. COUZUGOU, *The French Legislation Against Digital Information Manipulation in Electoral Campaigns: A Scope Limited by Freedom of Expression*, in *Election Law Journal: Rules, Politics and Policy*, vol. 20, n. 1, 2021, pp. 98-115.

⁴ Data available in E. FIORE, A. SEDDONE, D.R. PICCIO, *Securing Democracy: Online Political Advertising Regulations and Practices in the EU and its Member States*, in *Global Policy*, 2025, pp. 3-4.

⁵ E. FIORE, A. SEDDONE, D.R. PICCIO, *Securing Democracy: Online Political Advertising Regulations and Practices in the EU and its Member States*, cit., p. 4.

⁶ ODIHR Needs Assessment Mission Report 16-19 February 2026, “BULGARIA EARLY PARLIAMENTARY ELECTIONS 19 April 2026”, March 2026, available here: <https://odihr.osce.org>.

monitoring publicly available online information related to cybersecurity and disinformation risks. This situation creates risks of misuse of online platforms, artificial amplification of content, misinformation, and disinformation⁷.

These measures must be understood within the wider framework of electoral adjudication and Electoral Dispute Resolution (EDR). EDR mechanisms aim to ensure that all electoral actions and decisions undertaken throughout the electoral cycle conform to constitutional and legal provisions. This function becomes especially critical when the mandate of the dispute resolution body is temporally limited to the electoral period, which covers the preparation of the electoral process, the vote, the counting and the confirmation of the validity. In fact, when classified according to the temporal stage in which they occur, EDR mechanisms can be categorized into pre-electoral, electoral, and post-electoral instruments⁸: 1) pre-electoral instruments include planning, training, information dissemination, and registration; 2) electoral mechanisms are concerned with nomination, campaign, voting, and results; 3) post-electoral instruments address strategic reflection, reform, and legal review.

Considering all stages, this explains why the use of dispute resolution mechanisms can often be mitigated through effective conflict prevention systems. According to international and comparative standards⁹, key elements that contribute to preventing electoral conflict include simple and consistent legal framework; political and civic culture fostering lawful democratic behavior; functionally independent, professional, and impartial Electoral Management Bodies (EMBs) and EDRs. Furthermore, from a cultural viewpoint, a mutually agreed electoral code of conduct can be added to the previous list. However, when such preventative measures fail and conflict ultimately arises, EDR mechanisms necessarily come into play. The existence, structure, and nature of such mechanisms vary depending on several key factors, such as the constitutional tradition of the affected country, its political culture, the institutional framework, as well as the role of courts and independent authorities within that system.

An additional way to categorize EDR systems is by identifying the institutional actor responsible for issuing the final decision¹⁰. In comparative law, there are models where this responsibility is vested in

⁷ Nevertheless, we can see a path of progressive implementation of the common EU framework also in this case. Bulgaria passed domestic law implementing the DSA in 2025 and designated the Communications Regulation Commission (CRC) as the national Digital Services Coordinator, with the Council for Electronic Media and the Personal Data Protection Commission. The CRC formally assumed its full responsibilities under the DSA in November 2025. Its representatives indicated that their authority remains limited, notably due to the lack of legal tools to enforce measures or impose sanctions on very large online platforms. They also highlighted the need for clearer delineation of competences and improved cooperation among relevant bodies in the electoral context.

⁸ J. OROZCO-HENRÍQUEZ, A. AYOUB, A. ELLIS, *Electoral Justice: An Overview of the International IDEA Handbook*, International IDEA, Stockholm, 2010, p. 8.

⁹ VENICE COMMISSION, *Code of Good Practice in Electoral Matters* first adopted in 2002; OSCE/ODIHR, *Handbook on the Observation of Electoral Dispute Resolution*, OSCE, Warsaw, 2019.

¹⁰ See L. PEGORARO, G. PAVANI (eds), S. RAGONE (coord.), *El guardián de las elecciones. El control electoral en perspectiva comparada*, *op. cit.*, p. 71 ff.

a legislative body; alternatively, a judicial body, which may include regular courts within the judicial branch, constitutional courts or councils, administrative courts, or specialized electoral courts; an electoral management body (EMB) endowed with judicial powers; or *ad hoc* institutions, which may involve international participation or be established internally as context-specific solutions. Electoral justice, in this context, refers to the legal means and institutional mechanisms available at the national, local, regional and/or international level to ensure that every action, procedure, and decision within the electoral process complies with the applicable legal framework. Additionally, such institutions are allotted the tasks to protect or restore electoral rights, protect individuals who believe their rights have been violated, providing them with a hearing and binding resolution.

