

THE ANNULMENT OF THE 2024 ROMANIAN PRESIDENTIAL ELECTION. BETWEEN CONSTITUTIONAL GUARDIANSHIP AND JUDICIAL OVERREACH

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Abstract: The article focuses on Ruling No. 32/2024 of the Constitutional Court of Romania, which annulled the first round of the presidential elections in response to intelligence revelations about large-scale foreign disinformation and covert digital campaigns. Based on Article 146(f) of the Constitution, the Court assumed its role as the guardian of electoral integrity ex officio, ordered a full rerun of the elections, and extended the term of the incumbent president. While the decision reflects a militant defence of democracy and resonates with European standards that allow for annulment in exceptional circumstances, it can also be argued that it exceeded the limits of legality. The Court's reliance on declassified information, its succinct reasoning, and the absence of procedural safeguards raise questions about transparency, predictability, and thus the rule of law. Testing both sides of the coin - which the article attempts to tackle - can illustrate both the strength and fragility of Romanian constitutionalism, i.e., strong in its desire to defend democratic values, yet fragile in the absence of clear statutory and constitutional rules for such crises.

Keywords: Romanian presidential elections; militant democracy; electoral integrity; constitutional ex officio jurisdiction; Venice Commission's Opinion No. 1218/2024.

1. Introduction

The judgment of Romania's Constitutional Court (RCC hereinafter), from 6 December 2024, to annul the first round of the presidential election (Ruling 32/2024) [1] and restart the entire electoral process was unprecedented and highly controversial. It was initiated ex officio, based on article 146 let. f) of the Constitution, after the declassification of intelligence reports - via CSAT [Supreme Council of National Defence], documents of MAI [Ministry of Internal Affairs], SRI

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[Romanian Intelligence Service], SIE [Foreign Intelligence Service] and STS [Special Telecommunications Service] - suggesting large-scale vote manipulation and undisclosed campaign financing on social media. In its brief, unanimous reasoning, the RCC found that these irregularities vitiated the election, distorted equal opportunity, and, in a larger sense, attacked the sovereignty of the State (through foreign-influenced disinformation of the People). The Court invalidated the vote, ordered a full rerun of the election, and - invoking Art. 83(2) of the Constitution - extended the incumbent President's term until the new president's inauguration, which also triggered an intense political and doctrinal effervescent debate.

Accordingly, I propose an inquiry into the constitutional and legal dimensions of the RCC's judgment, drawing on perspectives from legal scholars and the Venice Commission's urgent opinion. Emphasis will be placed on the Court's ex officio jurisdiction and the problematics of extending the presidential term.

2. Constitutional and Legal Framework

2.1. Electoral Rights as Fundamental Rights

Under the Romanian Constitution [2], free and fair elections are a cornerstone of democracy. Article 2(1) of the fundamental law states that „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 means of a referendum”. At first glance, the constitutional declaration may seem like a routine affirmation of democratic and liberal principles - a standard element in the architecture of modern constitutional democracies. But when placed in Romania's historical trajectory, especially its experience under communist and previous authoritarian regimes, the declaration resonates with a much greater significance. For much of the 19th and 20th century (which marks the beginning and evolution of the Romanian modern and liberal constitutionalism), constitutional texts often honoured democratic ideals while masking a political reality in which elections were empty electoral exercises [3], devoid of genuine competition, freedom, or fairness. In this context, constitutional language became an instrument of legitimization (and manipulation) rather than a reality to be built or maintained. The language of the in force Romanian Constitution's preamble - adopted just two years after the fall of Communism - emphasizes that the state is founded on the rule of law, democracy, and respect for human rights (Art. 1(3)). The affirmation is not merely ornamental; at the level of constitutional textualism, it reflects a framework shaped by both aversive and aspirational constitutionalism [4]. However, despite its liberal aspirations, the Romanian state has not yet truly embodied these principles in practice [5]. But the preamble has the utility to be a clear and profound reaffirmation of the values that emerged from the 1989 Revolution - a kind of constitutional

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catharsis. [6], born of the collective memory of repression and the aspiration for a radically different future. In this sense, the declaration is not just constitutionally relevant. It is historical, emotional, and moral. It reflects Romania's determination to ensure that constitutional democracy is not just proclaimed but practiced. It is a sincere hope, but in contradiction with the ethnological core of the Romanian people, which is extremely conservative.

RCC also emphasized that the right to vote and to be elected are fundamental political rights essential to the Romanian democratic system: „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." [7]. Indeed, Articles 36 and 37 guarantee citizens' electoral rights, while Article 1(3), as already stated, enshrines the democratic rule of law. The supremacy of the Constitution and its core values - sovereignty, democracy, rule of law - frame any electoral competition. International standards echo this, e.g., annulment of elections is a measure of extrema ratio that safeguards the voters' fundamental right to express their will [8].

2.2. Constitutional Court's Role

Article 146(f) of the Romanian Constitution assigns the RCC the duty to „guard the observance of the procedures for the election of the President of Romania and to confirm the ballot returns" [9]. RCC holds that this power must not be interpreted restrictively [10]. In a 2019 Ruling, the Court stated that its mandate under Art. 146(f) covers the entire electoral process [11]. RCC thus acts as a final guardian of constitutional compliance in elections, with an explicit component (procedures set by law) and an implicit one, i.e., when no other remedy exists, the Court may step in suo motu to correct constitutional infringements [12].

