



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 37327/24
Călin GEORGESCU
against Romania

The European Court of Human Rights (Fourth Section), sitting on 11 February 2025 as a Committee composed of:

Jolien Schukking, *President*,

Faris Vehabović,

Lorraine Schembri Orland, *judges*,

and Simeon Petrovski, *Deputy Section Registrar*,

Having regard to:

the application (no. 37327/24) against Romania lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) on 16 December 2024 by a Romanian national, Mr Călin Georgescu, who was born in 1962, lives in Mogoșoaia (“the applicant”), and was represented by Ms Maria Vasii, a lawyer practising in Hunedoara;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the annulment, by a decision adopted on 6 December 2024 by the Constitutional Court of Romania, of the electoral process concerning the presidential elections in Romania. The applicant invokes Articles 6, 10, 11 and 13 of the Convention and Article 3 of Protocol No. 1 to the Convention.

A. Background of the case

2. The applicant was a candidate in the elections for the President of Romania which were held on 24 November 2024, with a second round of elections due to take place on 8 December 2024, as no candidate obtained an absolute majority of votes cast in the first round. After the first round, on

24 November 2024, the applicant having presented himself as an independent candidate not supported by a political party, was best placed with more than 2 million votes cast in his favour (22,94% of the total votes), and he qualified for the second round. The results of the first round, in particular those concerning the applicant, were largely considered by the media as a surprise considering the previous estimations of the polls.

3. On 28 November 2024 the Supreme Council of National Defence (Romanian acronym “CSAT”) held a meeting, summoned by the incumbent President of Romania, Klaus Iohannis. At the end of the meeting, the CSAT issued a press release which stated that, although it didn’t have any role in the electoral process, the CSAT had to analyse data pointing to an impact on national security. The press release noted that there were documents indicating cyber-attacks, by State and non-State actors, aimed at influencing the correctness of the electoral process. It was also noted that one candidate – who was not named in the press release, but easily identified by the media and the public as being the applicant – benefited from massive exposure and preferential treatment by Tik Tok social media platform. In that connection, the CSAT indicated that in the video material published on this platform, that candidate had not been labelled as a presidential candidate, which was not in compliance with the electoral rules and a decision of the Central Electoral Bureau (Romanian acronym “BEC”). The CSAT requested the competent authorities in areas of national security, criminal investigation and supervision of the electoral process to urgently take necessary measures to clarify the aspects presented at the meeting.

4. Having previously received a complaint by another candidate who lost in the first round of the presidential elections and after it had ordered that votes cast be recounted, by a decision no. 31 of 2 December 2024, delivered pursuant to Article 146 (f) of the Constitution of Romania and Articles 37 and 76 of Law no. 47/1992 on the organisation and functioning of the Constitutional Court (“Law no. 47/1992”), the Constitutional Court confirmed and validated the results of the first round of the presidential elections.

5. On 4 December 2024 President Iohannis declassified the intelligence documents (“Information notes”) from the meeting of 28 November 2024 of the CSAT (see paragraph 3 above).

B. The decision of the Constitutional Court of 6 December 2024

6. On 6 December 2024, having examined at its own motion the correctness and lawfulness of the electoral process in the light of the new declassified intelligence (see paragraph 5 above), the Constitutional Court decided, unanimously and pursuant to Article 146 (f) of the Constitution, to annul the entire electoral process with regard to the election of the President of Romania (decision no. 32 of 6 December 2024). It held that it was to be

resumed in full, with the Government setting a new date for the elections and a new calendar programme for the necessary actions. The decision was final.

7. The Constitutional Court underlined that it had the power, under Article 146 (f) of the Constitution, to ensure the compliance with the procedure for the presidential elections and confirm its results, which was to be considered in the light of its role to safeguard the supremacy of the Constitution, provided by Article 142 of the Constitution and Article 1 of Law no. 47/1992. Referring to the declassified Information Notes (see paragraph 5 above), the Constitutional Court noted that the presidential electoral process had been vitiated throughout its duration. The discovered irregularities had distorted the free and correct character of the citizens' vote, had affected the fair and transparent electoral campaign, and had violated the rules on the latter's financing. In that connection, the Constitutional Court pointed to the close relationship between democracy and the rule of law, to the necessity that the electoral process complied with the Constitution and the relevant legislation, as well as to the State's positive obligation and also duty of neutrality, referring in that respect to the Venice Commission's "Interpretative declaration of good practice in electoral matters as concerns digital technologies and artificial technologies" (adopted at its Plenary session on 6-7 December 2024; hereinafter "the Interpretative declaration").

