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THE "FUTURE EFFECT" AS A FICTION. *SUPPRESSION, ATTACHMENT AND THE BOUNDARY OF IMMEDIATE APPLICATION IN DECISION NO. 883/2026 OF THE CONSTITUTIONAL COURT OF ROMANIA*

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Abstract: In August 2026, the Constitutional Court of Romania upheld, by a majority vote, a transitional provision that terminates public offices and elective mandates on the basis of conflicts of interest and incompatibilities definitively established before the entry into force of the amending law. The Court treated this termination as a "future effect" of the previous situation. The paper argues that the reasoning fails on its own premises, since the phrase shifts the analysis from the legal effects of the previous finding to the condition of the office, which is only the object on which the new consequence operates. Compared to the distinction made in the Court's own case law between suppressing the future effects of a past situation and attaching a new effect to a completed fact, the provision performs the latter operation where the old law did not already provide for termination, as in the case of conflicts of interest. The decision also leaves several objections unanswered.

Keywords: Non-retroactivity; *facta praeterita*; *facta pendentia*; immediate application of the new law; future effects; Constitutional Court of Romania.

1. Introduction

On 17 August 2026, the Constitutional Court of Romania (hereinafter, RCC), reviewing before promulgation the Law amending and supplementing certain normative acts in the field of integrity (hereinafter, the amending law), rejected the objection that its Article X was retroactive. Its first paragraph attaches the termination by operation of law of an office, a public dignity or an elective mandate to conflicts of interest and incompatibilities established with definitive

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effect before the entry into force of the amending law. Of the four points of the decision, three refer to the regime of declarations of assets and interests; the paper deals with the fourth and, within it, mainly the aspect based on Article 15(2) of the Constitution [1].

The objection of retroactivity was fully formulated before the Court. The referrals argued that the fact giving rise to the consequence predates the new law and has been definitively consolidated; that what is decisive is that fact, rather than the moment when the consequence materializes; that the thirty-day period is merely a *dies executionis*; and that the ongoing mandate is a distinct legal relationship whose continuing nature does not make the one concerning incompatibility or conflict of interest pending. The Government agreed, arguing that the relevant relationship is that of the sanction, established before the new law. The separate opinion reached the same conclusion, arguing that the ongoing execution of a sanction cannot transform the sanctioned state into a *facta pendentia* and that the prohibition from accessing the position in the future and the loss of the position currently held differ in substance [2].

Before that objection can be assessed, a prior question arises, because the majority does not simply deny that a consequence is attached to a situation constituted under the old law. It constructs an intermediate category, the integrity and authority of the office, characterizes the impairment of that integrity as a future effect of the situation, and treats the protection of the office as an immediate application of the new law [3]. What must be asked is whether that future effect is a legal effect that the previous situation already had or a new consequence presented as one. Does Article X(1) suppress a future legal effect that already belongs to an existing legal situation or attach a new legal consequence to an exhausted fact?

The argument is that the reasoning by which the Court saves the provision is not supported by its own premises and that the only source of the failure is the use of the same phrase in two different senses. It therefore converges with the authors of the referrals and the separate opinion, but for a narrower reason. The majority's use of the expression "future effect" does not establish the existence of a pre-existing legal effect of the old situation; it replaces the legal situation from which the new consequence derives with the continued existence of the office. The reasoning therefore does not provide a sufficiently determinate basis for the decisive step from the general premise on future effects to the conclusion that the office ceases. To this is added a finding independent of the reasoning and verifiable by a simple reading, namely that four of the objections raised against the provision are rejected without being touched upon in the reasoning.