2.3. Electoral Procedures

Under Law 370/2004 (regulating Presidential Elections) and Law 47/1992 (On the Organisation and Operation of the Constitutional Court [13]). Electoral complaints are normally handled by the Central Electoral Bureau (BEC) and HCCJ (only for challenges related to the establishment and composition of BEC, as well as the establishment of alliance protocols), up to the final contest before the RCC. Specifically, Art. 52(1) and (2) of Law 370/2004 allows the RCC to annul the

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presidential election only upon a complaint (nota bene, based - here - only on the infraconstitutional legal basis, not the constitutional regulation) and evidence that fraud of such nature as to alter the allocation of the mandate has occurred or who advances to the second round, in which case only the affected round must be repeated on the second Sunday after the annulment decision. Within three days of voting's close, any political party, alliance, electoral alliance, minority-community organization represented in the Council of National Minorities, or candidate may file a motivated request for annulment, including the evidence on which it's based. The Constitutional Court shall rule on the application by the deadline established by law for the public announcement of the election results. Therefore, based on the infraconstitutional regulation, the RCC cannot ex officio annul an election.

However, as noted above, the RCC interprets its Art 146(f) duty broadly. In practice, when urgent facts emerge after official deadlines, many jurisdictions and international principles allow constitutional courts to revise results (res adjudicata notwithstanding) if democracy itself is at stake [14]. The Venice Commission opinions in regard to „Good Practice in Electoral Matters" underline the fact that election results should remain open to challenge in extreme circumstances [15]. Thus, while Romanian law did not expressly authorize ex officio annulment, the RCC's implicit competence, substantiated by the constitutional text and the urgency of the case, gave it a plausible constitutional basis.

2.4. Council of Europe Standards

European norms emphasize both the sanctity and finality of elections and the need for effective remedies. Article 3 of Protocol I to the European Convention on Human Rights (ECHR) guarantees free elections. ECtHR holds that annulment is permissible only if irregularities likely affected the result [16]. The Venice Commission's recent urgent opinion similarly stressed that courts may invalidate elections only under exceptional, clearly regulated conditions. Key principles include „Exceptional Ex Officio Power", as the Constitutional courts are traditionally reactive. Granting them ex officio annulment power requires „exceptional circumstances" and a clear legal basis [17]. Another principle is „Timeliness and Exhaustion". Ideally, electoral defects should be remedied before final certification. Annulments should be a last resort after all normal avenues have passed [18]. It should also be added the principle of „Proof Threshold", meaning that only „significant" irregularities that raise genuine doubts or likely altered the outcome justify annulment, and, of course, last but not least, the principle of

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„Transparency”, which implies that decisions should be well-reasoned, and evidence should not be limited to classified intelligence [19].

3. A brief timeline of the 2024 Romanian Presidential Election Crisis

Romania's autumn 2024 presidential election was unusually turbulent. In September 2024, the RCC disqualified a nationalist candidate for the presidency (Diana Șoșoacă) on militant democracy grounds [20]. The first round of voting on 24 November saw none of the ruling parties' candidates (Ciolacu, of PSD, or Ciucă, of PNL) advance. Instead, deputy Elena Lasconi (a pro-European candidate; USR) and former deputy Călin Georgescu (running as an independent; ultra-nationalist/populist) led with approximately 22% each. The result shocked many, as Georgescu's support had been polling at less than 5% only weeks earlier.

On 27-28 November, two complaints were filed at the RCC alleging campaign finance and procedural irregularities by other candidates. On 28 November, the Court ordered a nationwide ballot recount, completed on 2 December, which affirmed the original tallies and validated the first-round results. The RCC's validation made no mention of any external report. Meanwhile, on 4 December, the President declassified and released confidential CSAT intelligence reports. The reports revealed what were called extensive disinformation operations favouring candidate Georgescu, including massive TikTok advertising, payments to online influencers, and AI-driven campaigns - apparently orchestrated by a foreign actor. In short, they pointed to „voter manipulation" and violation of campaign finance laws [21].

Faced with this new information, which had become public only two days before the planned second round, the RCC, on 6 December 2024, convened an emergency session. It was unanimously decided to annul the first round. Its resolution acknowledged the declassified CSAT documents and concluded that the electoral process had been vitiated throughout its entire length [22]. Citing Article 1(3) of the Constitution and law, the Court found a violation of equality of chances and the voters' right to an undistorted vote. It ordered the entire presidential election to be repeated in full, set the need for a new calendar (the Government to fix dates), and held that the incumbent President's term extends until the new one takes the oath.

In the following months, Romania organized entirely new elections: first round on 4 May 2025, second on 18 May. BEC barred both Georgescu and Șoșoacă from running, relying on the RCC's 5 October and 6 December rulings. The May 2025 election proceeded without major incident. Turnout was high in both rounds (53,21% and 64,72%). In the second round, the far-right AUR leader George Simion lost against former Bucharest mayor Nicușor Dan (an independent, but pro-European

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candidate). Simion lost by 900,000 votes in the 2nd round (46,40% - 53,6%), and his post-election complaint alleging irregularities was dismissed by the RCC, which validated the results.

4. RCC Ruling 32/2024

The RCC's Ruling gathers only 4 pages for such a complex matter.

The Court found that the electoral process was deeply altered throughout its entire length and stated that the violations „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." [23]. The document emphasizes that „all these aspects have had a converging effect of disregard for the essential principles of democratic elections”.