8. The Constitutional Court further highlighted that the voters' right to create an opinion included both the right to obtain an accurate information about the candidates and the electoral process, from all sources, including online, as well as to be protected from unjustified impact on the voting behaviour based on unlawful and disproportionate acts. It pointed out that one of the candidates had benefited from an aggressive promotion of his messages through mass-media platforms' algorithms, which had circumvented the electoral legislation and led to misinformation and manipulation of the vote, given that the electoral materials promoting that candidate had not bore the specific signs of electoral advertising in accordance with Law no. 370/2004 on the election of the President of Romania ("Law no. 370/2004"). Moreover, as regards the principles of neutrality and equal opportunities to all candidates and referring to Article 37 of the Constitution, the non-transparent and manipulatory use by one candidate of digital technologies and artificial intelligence generated a clear inequality between that candidate and the other candidates, and called for the competent authorities to intervene, investigate and, as appropriate, impose lawful sanctions.

9. Referring to the electoral campaign financing and the Venice Commission's "Interpretative declaration" (see paragraph 7 above), the Constitutional Court noted that, while social media platforms should be obliged to disclose data on political advertising and election sponsors on a continuing basis, one candidate had declared to the Permanent Electoral Authority that he had not spent any funds in his campaign, which was contradicted by the data presented in the Information notes (see paragraph 5

above). It was common knowledge that an electoral campaign entailed considerable costs and expenses, and the analysis made revealed an obvious inconsistency between the scope of the campaign and the absence of any expenses reported by that candidate. The Constitutional Court considered that the principle of transparency as regards the funds spent for the electoral campaign was breached, raising suspicions as to the fairness of the elections.

10. Taking into account the duration and complexity of the necessary electoral activities, the Constitutional Court held, pursuant to Article 83 § 2 of the Constitution, that the incumbent President of Romania should continue his mandate until the newly elected President should take the oath.

11. In decisions nos. 230D of 6 December 2024 and 231D of 7 December 2024, the Central Electoral Bureau referred to the decision no. 32 of 6 December 2024 of the Constitutional Court and the related press release. It ordered discontinuation of all voting operations for the second round of the presidential elections in Romania and abroad and terminated the activity of the local and central electoral offices.

RELEVANT LEGAL FRAMEWORK

The Constitution of Romania

12. Article 1 § 4 of the Constitution of Romania provides that the State shall be organised on the principle of the separation and balance of powers – legislative, executive and judicial – within the framework of constitutional democracy.

13. According to Article 61 § 1 of the Constitution of Romania, the Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the country.

14. The President of Romania represents the Romanian State and safeguards the national independence, unity and territorial integrity of the country. He/she is the guardian of the Constitution and the proper functioning of the public authorities. To this effect, he/she acts as a mediator between the Powers in the State, as well as between the State and society (Article 80).

15. After the Parliament adopts a law, the latter is sent to the President who has to promulgate it within twenty days of its reception. Before the law is promulgated, the President may ask the Parliament, only once, to re-examine it. The President has to promulgate the law within ten days from receiving it back after its reconsideration by the Parliament (Article 77). In the context of the legislative procedure *lato sensu*, the President is one of the institutional and political actors who may ask the Constitutional Court to review the constitutionality of a law before it is promulgated, i.e. an abstract *a priori* review (Article 146 (a)). The decisions of the Constitutional Court are published in the Official Gazette and are generally binding as from their publication (Article 147).

16. The President of Romania has no right to initiate the process of adopting a law by regular legislative procedure (according to Article 74 § 1 of the Constitution, the Government, members of the lower and upper chambers of the Parliament, or at least 100,000 citizens with a right to vote, have such an entitlement under specific conditions). The President may ask the Romanian citizens to express their will by way of referendum on certain matters of national interest (Article 90). As interpreted by the Constitutional Court, the results of such referendum would have political effects, but no direct juridical or legislative consequences. It belongs to the authorities invested with the power to initiate the process of adopting legislation to consider whether to start such process along the lines expressed by the citizens in the referendum (see, among others, the decision of the Constitutional Court no. 2/2019, §§ 48, 52 and 73).