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2. The Romanian guarantee

Until the 1991 Constitution, non-retroactivity was inscribed, in civil matters, only in the Civil Code and was binding on the judge, but not on the legislator. Its elevation to constitutional rank also obliged the legislator. The Court called the consequences of the choice very serious and justified it by legal certainty, by the trust of citizens in the legal system and by protecting the separation between the legislative and the judicial or executive powers [4]. The reason had been stated long before. If what was done in accordance with the law in force could be undone indefinitely by a new law, no foresight would be possible, and the legal order itself would be threatened; and if the new law did not respect what was done under the old one, trust in the law would disappear and, with it, its authority, obedience being discouraged if its compliance did not guarantee protection [5]. In short, it is absurd to ask a subject of law to answer for the behaviour committed before the norm came into effect. Fairness, however, provides the rationale for the guarantee, not the test for its application, which is technical and has to do with the legal effects attached to the situation in question.

The constitutional rank has consequences, which the Court restates in the analyzed decision. In civil matters, the principle has an absolute value; the legislator cannot establish any derogation from it, and the only exception admitted by the Constitution is the more lenient criminal or contravention law [6]. The Court itself has ruled that the principle applies to any law, regardless of the field it regulates, and the doctrine adds that any attenuation of it is equivalent to a limitation of rights and freedoms [7]. And even when the legislator justifiably wishes to remove or mitigate unjust situations, it must find means compatible with the principle [8]. This last proposition matters the most here, because it rejects in advance any argument derived from the importance of the aim pursued.

Retroactivity is identified by the classic tripartite division, reflected in Article 6 of the Civil Code and consistently adopted by the Court. The new law does not apply to past and exhausted situations; it applies to those that arise after it enters into force and to those that are then in the process of being constituted, amended or extinguished, as well as to the future effects of situations that arose previously but have not yet been exhausted [9]. The last term bears the entire difficulty, and the Civil Code limits it by two provisions that must be interpreted together: the new law governs the future effects of the situations listed in Article 6(6) only if these situations subsist after it enters into force, and the acts and facts previously performed cannot generate legal effects other than those provided for by the law in force at the time of their performance [10].

The criterion I have applied in the paper rests on a consistent line of the Court's case-law, according to which a law is not retroactive when it modifies for the future a legal situation that arose previously or when it suppresses the future production of the effects of a situation established under the old law [11]. To suppress an effect means to leave something that the old law provided for without future consequences. To attach an effect, in the sense relevant here, means to link a new consequence to a completed fact which, when it occurred, did not produce it. The first operation is, in principle, compatible with the immediate application of the new law; the second is incompatible with Article 15(2). Immediate application allows the new law to shape and even add to the future effects of a situation that is still ongoing; what it does not allow is to make a completed fact the source of a consequence that the fact did not have. What matters, therefore, is not whether the consequence is new, but to what (and, from a different angle, why – which is not of interest in the paper) the new law links it. This can be established without assuming the answer, because the fact to which a consequence is attached is the element of the rule hypothesis that separates those to whom the consequence applies from those to whom it does not. It then remains to be seen whether this fact was complete at the time the new law came into force or consists of a state or conduct that continues or may change after it enters into force.

3. What the amending law added

Under the previous regime, a person definitively found to have a conflict of interest or in a state of incompatibility lost, for three years, the right to hold public offices and dignities covered by Law no. 176/2010, except elective ones; a person who had held an elective office could not hold the same office for three years from the end of the mandate; and for a person who was no longer in office at the time of the finding, the prohibition ran from the date on which it became definitive [12]. A 2014 decision had already held that "the same office" covered all elective offices within the law, so that the prohibition to run for office was already general [13]. The extension of the offices covered, which the Government presents among the novelties of the amending law, represents, about elective offices, a codification of the existing law.

Termination of the office held was another issue, and here the two states diverged. The former Article 25(3) made the established conduct a ground for removal from office or a disciplinary offence, a formula that required an act of the competent authority, rather than automatic termination [14]. As for incompatibility, automatic termination was positive law at least for local elected officials, under the Administrative Code, and for members of Parliament, under the law governing

their office; for conflicts of interest, the Code provided only for a disciplinary sanction, a reduction in the indemnity [15].