Basically, RCC highlighted two primary types of violations.

i) *Voter Manipulation and Misinformation*. The Court determined that „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." [24]. The Court noted that „electoral materials intended to promote a candidate did not bear the specific symbols of electoral advertising” and that the candidate „received preferential treatment on social media platforms, which led to a distortion of the voters' expression of will” [25].

ii) *Campaign Finance Irregularities*. The Ruling found that a candidate „infringed the electoral legislation relating to the funding of the electoral campaign”. The Court specifically pointed out the „obvious incongruity” between the size of the campaign and the candidate's claim of „0 lei” in campaign expenses. This violated the „principle of transparency of the funding of electoral campaigns” [26].

In light of these findings, the Court decided to annul the entire electoral process and to have it resumed in its entirety, including the establishment of new electoral offices, the resubmission of candidatures, and the conduct of a new, fair campaign. The RCC construed the Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (Venice, 18-19 October 2002), and Code of Good Practice in Electoral Matters as Concerns Digital Technologies and Artificial Intelligence to broadly measure „irregularities which may have affected the outcome" [27]. It opted for caution because candidate Georgescu had appeared to benefit substantially

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outside the electoral rules; the Court could not be sure that the first-round result truly reflected the voters' will.

The Ruling also addressed the presidential term, concluding that due to the „complexity and duration of the electoral operations required after the delivery of this ruling”, the current president will exercise his term until the new President-elect takes the oath [28]. The Court did not declare the presidency vacant, which would have triggered the appointment of an interim president - typically one of the presidents of the Chambers of Parliament. Instead, it upheld continuity as the default, prioritizing institutional coherence.

The Court's ultimate goal was to „restore citizens' confidence in the democratic legitimacy of public authorities" and to „dispel any suspicion" about the election's integrity [29].

5. Scholarly and supranational perspectives

Unsurprisingly, RCC Ruling 32/2024 has drawn varied analyses in academia and the legal environment.

It was argued that Romania's situation may have justified a „militant democracy” response, in order to support pre-emptive defences of democracy against systemic threats [30].

The logic of militant democracy [31] is simple, as its central claim is straightforward: democracy may sometimes have to defend itself by restricting actors who seek to alter/destroy it, for example, by banning extremist parties, disqualifying candidates (see, e.g., the Diana Șoșoacă [32] Case), or annulling fraudulent elections. Such measures may be justified as protective, but this does not mean that militant democracy can always serve as a guiding light in the dark tunnels of antidemocratic conduct. At a deeper analytical level, the legal doctrine rightly highlights the danger of institutions - especially constitutional courts - expanding their powers in times of crisis. [33]. By “overreaching” in the name of the `greater good`, particularly in situations where democracy cannot defend itself directly (when no clear legal remedy exists and only fragments of law can be extrapolated), interventions may begin to censor political discourse or invalidate elections without a solid legal basis, which, in substance, poses a threat to the rule of law. And here, it must be emphasized that the balance between protection and overreach varies by institutional design, political fragmentation, strength of civil society, media ecosystem, and the nature and severity of the threat. It is almost self-evident in the era of digital constitutionalism. [34] - that universal technical rules are hard to prescribe. In such circumstances, judicial activism - i.e., when courts go beyond interpreting laws to make policy or influence government action, often justified as a safeguard for

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fundamental rights or as a corrective to legislative inertia - can overreach to the point of eroding the very foundations it seeks to protect.

Militant democracy, therefore, is not authoritarian, nor should it be. Its legitimacy rests on the rule of law. Any defensive measures must follow clear legal procedures and respect established constitutional parameters. From the perspective of the People, actions such as excluding a candidate or annulling an election (even if warranted) can appear deeply undemocratic, potentially eroding public trust in the democratic system itself. But the greatest and most recent challenge is the integration of advanced technologies, social media platforms, and artificial intelligence into electoral campaigns, given their potential to distort information and affect the public's right to accurate information. Today, legal instruments are weak or ill-adapted to these threats, a circumstance that can explain why `defenders of democracy` emerge and why it may be necessary, in certain instances, to adopt harsh measures and overreach in the name of the greater good, thereby giving - at least in part - contemporary substance to Louis Antoine Léon de Saint-Just's words: „No liberty for the enemies of liberty”.

That being said, it can be argued that Ruling 32/2024 represents a form of counteractive militant democracy - a reaction that answered fire with fire [35] to a novel threat - unrestrained disinformation on social media - which demanded an extraordinary remedy. It may also be considered that RCC sought to protect the „axiological core” [36] of the Romanian democracy (Article 1). In this light, the unanimity of the judgment (all nine judges) can be interpreted as a powerful collective statement of constitutional duty, adding context that, in recent years, many of the more `sensible` rulings and decisions of the RCC have faced dissenting opinions. But now, under the umbrella of unanimity, RCC believed, by triggering a full rerun and barring certain grave manipulative electoral practices, that it averted - arguably - an immediate crisis in government legitimacy.