17. The President also participates in the appointment of the Government, by designating a candidate to the office of Prime Minister and appoints the Government on the basis of a vote of confidence adopted by the Parliament (Article 85 § 1). The President has the power to dismiss and appoint, on the proposal by the Prime Minister, some members of Government, but the Parliament's approval will also be required in the event of a government reshuffle if this changes the ministerial structure or the political composition of the Executive (Article 85 § 2).

18. Under Article 89 of the Constitution, the President has a limited power to dissolve the Parliament under very specific circumstances, namely if no vote of confidence has been obtained to form a Government within sixty days after the first request, and only after rejection of at least two requests for investiture. Moreover, during the same year, the Parliament can be dissolved only once and, furthermore, it cannot be dissolved during the last six months of the term of office of the President of Romania, or during a state of mobilisation, war, siege or emergency.

19. The President, in the exercise of his powers, can issue decrees by virtue of the Constitution. When they concern specific areas, such as international treaties, state of emergency, mobilisation of the army, they have to be counter-signed by the Prime Minister (Article 100).

THE COURT'S ASSESSMENT

20. The applicant complained that the decision no. 32 of 6 December 2024 of the Constitutional Court annulling the entire electoral process for the election of the President of Romania had been based on unsubstantiated accusations, that it had been unlawful and disproportionate and in violation of his right to free elections provided for by Article 3 of Protocol No. 1 to the Convention. Invoking Articles 6 and 13 of the Convention, the applicant also complained that this decision, which had denied his right to be elected as President of Romania, had been adopted in a non-transparent manner and that

there was no remedy against it. Relying on Articles 10 and 11 of the Convention, the applicant alleged that this decision was the result of political interference by “the ruling party” in charge of the electoral process and that it undermined the freedom to participate in democratic process, particularly the freedom of political association.

A. As regards the complaint under Article 3 of Protocol No. 1 to the Convention

21. The applicant complained that the annulment by the decision no. 32 of 6 December 2024 of the Constitutional Court of the entire electoral process with regards to the election of the President of Romania infringed his right to free elections under Article 3 of Protocol No. 1.

22. The Court reiterates that the obligations imposed on the Contracting States by Article 3 of Protocol No. 1 are limited to “the choice of legislature” and do not normally apply to the election of a Head of State, unless it is established in the light of the constitutional structure of the State in question – which the Court hasn’t yet concluded in any previous case – that the latter could arguably be considered to be a “legislature”, being given the power to initiate and adopt legislation or to enjoy wide powers to control the passage of legislation or the power to censure the principal lawmaking authorities (see *Boškoski v. the former Yugoslav Republic of Macedonia* (dec.), no. 11676/04, 2 September 2004, and, *mutatis mutandis*, *Guliyev v. Azerbaijan* (dec.), no. 35584/02, 27 May 2004, and *Kribovokov v. Ukraine* (dec.), no. 38707/04, 19 February 2013).

23. Turning to the present case, the Court observes at the outset that the Constitution of Romania expressly states that the Parliament is the sole legislative authority in the country (Article 61 § 1 of the Constitution; see paragraph 13 above).

24. The President’s role as defined by the Constitution is centred around the function of representation of the State, observance of the Constitution and the proper functioning of the public authorities, as well as mediation between different powers in the State, as well as between the State and society (Article 80; see paragraph 14 above).

25. The Court further observes that it follows from the applicable provisions of domestic law that the President of Romania is vested with few powers that could be construed, to a limited extent, as an institutional interaction with the legislature, while not being part of it. In particular, he or she is empowered to sign and temporarily delay the promulgation of laws passed by the Parliament, but under strictly limited conditions (Article 77; see paragraph 15 above). The exercise of that power creates a simple procedural obligation on the Parliament to re-examine the law (either entirely or a particular provision thereof), but the latter retains unfettered discretion as to the substantive outcome of such re-examination. The President cannot