The case law has blurred the distinction without eliminating it. In a case concerning a mayor whose mandate had been found to have been terminated due to incompatibility, the High Court of Cassation and Justice (HCCJ) was asked whether the limitation period for administrative liability could be raised against the prefect's order; the referring court formulated the question for orders issued following the finding of either incompatibility or a conflict of interest, the operative part of the decision answered in these terms, and the reasons state that, for local elected officials, a final report finding either of the two states leads to the termination of office as a matter of law. Therefore, the decision assumes, also in its operative part, that a conflict of interest could terminate a local mandate. It does not decide on this issue. What binds the courts is the resolution given to the question of law referred to it, which concerned the limitation period and not the reason for the termination of office, the case itself concerning an incompatibility; the premise is based on provisions of the Administrative Code, the text of which only mentions incompatibility, conflicts of interest being met in the same Code with a disciplinary sanction; and the subsequent decision in an appeal in the interest of the law, which concerned the termination of office itself, dealt only with incompatibility [16].

The issue remained open, and the practice was divided. The Constitutional Court observed in 2018 that a conflict of interest of local and county councillors did not constitute a reason for their mandate to end by law, while an appeal court upheld in 2020 an order of the prefect terminating the mandate of a mayor due to a conflict of interest, interpreting Law no. 176/2010 as providing for the termination of the mandate in both cases and limiting the 2018 observation to councillors. The amending law reflects the same uncertainty, since Article X(1) applies to persons whose conflict of interest had been definitively established and who were still in office at the time of its entry into force, and the President of the Chamber of Deputies described it as regulating the conditions under which such persons may continue to exercise their mandate [17]. The same premise appears in the judgment of the Court of Justice of the European Union in a case concerning a mayor in a conflict of interest, where the three-year ban is described as a sanction additional to the termination of the mandate [18]. Therefore, with regard to conflicts of interest, the termination of the mandate was based on a premise stated in a decision that did not decide it, contrary to the legal text and applied divergently in practice, and Article X(1) resolves the uncertainty for the past.

In my view, the asymmetry is the key to the intertemporal analysis. The three-year ban applied to both states; the termination of the current mandate was provided in terms only for incompatibility. In this context, the new Article 25(2) brings three changes. The ban becomes one of up to three years, individualized and proportionate [19]. It runs uniformly from the date on which the evaluation report or the court decision became final; and to this is added the loss of the office, public dignity or mandate, which ends by law on the same date. Article X(1) attributes this consequence to the findings that became final before the amending law, provided that three years have not passed since the date on which they became final, the office ending thirty days after the entry into force of the amending law; Article X(2) attributes it to the findings that become final subsequently, whenever the conduct occurred [20].

As to what the amending law adds, the prohibition is recalculated from the finality, whereas, under the old law, it flowed, for a person still in office, from release or dismissal from office or from the end of the mandate. Termination extends to each position within Law no. 176/2010 and operates by direct effect of the law, the competent authority merely recording it, while removal from office previously depended, apart from the incompatibility of elected officials, on a decision of that authority, subject to separate review by the administrative courts [21]. It has been argued that the former Article 25(2) already attached to both states the forfeiture of the office held, which necessarily entailed termination of the mandate, so that the omission of conflicts of interest from Article 160 of the Administrative Code was a drafting error and Article X merely corrects the wording, leaving the substance of Law no. 176/2010 unaltered [22]. The text of the former law does not bear the respective reading. Article 25(2) excepted elective offices from the general bar and made the bar on the same elective office run from the end of the mandate, which presupposes that the mandate continues, while the Administrative Code met conflicts of interest with a disciplinary sanction, a reduction of the indemnity, that would have no object if the mandate had already ended by operation of law. As regards conflicts of interest, the amending law transforms into a written rule what had previously been a contested interpretation of the law, set out in the grounds of a decision which did not decide it and applied by some courts but not by others; as regards incompatibility, at least in the case of local elected officials and members of Parliament, it adds nothing in this regard. The relevant novelty therefore lies in the termination of a position already held by reference to a final finding made under the previous regime, where the old law did not already provide for this, rather than in a restriction based on integrity as such.