Of course, the Ruling cannot be free of criticism, as, indeed, RCC's approach strained legal norms and risked collateral damage, adding that annulment, being a radical solution, demanded robust justification [37]. As such, it was also argued that the Court did not explain why only a full restart (versus a limited remedy) was necessary, given that the CSAT reports indicated irregularities in one campaign rather than systemic failure of the entire electoral machinery [38]. Also, the Court decided without hearings and bypassed a minimally adversarial process. It is true that the RCC is not part of the judiciary and does not act in the same manner, using procedures typically reserved for resolving inter partes conflicts. However, in this case, it did use evidence (*lato sensu*) to address particular electoral conduct, which - it is true - had a broader impact. Moreover, the evidence consisted of only official written statements (declassified information) from certain public intelligence

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authorities. If the accused cannot defend himself, theoretically, this could raise a constitutional issue. The Venice Commission recommends that impartial, transparent decisions with hearings or at least full argumentation are necessary for cancelling results [39]. By contrast, RCC's reasoning - 4 pages with no substantial published evidence or examination - left critics uneasy about fairness and transparency.

Therefore, it cannot be denied that the RCC judgment was problematic from the perspective of respecting procedural principles. Even if the goal seemed justifiable - avoiding a more serious electoral outcome - the law cannot be violated in the name of the result, and the authority of the Constitutional Court does not exempt it from respecting the procedure [40]. On the other hand, it can be said that the incident law existed (in this case, the fundamental law) and was interpreted extensively, proportionate to the exceptional situation. In today's context - dominated by the pervasive influence of the digital environment and social networks, which constitute a vast but insufficiently regulated public space - the constitutional norm in Article 146(f) has been recalibrated to address new realities. Such changes could not have been anticipated even through the most sophisticated teleological interpretation, nor in connection with the 2003 constitutional revision, and certainly not in relation to the years 1990-1991, when the fundamental law was originally drafted.

However, such arguments remain largely theoretical. In practice, the rule of law is built on predictability and legal certainty - values that must be protected through clear and respected procedures. But, in reality, we find ourselves back where we started. This leads to the question: in the face of the values that constitutional democracy protects, should the instruments of the rule of law remain stagnant when confronted with new situations, simply because there is no complete procedural overlap? Furthermore, to be fair, we must - yet again - also rhetorically ask: can fundamental principles and values themselves serve as a basis for extending existing procedures? Or would it be more consistent with the rule of law to accept the emergence of an outcome that contradicts its values, only to later develop procedures in the name of those same values to prevent the respective „democratic evil” in the future? Does this imply living, at least temporarily, with an „evil” that we already recognize, but which the law will only criminalize later? Of course, the law will not act retroactively. But here, unlike other situations, the „evil” is not a future awareness and abstraction, but a present reality, acknowledged as an anti-value for democracy and the rule of law (based on European standards), and which is pressing synchronically on the core of constitutional democracy and the rule of law.

Another pointed critique targets the extension of President Klaus Iohannis's term. It was argued that RCC's reliance on Art. 83(2) was legally dubious [41]. Article 83(3)

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expressly allows extension „by organic law, in case of war or catastrophe". By simply invoking 83(2) („until the newly elected President takes the oath"), the RCC arguably sidestepped the constitutional requirements [42]. Ignoring the legislative check (organic law) would have created a precedent where judges determine executive terms without democratic input. The concern is partly alleviated by the Venice Commission's view, i.e., since Romania's Constitution lacks explicit guidance for an annulled presidency, the incumbent-stays solution is permissible in the absence of a clear provision [43]. Nonetheless, critics emphasize that the Court should at least have acknowledged the legal tension it created and possibly called for urgent law-making on the gap [44].

5.1. Continuing comparative angles

The Venice Commission's Opinion No. 1218/2024 provides a presumptively objective, thus important, external perspective. Although it does not adjudicate the Romanian internal facts, it articulates general principles on when courts may cancel elections. It acknowledges that many systems assign the highest authority (often the constitutional court) the final say on electoral validity [45]. It expressly observes that a constitutional court may have the competence to annul, and that it is found in the legislation of many States [46]. Moreover, the Commission does not categorically forbid ex officio annulments by courts; it merely insists that they be confined to exceptional cases with safeguards [47]. The urgency of the Romanian case (the 2nd round was only two days away) was highlighted even by VC members, e.g., Marta Cartabia noted the RCC was „forced to act swiftly" under acute time pressure [48]. Cartabia reminded that annulment must be an ultima ratio, justified only if irregularities directly affected the outcome [49], an effect that was arguably met here, given that Georgescu's vote share exploded under suspicious circumstances. In fact, VC rapporteurs wrote that while the threshold is high, if irregularities are serious enough to cast „genuine and objective doubts as to the veracity of the election result" [50], annulment can be contemplated [51].

In terms of campaign finance and technology, the Venice Commission has long urged stricter rules on online election advertising and third-party campaigning [52]. The RCC's finding of undeclared social media spending resonates with these concerns. The Commission emphasized that judges must „precisely indicate the violations and the evidence" [53] when dealing with digital campaigns, it warns against basing judgments solely on intelligence („which may only be used as contextual information") [54], as already stated. In Romania's case, the contested

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evidence consisted of now-public intelligence, which at least sidesteps the secrecy objection (they were declassified to become admissible evidence).

5.2. Points of agreement and divergence

There is a broad consensus that free elections are fundamental and that grave fraud justifies court intervention. Both supporters and sceptics agree that the irregularities in late 2024 were exceptional, unprecedented in Romania's post-1989 history and at the European level as well. The debate centres on how and by whom such threats should be checked. Pro voices stress the Court's duty as guarantor of constitutional order, citing Art 146(f) and urging a pragmatic, values-based approach. Critics invoke the rule of law and electoral law provisions, arguing that the RCC stretched or filled gaps not meant to be judicially created. On this, the Venice Commission falls, somehow, in between, as it validates the possibility of annulment but calls for legislative safeguards and prudence.