This type of EDR is not exceptional, but rather widespread. Indeed, there is a notable global trend toward transitioning from parliamentary to judicial control over elections¹¹, except for certain regions, especially from the Global South, where independent electoral bodies remain more usual¹².

Considering the diffusion of judicial electoral controls, the decision analyzed herein may not be viewed as a total anomaly, but rather as the outcome of a broader and natural evolution: namely, the increasing involvement of jurisdictional actors in the assessment of electoral processes.

Also, the power to annul an election, as the Romanian Court did, may stem from various substantive and ideological approaches to electoral control, involving three basic subtypes: prescriptive, outcome-determinative, and intermediate or mixed. The *prescriptive* approach implies that an election may be annulled solely based on the presence of specific irregularities, regardless of their impact on the final result. Its logic emphasizes strict adherence to legal requirements and often involves a checklist to identify violations, while the *outcome-determinative* approach means that an election may be invalidated if it is proved that irregularities or fraud materially affected the electoral outcome. In this case, the rationale focuses more on the impact of the irregularities rather than their mere occurrence. Finally, the *intermediate* or *mixed* approach refers to severe irregularities that may justify an annulment even if their direct effect on the election result is not conclusively demonstrated, in order to sanction severe procedural violations while also considering the broader legitimacy of the electoral process.

2. The Electoral Jurisdiction of the Constitutional Court of Romania

The Constitution of Romania expressly designates the Constitutional Court as a key actor with jurisdiction in electoral matters. It assigns to the Court the competence to «ensure compliance with the

¹¹ Or at least independent, as pointed out by M. LANGFORD, R. SCHIEL, B.M. WILSON, *The Rise of Electoral Management Bodies: Diffusion and Effects*, in *Asian Journal of Comparative Law*, vol. 16, Supplement S1, p. 60 ff.

¹² On Latin America, see J. DE JESÚS OROZCO HENRÍQUEZ, *Justicia electoral comparada de América Latina*, UNAM, Mexico, 2019; on Asia, see R. DIXON, M. TUSHNET, *Constitutional Democracy and Electoral Commissions: A Reflection from Asia*, in *Asian Journal of Comparative Law*, vol. 16, Supplement S1, 2021, pp. 1-12.

procedure for the election of the President of Romania and confirm the results of the vote» (Article 146(f) of the Constitution); and «ensure the observance of the procedure for organizing and holding referenda and confirm their results» (Article 146(i) of the Constitution).

As noted by Viorescu and Varela¹³, in decision n. 66/2019, the Constitutional Court of Romania (CCR), in a case originally concerning local elections but eventually involving general issues, clarified the scope of this constitutional mandate, stating that «the general wording contained in the Constitution cannot be limited to only two specific situations described in Law n. 47/1992»; and that the Constitutional Court's power as per Article 146(f) of the Constitution involves an express component provided for by Article 38 of Law n. 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 n. 370/2004 (para. 22). In line with this interpretation, Article 37(1) of Law n. 47/1992 and Article 52 of Law n. 370/2004 grant the Constitutional Court competence to adjudicate petitions for the annulment of presidential elections within its more general role as the ultimate guardian of the constitution¹⁴.

Within this framework, the analysis of the 2024 judgment must address a more specific issue, namely the Court's authority to review the validity of electoral results *ex officio*, in the absence of a formal complaint. This question lies at the core of decision n. 32/2024, because so far it had been understood that the Court may not intervene outside an express procedural setting, responding to a claim or within the framework of a specific remedy. As anticipated in n. 66/2019, the Court held that «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).

In other words, the Court recognized not only its reactive jurisdiction (responding to formal challenges), but also a proactive or supervisory authority, enabling it to intervene *sua sponte* when the integrity of the electoral process is at stake. Moreover, decision n. 2/2024 (5th of October) laid the normative groundwork for the one under analysis. In that ruling, for the first time in Romania's constitutional history, the candidacy of Diana Șoșoacă was annulled due to her anti-democratic conduct¹⁵. The Court pointed out a pivotal aspect: «It is axiomatic that the adoption of the 1991 Constitution signifies the rejection of totalitarian, authoritarian or anarchic regimes, which means that democratic levers cannot be

¹³ R. VIORESCU, D. VARELA, *Constitutional Analysis of the Judgment of the Constitutional Court of Romania No. 32/2024 Annuling the Presidential Elections*, in *European Journal of Law and Public Administration*, n. 2, 2024, p. 247.