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The President of the Chamber of Deputies replied that the amending law does not create any liability for conduct that previously produced no legal effect [23]. The proposition is true, but it does not answer the objection of the authors of the referrals, since they did not claim that the conduct in question produced no legal effect; the prohibition existed. The question is whether it produced the effect attached now. If termination already existed, the answer is yes, and Article X did not attach any new consequence; if Article X was necessary, it was necessary for the other categories, to which it attributes a consequence that did not exist at the time of the establishment of their situation. The Court does not draw such a line. In this regard, the amending law was fully defended only by the President of the Chamber, the Government and the President of the Senate having considered the objection of retroactivity well founded.

A point of reference is provided by the amending law itself, in Article X(3), which requires persons who become incompatible through its application to give up one of the incompatible offices within forty-five days of its entry into force [24]. Whatever may be said of it under the electoral guarantee discussed below as regards members of Parliament, and under the Court's own case law on mandates in progress, which is stricter than the criterion applied here, it is, on that criterion, a transitional provision properly so called, since it concerns a state subsisting at the date of the new law, requires conduct for the future, grants a period for compliance and attaches no consequence to any exhausted fact. Two paragraphs apart, Article X thus shows what a transitional provision doing its work looks like and, by contrast, what its first paragraph does.

4. The reasoning and where it fails

The Court presents the intertemporal doctrine in its received form; the difficulty lies in its application. Starting from the premise that the new law governs the unexhausted future effects of previously arising situations, the Court adds a filter extracted from Article 1(3) in conjunction with the first sentence of Article 16(3), which supposedly requires that, in matters of public integrity, such effects be treated as a continuing situation. It then rules that a conflict of interest or a state of incompatibility whose legal effects are not exhausted is projected onto the position and affects its integrity and characterizes the projection as a future effect, governed by the new law, of the situation generated by the incumbent's conduct. Hence the conclusion that the transitional provision does not provide for any personal sanction, but puts an end to the impairment of the position [25].

The expression "future effect" appears twice, and the demonstration depends on treating the two occurrences as identical, although they do not mean the same thing. In the doctrinal premise, a future effect is a legal effect of a legal situation that still subsists, that is, a legal consequence that the situation continues to produce after the entry into force of the new law and which, therefore, the new law can govern. In the final characterization, the same expression denotes the impairment of the authority and image of the public office, which is a state of fact. The inquiry has therefore changed its object. Even if the condition of the office were considered a legal situation in itself, this would be the object on which the new consequence operates, not a legal effect that the previous finding would have already generated, and this effect was what the intertemporal doctrine required the Court to identify.

The Court itself acknowledges as much, describing the protection of the integrity of the public office as a consequential and distinct effect of the wrongful conduct, one "which must receive its own regulation in normative terms" once the finding has become final [26]. The acknowledgement works against the conclusion, since the effect is linked to the wrongful conduct, which is a completed fact, and not to a situation still in progress, and its legal basis arises only by means of the new law. The operation is therefore an attachment, the subsisting state of affairs serving only as a bridge through which a new consequence is carried back to the completed fact from which it derives. If a persistent circumstance could be called a future effect whenever a new consequence must be attached to a past fact, Article 15(2) would cease to function as a rule of decision.

The majority does not invoke the formula regarding the suppression of future effects, although it was at hand. The paragraph that takes up the intertemporal doctrine ends by stating that immediate application means that a legal situation produces the legal effects provided for by the law in force at the time of its establishment [27]. The formula describes in doctrinal terms the survival of the old law, rather than immediate application, but it is the premise that the Court adopts and, based on this premise, no law attached to the situation, at the time of its establishment, has the effect that is now attributed to it, unless the incompatibility has already involved termination. Seven paragraphs later, however, the Court states the opposite.

The final paragraph of the reasoning shows the same tension. Intertemporal rules, the Court says, recognize the sovereignty of the old law over personal sanctions, the future effect consisting in an office affected as regards its integrity; however, the same paragraph describes termination, where the amending provision establishes it, as one of "two administrative sanctions applied to the holder" [28].