Importantly, one line of critique mischaracterizes the VC's stance: some have suggested the Commission demanded another mechanism (like an appeal body) besides the RCC [55]. In fact, the VC expressly notes that having a single constitutional court decide finally is permissible - provided due process is respected, of course. It is not a violation of norms for one (independent) court to have the first and final word on elections. Appeals and complaints are normally needed only if the annulment could come from an administrative body (like the BEC) rather than a court. In Romania's case, the RCC itself was annulled, as per the force of the Constitution (albeit having a what it is indeed now proved by context to be lacunary power provision, but the extraordinary situation remains and the extraordinary tool - a constitutional provided one - was used in an extraordinary manner), so no parallel remedy was missed. Furthermore, Ruling 34/2024 was not a revision of Ruling 31/2024, by which the Court initially validated the results of the first round [56].

In April 2025, reflecting the dynamism of Romania's socio-legal and political culture and its impact on judicial culture, the Ploiești Court of Appeal admitted a citizen's claim and annulled, respectively suspended, the RCC's Ruling No. 34/2024, erroneously treating it as an administrative act. The misclassification generated a direct jurisdictional conflict between the RCC and the ordinary judiciary. By filing a procedural action before the High Court of Cassation and Justice (HCCJ) to defend the constitutional order and preserve the effects of its constitutional judgement, the RCC practically revealed - simply by having to turn to the HCCJ for protection (a constitutional oddity) - deep-seated tendencies within Romanian judicial culture and exposed divergent approaches to interpreting law generally and the constitutional rule of law in particular, i.e. its meanings, purposes, and standards. The HCCJ overturned the ruling of the Ploiești Court of Appeal, declaring it

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inadmissible because ordinary courts lack competence to review acts of the RCC. The HCCJ essentially reaffirmed a fundamental principle of constitutional law: rulings and decisions of a Kelsenian-style constitutional court are constitutional judgments, not administrative acts; they are binding erga omnes and insulated from judicial review.

6. Converging Values, Divergent Paths? Venice Commission Report vs RCC's Ruling

The Venice Commission's Opinion gives a structured framework to evaluate the RCC's judgment. Thus, I will try to outline the main themes of the report and, more concretely, relate them to RCC Ruling 32/2024.

i) Ex officio intervention (paragraph 27). The report warns that a court's power to act on its own initiative is „enormous” and must be limited to exceptional circumstances and clear rules. The RCC ruling was indeed ex officio. The Court justified this by extraordinary facts (intelligence showing foreign interference). From the VC view, this fits an exceptional case. It stated that in some countries, constitutional courts may have ex officio roles; Romanian law does not forbid it, and as seen, the RCC claimed an implicit mandate. The Commission's caution suggests that Romania should, in future legislation, grant such ex officio authority. For now, the RCC Ruling arguably stayed within „exceptional circumstances” because the annulment threat was imminent and grave.

ii) Timeframe and remedies (paragraphs 34-37). The Commission stresses prompt resolution of disputes, ideally before final validation. It says complaints should be resolved as soon as they occur, and that revising results post-certification should be a last resort. RCC did act relatively quickly, i.e., within two days after declassification and two days before the 2nd round. On 6 December, the election was not yet certified (the president was not chosen), so RCC still had room to intervene. The Commission notes that post-election annulments are only justified if unavoidable. Given that no legal challenge could otherwise block the impending second round, one could argue the RCC's timing was indeed last-minute. The Court recognized this. It accelerated the electoral annulment to avoid a constitutional vacuum. The RCC's ruling, for these reasons, met the requirement of urgency, and its timing may be seen as sufficiently reasonable under the circumstances.

iii) Judicial competency (paragraphs 21-23). The Venice report affirms that the highest electoral body (or constitutional court) usually should have the power to annul results. The constitutional court does not need to be only a reviewing body; it may act as a first and final instance in electoral disputes. In Romania, the Constitution (Art 146(f)) plainly vests the RCC with final election oversight, without requiring an appeal route. Therefore, RCC Ruling 32/2024 aligns with this

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understanding, i.e., the Court was the competent body, and its decision was final. The Commission clarifies that if an election-organizing authority alone could cancel elections, then an appeal channel would be needed - but that is not the Romanian structure.

iv) Substance of annulment - influence on outcome (paragraphs 39-42). Supranational standards demand that annulment hinges on whether irregularities could have affected the result. The Venice Commission notes that demanding irrefutable proof that the outcome was altered sets too high a hurdle; instead, it suffices that irregularities raise „genuine and objective doubts” about the validity. RCC arguably found such doubts, i.e., Georgescu’s unexpected surge and the scale of digital manipulation meant the voter intention was deeply altered. The VC opinion sets such parameters, as it explicitly contemplates annulling an entire election if irregularities pervade all districts, which mirrors RCC’s full-repeat remedy. The RCC treated the electoral cause holistically. The Commission guidelines (Code of Good Practice) allow invalidating either the entire process or just the affected areas. RCC chose the maximum response.