¹⁴ On this overarching task, A. SIMONCINI, *L'annullamento delle elezioni presidenziali in Romania. Luci ed ombre di una divisiva decisione costituzionale*, in *Quaderni costituzionali*, n. 1, 2025, p. 234 ff. On possible precedents paving the way for the current decision, see S. GIANELLO, *La difesa della democrazia e i suoi limiti: considerazioni a partire dalle elezioni presidenziali romene e dall'affaire Georgescu*, in *DPCE Online*, 2025, p. 364.

¹⁵ R. CORNEA, *Romanian Militant Democracy in Action: Shielding Democracy from Subversion and Annuling the Elections*, in *Verfassungsblog*, 1st of April 2025.

used for the purpose of distorting/deforming/challenging the constitutional order thus established, or Romania's European course».

This ruling was criticized as a strategy to favor a runoff between Mr. Ciolacu, the candidate of the Social Democratic Party (PSD), and Mr. George Simion, the leader of the mainstream ultranationalist faction (AUR), leading to a likely victory of the former. As recalled by Bogdan Iancu, the composition of the then majority of the Court, where five out of six judges were appointed to the bench by PSD-controlled majorities, led to these suspicions¹⁶.

The Court exercised the powers of a procedure that for decades had been interpreted as a basic verification of formal conditions for candidacies, transforming it into an individual check of the “democratic credentials of a candidate”. As the dissenting opinion underscored, the Court applied the logic of militant democracy embedded in the party ban procedure provided for in the Constitution to the electoral verification procedure¹⁷.

3. The Context Prior to the Ruling

The first round of the presidential elections took place on the 24th of November 2024, and a runoff was scheduled for the 8th of December of the same year, as no candidate had secured an absolute majority in the first round. However, due to a series of irregularities, outlined below, the results of the first round were annulled, requiring the electoral process to restart entirely.

It was unexpected that Călin Georgescu, an independent candidate who had not been considered as a serious contender in previous polls, received over two million votes (representing 22.94% of the total), placing him in first position. Another candidate challenged the outcome, requesting the Constitutional Court to order a recount. As a result, through decision n. 31 of the 2nd of December 2024, the Court validated the results of the first round.

Previously, on the 28th of November 2024, the Supreme Council of National Defense (CSAT) held a meeting convened by the incumbent President of Romania, Klaus Iohannis. Following this meeting, a press release was issued stating that, although the CSAT played no formal role in the electoral process, it had been compelled to examine data suggesting an impact on national security. Specifically, the statement referred to intelligence documents indicating cyber-attacks, carried out by both state and non-state actors, aimed at undermining the integrity of the electoral process. Furthermore, the statement referred to the disproportionate media exposure of one candidate on the social media platform TikTok, where he was

¹⁶ B. IANCU, *Constitutional Death Foretold? The Romanian Elections Saga in a Nutshell*, in *The Review of Democracy*, 2025.

¹⁷ On this issue, see the critical assessment by B. IANCU, *Militant Democracy and Rule of Law in Three Paradoxes: The Annulment of the Romanian Presidential Elections*, in *Hague Journal on the Rule of Law*, n. 3, 2025.

not labelled as a presidential candidate, in breach of both electoral regulations and a decision of the Central Electoral Bureau¹⁸.

Intelligence documents related to these matters were declassified by President Iohannis (who also serves as the chair of the CSAT) on the 4th of December 2024, two days after decision n. 31. Consequently, the Constitutional Court determined reassessing *ex officio* and once again the validity of the first round of the presidential elections.

4. The Annulment of the Presidential Elections through decision n. 32 of December 6, 2024

In light of the declassified information, the Constitutional Court found on the 6th of December 2024 that the electoral process for the election of the President of Romania was compromised throughout its entire duration and at all stages by multiple irregularities and violations of electoral legislation, which distorted the free and fair character of the vote cast by citizens and the equal opportunities among electoral competitors, undermined the transparency and fairness of the electoral campaign, and disregarded the legal regulations concerning its financing. All of these aspects had the cumulative effect of undermining the essential principles of democratic elections (para. 5).