intervene with a pure power to legislate, *i.e.* the power to initiate legislation (Article 74 § 1; see paragraph 16 and compare with *Kribovokov* (decision cited above)) or adopt laws having supreme legal force, which belongs exclusively to the Parliament. The President cannot issue any decree beyond his or her powers, which therefore excludes decrees of legislative nature or decrees that could contradict or supersede the Parliament's legislative acts. Accordingly, his or her powers in this respect are essentially confined to the implementation of such legislation (see paragraphs 15 and 19 above). The Constitution of Romania clearly provides for the separation of powers (see paragraph 12 above). It appears to the Court that the President's power accessory to the Parliament's legislative power is not a competence pertaining to the proper act of lawmaking, but must be construed as being necessary and strictly limited to the system of the inter-institutional "checks and balances", common to most European democracies (compare with *Guliyev* (decision cited above)).

26. In the light of the above, the Court finds no indication that the powers of the President of Romania are such as to make that office part of the "legislature" of the respondent State, within the meaning of Article 3 of Protocol No. 1 to the Convention.

27. It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 a) and must be rejected in accordance with Article 35 § 4 of the Convention.

B. As regards the complaints under Articles 6 and 13 of the Convention

28. Invoking Articles 6 and 13 of the Convention, the applicant complained that the decision no. 32 of 6 December 2024 of the Constitutional Court had been adopted in a non-transparent manner and without a possibility for him to refute the accusations contained therein, and that there was no remedy against it.

29. The Court notes that the proceedings in question concerned the applicant's right to stand as a candidate in the presidential elections. The dispute in issue, therefore, concerned his political right and did not have any bearing on his "civil rights and obligations" within the meaning of Article 6 § 1 of the Convention (see *Mutalibov v. Azerbaijan* (dec.), no. 31799/03, 19 February 2004, and, *mutatis mutandis*, *Pierre-Bloch v. France*, 21 October 1997, § 50, *Reports of Judgments and Decisions* 1997-VI). Moreover, although the applicant refers in his application to "the accusations" against him, the Court notes that the decision of the Constitutional Court no. 32 of 6 December 2024 did not concern the determination of any "criminal charge" against the applicant within the

meaning of Article 6 § 1 of the Convention. Accordingly, the Court finds that Article 6 of the Convention is not applicable to these proceedings.

30. It follows that the complaint under Article 6 of the Convention is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 a) and must be rejected pursuant to Article 35 § 4 of the Convention.

31. Given these findings, the applicant does not have an “arguable claim” under Article 13. Therefore, the complaint raised under this Article is similarly incompatible *ratione materiae* with the provisions of the Convention and must be rejected pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

C. As regards the complaints under Articles 10 and 11 of the Convention

32. Relying on Articles 10 and 11 of the Convention, the applicant alleged that the Constitutional Court’s decision no. 32 of 6 December 2024 was the result of political interference by “the ruling party” in charge of the electoral process and that it undermined the freedom to participate in the democratic process, particularly the freedom of political association.

33. The Court recalls that the wording of Article 34 indicates that a “claim” or complaint in Convention terms comprises two elements, namely factual allegations (i.e. to the effect that the claimant is the “victim” of an act or omission – see *Eckle v. Germany*, 15 July 1982, § 66, Series A no. 51) and the legal arguments underpinning them (i.e. that the said act or omission entailed a “violation by [a] Contracting Party of the rights set forth in the Convention or the Protocols thereto”). These two elements are intertwined because the facts complained of ought to be seen in the light of the legal arguments adduced and *vice versa* (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 110, 20 March 2018).

34. The Court notes that the applicant did not raise any factual and legal arguments in support of his complaints under Articles 10 and 11 of the Convention.

35. The Court would point out that it is not for it to speculate on the substance of an applicant’s complaints, especially if he or she is represented by a lawyer of his own choosing, as in the present case. Insofar as the complaints, in the light of the scarce elements put forward by the applicant, could be understood as concerning his alleged inability to participate in the electoral process, the Court considers that that is an aspect already examined under Article 3 of Protocol No. 1 to the Convention (see paragraphs 21-27 above). As regards the freedom to political association that he also mentioned without any further details, the Court observes that the applicant was an independent candidate in the elections for the President of Romania (see paragraph 2 above).

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36. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 March 2025.

Simeon Petrovski
Deputy Registrar

Jolien Schukking
President