v) Digital campaigning and third-party influence (paragraphs 56-59). The Venice report underlines that online campaigning must still obey finance and transparency rules, and that courts should assess whether the violations have influenced elections. It acknowledges the novelty of AI and social media, calling for regulation to ensure advertising is identified and funded transparently. The RCC’s ruling explicitly cited undeclared online funding and AI-assisted campaigns as part of the illegal conduct. In this respect, the Court’s concerns overlap with the Commission’s, i.e., social media distortions, especially by foreign actors, represent a grave threat. The Commission’s stance is that such digital disinformation can justify extraordinary measures. The RCC’s action effectively forced immediate attention on this issue, highlighting gaps that the VC suggests need legislative fixes (e.g., disclosing algorithmic ads, restricting foreign media involvement).

vi) Use of intelligence reports (paragraph 59). An effervescent point is that the VC underlines that decisions cannot rest solely on classified intelligence. Instead, there must be clear evidence and reasons in the judgment. In Romania’s case, the evidence all originated as secret CSAT reports. By declassifying them, President Iohannis made them public government documents admissible in court. In effect, the RCC did base its decision on what was formerly classified, albeit legally accessible. However, the Commission would caution that relying on previously secret evidence limits transparency. RCC did not publish the declassified files along with its motivation. This, among other shortcomings, created tensions. On one hand, the Court needed something beyond anecdote, and on the other, its reasoning had to be shown to the

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public. The Venice clearly stated that such judgments should list the specific violations and evidence (which RCC did not do in detail, likely for security/confidentiality reasons?!). This is an area of departure. The RCC did not fully meet the high transparency standard, although it did avoid relying solely on intelligence (it relied on the published summary of those reports and contextual standard of the Code of Good Practice in Electoral Matters, but this seems to be just a quickly painted fence, or something like „if something looks sufficient, then it is).

vi) Interim solutions (paragraph 61). Finally, the Venice report notes that if elections are annulled, an interim arrangement is needed until reruns. It says either the former office-holder stays or an interim successor is appointed (the latter only if the constitution provides). Since Romania's fundamental law has no special provision for an annulled presidential electoral exercise, the VC deems continuation of the incumbent as acceptable until new elections. That is precisely what the RCC ordered under Art 83(2). In this respect, RCC 32/2024 is consistent with VC guidance. It avoided an institutional vacuum and kept the current president in place. The only caveat is that the Constitution's Article 83(3) envisages extension only by organic law in crisis, but the crisis is limitedly expressed, i.e., war and catastrophe. A constitutional textual expression containing „such as war and catastrophe” would have given the needed interpretation room. However, given the urgency, the Court opted for the simpler route, effectively treating the situation as one not expressly foreseen, thus defaulting to Art. 83(2).

It can be concluded that the Venice Commission lends qualified support to many aspects of the RCC's approach (exceptionality, substantive threshold, interim extension), while flagging the need for procedural safeguards (due process, transparency) that were somewhat lacking. The Commission also encouraged Romanian authorities to adapt laws to the new digital realities.

7. Conclusions

The annulment of Romania's 2024 presidential election is a landmark constitutional intervention (judicial activism). Under acute political and informational pressures, the Constitutional Court exercised its implicit electoral guardianship to protect democracy as it understood it. The Court saw itself as upholding the Constitution's supremacy and the fundamental right to a genuine and free electoral manifestation by the voters. From such a constitutional standpoint, the decision can be defended. Article 146(f) and related laws, properly read (or just read from a certain angle), do allow the Court to act decisively when a free suffrage is threatened. The unanimity

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of the Court suggests at least a strong belief that this step was legally and ethically warranted.

On the other hand, RCC Ruling 32/2024 exposed the thin threads holding the legal framework together in crisis. The Court effectively extended unwritten powers to annul an election and to prolong a presidency, doing so with minimal explanation. While the urgent nature of the threat (foreign-manipulated disinformation) is clear, Romanian constitutional law did not explicitly envision such a scenario and most probably was impossible to do so in 2003 (during its revision process), a fortiori in 1991, I would reiterate. Thus, the Court had to interpret constitutional texts expansively - a move some constitutionalists view with suspicion. As Marta Cartabia cautioned, annulment must remain an ultima ratio, and courts must balance speed with due process. In Romania's case, the scale of evidence and the looming 2nd round arguably justified speed. Yet, procedural formalities suffered.

Looking forward, the most defensible conclusion is that the essence of democracy - free and fair elections - was at risk at the end of 2024, and this required extraordinary correction. However, I believe that such court-imposed corrections should not become and remain normative (lato sensu) via judicial activism. Parliamentary action is urgently needed to create and strengthen campaign finance and transparency laws for digital media and regulate interim presidential succession for annulled mandates (as recommended by the Venice Commission). Of course, the last part can be done exclusively by amending the Constitution, i.e., art. 82, as paragraph 3 sets limits that infraconstitutional laws cannot infringe.

8. Further personal assessments

Based on the above, I believe that a robust constitutional democracy must rely not only on judges' vigilance but also on clear rules. For now, 'it is what it is' - the constitutional judgment is gradually aligning with the values and standards of democracy and defending them.

I also believe that, in the current setup of constitutional textualism, Article 83(2) is a self-executing provision that unequivocally mandates the incumbent president to remain in office until the successor takes the oath. In contrast, Article 83(3) carves out a narrow exception - extension by organic law only in cases of war or catastrophe. Because the situations did not amount to war or catastrophe, the general rule of 83(2) applies without triggering the organic-law requirement of 83(3). This hierarchy of norms confirms that the RCC - in my opinion, I would emphasize again - correctly relied on the text it found directly applicable, even though it is true that some serious political effects can be seen as incoherent in regard to the formation and collaboration between political institutions, i.e., parliament, government, and

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president. But I think here is rather a discussion of political opportunism and not constitutional clashes, and RCC should not be involved.