The legal foundation invoked by the Constitutional Court to impose upon the State «the obligation to ensure a transparent electoral process in all its components in order to guarantee the integrity and impartiality of elections» as being among «the premises of an authentic constitutional democracy, the democratic development of the State, and the safeguarding of the rule of law» (para. 9), is grounded in Article 2 para. 1 of the Constitution. This provision assigns national sovereignty to the Romanian people, who exercise it «through their representative bodies, constituted by free, periodic, and fair elections, as well as by referendum». The increasing judicialization of electoral processes reflects not only a trend towards procedural integrity, but also a deepening of democratic accountability, whereby courts become safeguards of the genuine expression of popular sovereignty¹⁹.

Thus, the fairness of elections, as an expression of popular sovereignty and a fundamental principle of Romanian democracy, becomes the central axis of the Court's reasoning. In this regard, the Court places upon the State a positive obligation to prevent any unjustified interference in the electoral process in accordance with constitutional principles as well as «a duty of neutrality, which includes the obligation to strengthen voters' resilience, including by raising public awareness about the use of digital technologies in elections, particularly through the provision of adequate information and support» (para. 10). Electoral

¹⁸ European Court of Human Rights, *Călin Georgescu v. Romania*, no. 37327/24, 11th of February 2025, ECLI:CE:ECHR:2025:0211DEC003732724, para. 3.

¹⁹ S. ISSACHAROFF, *Fragile Democracies: Contested Power in the Era of Constitutional Courts*, Cambridge University Press, Cambridge, 2015.

freedom, moreover, entails the voters' right to form their opinions freely and, consequently, the right to obtain accurate information about candidates and the electoral process from all sources, including online platforms, as well as protection against unjustified influence through illegal and disproportionate acts or facts affecting voting behavior (para. 13).

With respect to the violations that compose the backdrop of the case, the Court determined that «the freely expressed nature of the vote was violated because voters were misinformed through an electoral campaign in which one of the candidates benefited from aggressive promotion, carried out by circumventing national electoral legislation and through the abusive exploitation of social media algorithms» (para. 14). Additionally, «the manipulation of the vote became even more evident insofar as the promotional electoral materials of one candidate did not include the specific markings of electoral advertising as required by law n. 370/2004» (para. 14). The Court further observed that the candidate also benefited from preferential treatment on social media platforms, which had the effect of distorting the expression of voters' will (para. 14). This, in turn, led to «a directly proportional reduction in the digital media exposure of the other candidates in the electoral process» (para. 15).

As a result, the Constitutional Court annulled the entire electoral process relating to the election of the President of Romania, extending the effects of its ruling «to all electoral operations conducted pursuant to the relevant governmental resolutions, including the votes already cast in the second round» (para. 19). This latter point is especially relevant given that Romanian citizens residing abroad cast their votes in advance, and decision n. 32 was issued only two days before the date scheduled for the runoff.

The Constitutional Court included a paragraph that appears to serve as a justification for its intervention: «Through this constitutional and democratic review of the electoral process, the Court fulfils its function of ensuring compliance with the procedures governing the election of the President of Romania, *with the ultimate aim of restoring citizens' trust in the democratic legitimacy of public authorities, in the legality and fairness of elections, and of eliminating any suspicions such as those confirmed in the present case*» (para. 21).

The Constitutional Court's ruling was followed by an urgent assessment by the Venice Commission, which, although intended as a general analysis, offered a series of useful warnings and recommendations for understanding the broader implications of the decision under review²⁰. Among the main conclusions drawn from the comparative analysis of domestic legal systems, the Venice Commission stated that engaging in the annulment of electoral results requires that courts exercise self-restraint and mainly confine themselves to reviewing compliance with legal rules. It therefore recommends greater precision and clarity in the legal framework governing such matters. While the existence of mechanisms allowing

²⁰ European Commission for Democracy through Law (Venice Commission), *Urgent Report on the Cancellation of Election Results by Constitutional Courts*, CDL-PI(2025)001, 27th of January 2025.

for the total or partial annulment of electoral results is deemed appropriate, such mechanisms must be conceived as a measure of last resort (*ultima ratio*).