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Unless the same measure changes its nature according to the provision which provides for it, a matter dealt with below, the sovereignty granted to the old law precludes the attachment of termination to a finding made under it. The fact that the consequence falls on the office does not, in itself, identify the legal fact to which the temporal rule must be attached, and the termination is not connected with anything in the exercise of the office, but with the finding.

The majority's strongest answer would be that, whatever may be said about the conduct and the finding, on the day the new law came into force, the incumbent was exercising an office, an indisputable legal relationship in progress, and the new law governs only the conditions under which it may continue. The answer confuses the element on which the consequence operates with the fact to which it is connected. Among all those holding office at that date, the only element of Article X(1) that separates those whose office ceases from those whose office continues is a finding that became final before that date, together with a period calculated from the date on which that finding became final. This element was complete when the new law entered into force and would be no less so if the generating fact were placed, as the separate opinion places it, at the level of conduct, rather than at the level of the finding to which the rule itself refers. The continued holding of office does not in itself constitute an additional incompatibility or conflict of interest, and nothing the holder does or omits after that date has any influence on the occurrence of the consequence. The President of Romania underlined this point by distinguishing the relationship concerning the incompatibility or conflict of interest from the relationship concerning the exercise of the mandate, and the Government by treating the sanctioning relationship as the relevant one [29]. The majority can treat the first relationship as pending only by transferring the effect from the situation that generated it to the office on which it falls, and this is the mechanism that their argument leaves implicit.

The President of the Chamber of Deputies gave the same answer in principle, arguing that a public office or a mandate is not a legal relationship immune to legislative changes during its exercise [30]. The proposition must be qualified, since the Court's own case law has repeatedly protected ongoing mandates against subsequent changes to the status acquired at the beginning of their exercise; the conditions of exercise may certainly be tightened by law for mandates acquired in the future. Such a condition, however, requires that the holder be, from a certain date, in a determined situation, under penalty of losing the office if he does not comply; Article X(1) does not impose anything on him for the future. Nor can the finding be reformulated as a present situation, as if the rule merely established a

new condition of retention which some holders happen not to meet. A condition which can be met only by not having done, before the rule existed, what the rule now sanctions is a consequence of the past fact presented as a condition, and the Court has treated this interpretation as retroactive, as recalled below. The difference is that between *facta pendentia* and *facta praeterita*, and Article X(3) shows that the legislator knew how to adopt the former.

The remaining weaknesses are linked to this equivocation. The premise that the effects of the situation are not exhausted is the very proposition that had to be demonstrated. What remained when the new law came into force was the three-year ban established by the old law, either in progress or, for a person still in office, postponed until release or dismissal from office or, for an elective office, until the end of the term. The ban is indeed an effect that has not yet been exhausted, and the new law can govern its future occurrence by suppressing or mitigating it; but its execution does not transform the generating fact into a situation in the process of being constituted, since the sanctioning relationship was fixed, as regards its content and duration, when the finding became final [31]. If it were otherwise, each public law sanction in progress would reopen the relationship from which it originated. Furthermore, the termination of the position held is not a subsequent stage of the prohibition, but a consequence of a different content, since for elective positions the old law postponed the prohibition until the end of the mandate, and the termination was either not provided for or was conditional on a separate act of the competent authority, except in cases where the incompatibility already implied it. The Court drew this line also for sanctions, ruling that a new law may regulate consequences that have not yet been achieved and which are susceptible to continued execution, but that a sanction, once applied, cannot produce consequences other than those provided for at the time of its imposition, the subsequent activation of the effects with prohibitive content being retroactive [32].