It is true that RCC's Ruling 32/2024 effectively extended the President's mandate in a fragile political and institutional context. At that time, the new Parliament was to be convened, and the formation of the government depended on an unconfigured coalition. Consequently, the future President would have inherited an already installed cabinet, which means that the executive powers - especially in the field of defence and foreign policy - would be exercised by a President and a Government with no political link generated by the selection and investiture process (see Art. 3 of the Romanian Constitution). In addition, the expiration of the mandates of three Constitutional Court judges in 2025 required launching renewal procedures, including an appointment to be made by the President, i.e., by the newly elected President ('presumption').

On the one hand, these are undoubtedly problematic contexts with potential negative (political) effects. On the other hand, at an abstract-institutional level, they remain compatible with the constitutional logic of institutional continuity. The prolonged presidential term can weaken the political link between the president and the government, but this does not affect the government's constitutional legitimacy. The government is the political emanation of Parliament and remains legitimate as long as it enjoys parliamentary confidence, regardless of who holds the presidency. I would go even further and draw a contextual analogy: just as the resignation and removal of a president by referendum does not automatically trigger the fall of the Government, the same logic can be applied here. The separation of powers and institutional stability require that such events do not automatically disrupt other branches of government or their functioning; the successor must collaborate with a cabinet formed under the previous president, because the decisive source of legitimacy is parliamentary support. Moreover, presidential and parliamentary elections are separate by constitutional design. Even when their cycles overlap, the incoming president inherits a government that reflects Parliament's current configuration, not the president's mandate. In 2024, the overlap of the five-year presidential term and the four-year parliamentary term was merely cyclical. Before 2003, when both terms were four years, elections were regularly held on the same day, which created a distorted public perception that the president directly influenced the governmental agenda. However, after 2003, the rationale shifted to separating the electoral processes - in order to normalize cohabitation - and the presidential term was extended to five years. As a result, to not alter this logic, in 2024, the elections were held separately. The proper benchmark, therefore, is institutional design rather than the personalities occupying offices. An accurate analysis centres on Parliament's confidence as the government's stabilizing foundation, with the

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presidency operating alongside - not above - the parliamentary source of government legitimacy.

If, purely as a hypothesis, an organic law were to extend the presidential term, wouldn't that also affect the link between the presidency and the government for the future/newly elected president? Would there really be any difference in the effects concerning the debated political link if one were to apply Article 82(2) versus Article 82(3)? I think not. If, prior to his election and during the extension of the previous presidential mandate, a government was formed, the newly elected president would inherit the same political conditions or link.

Next, I view the appointment of a judge by President X rather than by President Y as politically opportunistic. Ideally, the Court should be insulated from partisan identities and avoid any hint of opportunism in its composition and activity. The fact that President X ends up appointing more judges than would occur under normal temporal circumstances does not breach the Constitution's formal architecture or the Court's design. While the situation is, to a certain degree, politically questionable, it does not violate the institutional framework of the fundamental law. The RCC's continuity is ensured by the joint institutional roles of Parliament and the President, regardless of the individuals involved. Unfortunately, constitutional judges often remain associated with the president or the majority political colour of the Chamber that appoints them.

From a teleological perspective, supported by both extrinsic and intrinsic views, the fundamental law does not presuppose that every president will nominate the same number of constitutional judges during a single mandate. Consequently, successive presidential terms of five years each may entail one or two nominations per term, depending on the timing. It is also important to remember that the length of the presidential mandate itself can be adjusted, either downward or upward, as occurred in 2003. As a result, the „mathematics” of appointments to the Constitutional Court can change over time. Furthermore, a president can serve only one term instead of two, and when serving the maximum of two terms, they do not necessarily have to be consecutive. Therefore, presidential appointments to the Constitutional Court are not (rigidly) tied to a specific mandate or directly linked to certain temporal mathematics. Timing follows the constitutional and statutory rules governing judicial terms and renewals, not an arithmetic linkage to a certain presidential term. Suppose the presidential mandate were extended by organic law. Would that permit the incumbent to appoint a judge to the highly coveted vacancy without encountering contextual moral or political constraints? Again, I think not, because the situation created under Art. 83(3) would still carry the same potential detriment for the president who would be elected later. If this scenario were admissible, then why

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wouldn't it be under Art. 83(2), which allows for some (and more) interpretative flexibility? Anyway, the elections were rescheduled at the appropriate time, and the newly elected president (Nicușor Dan) made the much-debated presidential appointment to the RCC.