Also, regarding Constitutional Courts' *ex officio* competence, the Commission notes that no international standard either prohibits or mandates such competence, though it is indeed unusual given the reactive nature of judicial bodies. Furthermore, the Commission underscores the need for sufficient evidence to establish that the identified violations had a decisive impact on the outcome of the election. Also, since the burden of proof normally lies with the party bringing the challenge, when the Constitutional Court acts *ex officio*, it must provide a correspondingly high level of reasoning²¹ to justify its decision in terms of proportionality and seriousness of the situation.

More specifically, regarding the risks posed by the digital era to electoral integrity, the Commission recommends (para. 78) that: «F. States should regulate the consequences of information disorders, cyber-attacks and other digital threats to electoral integrity; candidates and parties must be granted fair and equitable access to online media, and regulations should be implemented to ensure that artificial intelligence systems by internet intermediaries do not favor certain parties or candidates over others [paras 54 and 55]; G. The general rules on campaign finance and transparency should be applied to online campaigning using social media platforms; States should also regulate that online electoral advertising must be identified as such and must be transparent, and that social media platforms are required to disclose data on political advertising and their sponsors [paras 56 and 58]». Overall, the Commission pointed at «the need for a recognizably judicial process to apply in the future to disqualifications of candidates»²².

5. Conclusion

When situating the Romanian case within a comparative framework, several factors make it particularly noteworthy.

First, it concerns a novel case illustrating how new technologies directly affect the traditional understanding of electoral freedom and the conditions under which the vote is cast. In fact, the case has to do specifically with social media, the impact of which on traditional data-driven and citizen-initiated campaign strategies is unprecedented²³. This is not a new phenomenon *per se* (but the present magnitude is): data has played a central role in political campaigning since the beginning of the 20th century, when

²¹ This is not the case for this judgment, as was also noted by S. SASSI, A. STERPA, *La Corte costituzionale della Romania difende la democrazia liberale dalla disinformazione. Prime note sulla sentenza n. 32 del 6 dicembre 2024*, in this Journal, n. 4, 2025, p. 174.

²² B. IANCU, *Constitutional Death Foretold?*, *op.cit.*

²³ N. TAN, *Regulating Digital Campaigning*, in H.A. GARNETT, T.S. JAMES (eds), *The Oxford Handbook of Electoral Integrity*, Oxford, OUP, 2025.

opinion polling was first used to gauge voter attitudes and policy preferences²⁴. Recently, parties and candidates have expanded on these practices by incorporating data from digital platforms and public relations consultancies to craft messages, develop slogans, and target specific voter groups²⁵. As has been shown, content, timing and mode of engagement with data also depend on their use. For instance, publicly available information (names, phone numbers, or addresses) can be useful to support broad, traditional outreach strategies, while more granular data derived from user activities or inferred preferences enables targeted digital campaigning²⁶. The disproportionate presence of one candidate on TikTok, in a capacity that was not even attached to his status, represented an asset for his success and a challenge for the sincerity of the electoral process.

Second, the decision to annul the electoral process was adopted *ex officio* by the Constitutional Court, establishing an exception to the much more spread principle of judicial reactivity. Third, and perhaps most significantly, the way the Constitutional Court intervened, i.e., with the stated aim of protecting democracy and the rule of law in Romania, may ultimately jeopardize the very values it sought to uphold. Among the doctrinal analyses addressing the present decision, one can identify authors who unreservedly praise the actions of the Constitutional Court, alongside others who, while acknowledging the necessity of intervention, express reservations, given the potential for negative consequences. On the one hand, it has been argued that this method of protecting democracy may lead to a loss of public confidence in democratic institutions, ultimately resulting in a “win-win for the Kremlin”, which may have supported the affected candidate, even if the elections were annulled²⁷.

The overall supposed activism of the Court has been criticized, also with respect to the abovementioned decision n. 2/2024, concerning the annulment of Diana Șoșoacă’s candidacy: «To be clear, additional protection for the Office of the President against dismantlers of democracy is welcomed. However, the broad criteria introduced in ruling n. 2 can easily be exploited to keep democratic opposition out of the race by a sycophantic Court in the future, if additional safeguards are not introduced»²⁸.

The Court has been accused of electoral interventionism, wherein the tools of militant democracy, which is core to grasp the potential and rationale of the decision²⁹, were employed without adherence to its

²⁴ N. ANSTEAD, *Data and Election Campaigning*, in *Political Insight*, vol. 9, n. 2, 2018, p. 32.

²⁵ K. DOMMETT, *Data-Driven Political Campaigns in Practice: Understanding and Regulating Diverse Data-Driven Campaigns*, in *Internet Policy Review*, vol. 8, n. 4, 2019.

²⁶ K. DOMMETT, G. KEFFORD, S. KRUSCHINSKI, *Data-driven Campaigning and Political Parties*, Oxford, OUP, 2024.

²⁷ V. ANGHEL, *Why Romania Just Canceled Its Presidential Election*, in *Journal of Democracy*, 2024.

²⁸ R. CORNEA, *Romanian Militant Democracy in Action*, *op.cit.*

²⁹ F. ROSA, *L’annullamento delle elezioni presidenziali in Romania e la difficile difesa della democrazia*, in this Journal, n. 15, 2025, p. 64.

underlying principles³⁰. Also, the absence of procedural guarantees made Iancu claim that the Court engaged in a “faux-militant democracy exercise”³¹.

In order to uphold its foundational principles, and for citizens to regard democracy as a system worthy of protection, it is essential that the institutions tasked with safeguarding it, do so by respecting the very norms that constitute it; otherwise, the guardians of democracy, especially courts, risk losing their credibility in the attempt to shield it from the threats of the digital era. They may end up undermining their own legitimacy when drawn into the political arena without the necessary tools and safeguards.

In this specific case, all the major questions concerning the debatable evidence used, the poor quality of the reasoning, and perhaps also the choice to intervene *ex officio* have played a role in the systemic and public role of the Court.

Therefore, this decision should serve additionally as a call to improve the preventive dimension of electoral dispute resolution systems³². In fact, the issues concerning the electoral campaign that emerged in the case, ideally, ought to have been addressed beforehand, rather than leaving the matter to be resolved by the Constitutional Court once the votes have already been cast. As was explained, the opposite solution places the Court in a problematic position, having to confront a decision already made by the electorate. It has been said that intervention was necessary by the Romanian Constitutional Court in order to prevent a massive distortion through digital means of the free will of the people as expressed in the elections. Yet, at the same time, it is appropriate to discuss the concerns regarding the potential repercussions of such an intervention on the legitimacy and credibility of the institution itself.

Indeed, the Romanian case illustrates the tension between judicial activism in defense of democracy and the procedural constraints that guarantee institutional legitimacy. Future reforms should therefore focus on strengthening preventive oversight, rather than relying on *ex post* annulment mechanisms. It is also an additional warning on the dichotomy authoritarian liberalism/illiberalism conflict and the complex

³⁰ G. FARFÁN SALDAÑA, *¿Democracia militante o intervención electoral? Comentario del caso Călin Georgescu v. Rumania*, in *La Razón Histórica. Revista hispanoamericana de Historia de las Ideas*, n. 64, 2025, p. 64.

³¹ B. IANCU, *Constitutional Death Foretold?*, *op.cit.*

³² Selejan-Gutan has commented on the judgment’s significance in symbolic terms. See B. SELEJAN-GUTAN, *The Second Round that Wasn’t: Why The Romanian Constitutional Court Annulled the Presidential Elections*, in *Verfassungsblog*, 7th of December 2024.



embedment of Eastern European Member States in the EU³³, with respect to liberal constitutionalism³⁴ and particularly the requirements of the rule of law³⁵.

³³ The only recent precedent in the EU of electoral annulment was the 2016 annulment of the second round of the presidential elections in Austria, when the Constitutional Court found irregularities in 14 districts related to the counting of postal votes. In between the submission of this paper and the final completion of the blind review process, there was an electoral decision also by the Bulgarian Constitutional Court. In March 2025, after a legal challenge to the October election that prompted a recount and a four-month investigation, the Court found that the election of 17 MPs from various parties was unlawful due to voting irregularities, including forged ballots. As a result, the ruling coalition, in office since January 2025, held a slim majority of 121 seats in the 240-seat legislature. This instability has led to the early elections to be held in April 2026 (mentioned *supra*).

³⁴ On the need to rethink its foundations in times of technological innovation and security threats, S. SASSI, A. STERPA, *La Corte costituzionale della Romania difende la democrazia liberale dalla disinformazione. Prime note sulla sentenza n. 32 del 6 dicembre 2024*, *op. cit.*, p. 166 ff.

³⁵ B. IANCU, *Romanian Militant Democracy and the Time Machine*, in *Verfassungsblog*, 13th of March 2025, mentions «idiosyncratic Eastern traditions of the rule of law showcased in Euro-friendly attire».