I believe that the most profound political effect of Ruling 32/2024 does not lie in the fact that political institutions - the Parliament, the Government, and the Presidency - must recalibrate their functioning in relation to certain *de jure* and *de facto* procedures. Rather, its central impact manifests at the level of public trust. When existing legal instruments prove unclear or incomplete - as is currently the case, since they were not designed *ab initio* to manage such unexpected developments - the credibility of democracy itself is deeply shaken. Unlike procedural or institutional adjustments, which can be implemented relatively quickly, the erosion of trust dissipates far more slowly. This is especially true in Romania, where democracy lacks a solid tradition of historical consolidation [57] and has often been understood more through negative experiences - through what democracy is not - than through lived knowledge of what it is. The fragility stems from the interplay of constitutional and legal provisions, which, while seemingly democratic, were frequently exploited to entrench authoritarian power [58], as seen, e.g., under the 1866 and 1923 fundamental laws. In this context, the concept of „militant democracy” becomes relevant once again, not merely as a theoretical safeguard but even as an instrumental principle which can generate concrete effects. Through its judgment, RCC indirectly instructed the People about the limits of democracy, engaging in a form of judicial activism by expanding its powers to respond swiftly to an anti-democratic danger. Yet this reaction, though arguably necessary, as we have seen, remains legally ambivalent and insufficiently persuasive. It does not clearly convey to citizens what democracy truly is, nor why it has to be defended in this particular way. Instead, people were told that certain actions were "not democratic", without being offered a compelling explanation that could reinforce democratic learning and/or acceptance. The result is that citizens have once again failed to gain a deeper understanding of how democracy functions in practice. What they have experienced instead are its limits - shaped by legal lacunae, weak political culture (including its own), and contradictions within a system still under construction.

Also, it should not be overlooked - within the issues debated in this article - that centralizing power in the judiciary or in constitutional justice carries the risk of fostering a culture of dependency on judicial intervention rather than strengthening democratic institutions. Over time, if no concrete and clear legal solutions are adopted, this may not only undermine public trust in the impartiality of the courts (even in cases where a just/fair outcome was protected or reinstated) but also weaken

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the resilience of democracy itself, leaving it more vulnerable to both populist backlash and authoritarian overreach.

As a conclusion, it can be said that, after all, the angles of analysis can always be shifted, and in the end, it seems that everyone is right, at least to some extent.

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[5] Răzvan-Cosmin Roghină, op. cit., passim.

[6] I use “constitutional catharsis” alongside Aristotle’s sense of political catharsis (found in the work „Poetica”). His idea of political catharsis speaks of how collective life - through institutions, public deliberation, and even art - can channel and refine the emotional energies of citizens. It can be seen as a civic purification, in which passions are not suppressed but shaped, helping to prevent social chaos and promote harmony within the polis. It can be said to be the result of a mixture of aversive and aspirational constitutionalism. Constitutional catharsis may be a better or more useful expression, one that also includes the recognition that constitutional moments, constitutional crises, and solutions are deeply shaped by cultural context and not just by a universal or regional legal epistemology embraced as a repository of standards. For example, in Romania, there is a strong societal impulse to "punish" or isolate those who violate fundamental values or threaten the ethnological identity of the nation (a kind of “democratic anathema”). Such a desire for moral revenge spills over into expectations about the law in general, the constitution, and the judicial system. Shaped by religion (primarily), it often clashes with the liberal ideals that underlie modern liberal constitutionalism. The result is a kind of cultural dissonance, that is, a desire for a law and

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justice that is both deeply emotional and at odds with the procedural neutrality of liberal democracy. But in the modern world, this process is deeply shaped by cultural context.

[7] RCC Decision 32/2024, para. 21.

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[17] Venice Commission, Urgent Report ... cit., CDL-AD(2025)003, pp. 7-8, 11.

[18] Ibid., p. 10.

[19] Ibid., p. 16.

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[22] RCC Ruling 32/2024, para. 5.

[23] Ibid.

[24] Ibid., para. 14.

[25] Ibid.

[26] Ibid., para. 18.

[27] Ibid., para. 5.

[28] Ibid., para. 22.

[29] Ibid., para. 21.

[30] Manuel Guțan, The New Enemies of Romanian Militant Democracy (Part II): Fighting Manipulative Social Media, <https://constitutionaldiscourse.com/the-new-enemies-of-romanian-militant-democracy-part-ii-fighting-manipulative-social-media/> (accessed 14.08.2025).

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[33] See, *Courts and Judicial Activism under Crisis Conditions Policy Making in a Time of Illiberalism and Emergency Constitutionalism*, Martin Belov (ed.), Routledge, 2021. Also, see commentary (book review) by Răzvan Cosmin Roghină, in *Romanian Journal of Comparative Law*, nr. 2, 2022, pp. 411-457.

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- [50] Venice Commission, Urgent Report ... cit., CDL-AD(2025)003, p. 12.
- [51] Ibid., pp. 11-12.
- [52] Ibid., p. 16. Also, see CDL-AD(2024)044-e Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2024\)044-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)044-e) (accessed 18.07.2025).
- [53] Venice Commission, Urgent Report ... cit., CDL-AD(2025)003, p. 16.
- [54] Ibid.
- [55] See, e.g., Ionel Olteanu, *Obligă recomandările Comisiei de la Veneția la reluarea turului doi pentru alegerea Președintelui României?*, <https://www.juridice.ro/770039/obligarecomandarile-comisiei-de-la-venetia-la-reluarea-turului-doi-pentru-alegerea-presedintelui-romaniei.html> (accessed 19.08.2025).
- [56] Ruling 31/2024, https://www.ccr.ro/wp-content/uploads/2024/12/Hotarare_31_2024.pdf (accessed 22.06.2025).
- [57] Răzvan-Cosmin Roghină, op. Cit., pp. 145 et. seq.
- [58] Manuel Guțan et. al., *Șefii de stat. Dinamica autoritară a puterii politice în istoria constituțională românească*, Bucharest, Universul Juridic, 2020, passim.