In order to characterize the situation as ongoing, the Court invokes by analogy Article 6(6) of the Civil Code. The text declares the new law applicable to the future effects of the situations it lists only if these situations subsist after it enters into force, and subsistence was precisely what had to be proven, so that the rule of unexhausted situations is made to demonstrate that the situation is unexhausted. What must subsist, moreover, is not the factual existence of the office, but the legal situation to which the contested consequence is linked, and the vocation of permanence of the situations listed, such as those arising from status, marriage or property, cannot be borrowed for a situation whose continuation is the very point in dispute. Article 6(2), which prohibits the attachment of new effects to previous facts and which the President of Romania invoked, is not addressed [33]. The

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constitutional basis also shifts, since the Court places the integrity of the public office in the first sentence of Article 16(1), referring to the first sentence of Article 16(3) in the previous paragraph and returning to the latter in the decisive part of its reasoning [34]. The decision therefore leaves it unclear which provision fulfils the normative function, since Article 16(1) enshrines the equality of citizens before the law, while Article 16(3) concerns access to public office and dignities. In any event, the fact that Article 16(3) also covers the termination of service relationships does not transform it into an authorization to terminate them by reference to facts before the rule, since the conditions it leaves to the law are established for the future.

The Court also describes termination as the principal sanction attached to the conduct and, subsequently, as an objective operation that does not provide for any personal sanction [35]. It may be replied that the two characterizations, which are hard to reconcile, refer to different texts, but in both cases termination is conditional on a previous definitive finding, and the decision does not explain why the distinction between a sanction and an objective consequence should alter the intertemporal analysis. The Court also rejects the objection of retroactivity against the amending provision on the ground that it applies prospectively, but maintains Article X(2), which attributes the same consequence to subsequent findings of conduct that may predate the amending law. Article X(2) presents a different configuration from Article X(1), because the finding becomes definitive after the entry into force of the new law, and whether the consequence is attached to the previous conduct or to the subsequent finding is a separate question, which this paper does not resolve; the decision, however, does not pose it and treats both paragraphs similarly. Nor does it explain what intertemporal function Article X performs if termination already results from the immediate application of the amended rule. A transitional provision may establish modalities, such as the thirty-day period; but if what Article X(1) adds is the attachment of termination to already final findings, the consequence results from a rule adopted for the past. The separate opinion reaches a similar conclusion with regard to Article X(2) [36].

5. What the decision does not say

Other defects concern what the decision does not say, *i.e.*, the objections it leaves unanswered and the case-law it does not address. Both referrals invoked Articles 36 and 37 of the Constitution and Article 3 of Protocol No. 1 to the European Convention on Human Rights against Article X, with reference to the judgment of the European Court of Human Rights in the Lykourezos v. Greece case, arguing

that the termination of an elective mandate also affects the representative relationship validated by voting; the President's referral invoked Article 16(1) against a differentiation according to the date of the final court judgment; the President's referral also invoked Articles 1(4) and 61(1), arguing that the automatic termination of a mandate conferred by popular vote, without individual assessment by a court, transforms the legislative power into a judicial body; and the President's referral and the President of the Senate invoked the law on legislative drafting, which requires transitional provisions to avoid retroactivity [37]. An objection derived from legal certainty and legitimate expectations can be considered as being absorbed in the analysis of retroactivity and is set aside here. The majority's reasons do not respond to any of the others. Articles 36 and 37 and Article 3 of Protocol No. 1 appear only in the list of provisions invoked; Articles 1(4) and 61(1) are not even there; Lykourezos is not at all; Article 16(1) is cited only as an axiological premise; and from the law on legislative drafting, only one article is cited, concerning the inclusion of amending provisions; however, the operative part considers the provisions constitutional "in relation to the objections raised" [38]. The defect is one of nature rather than degree, since the reasoning examined above is not valid, whereas here the reasoning is missing. It does not in itself establish that the provision infringes the guarantees invoked. Furthermore, the electoral objection does not have uniform force, since Article 3 of Protocol No. 1 does not, as a rule, apply to elections for local authorities and would cover only parliamentary mandates, while Articles 36 and 37 of the Constitution do not distinguish between national and local elections [39]. This was one reason for the decision to distinguish between the two, not to ignore both [40]. What the finding establishes is that the decision does not explain why the temporal criterion is sufficient to justify different treatment of identical conduct, why a consequence introduced after the elections is compatible with the effects of the vote already cast, or why the objections raised under the separation of powers and the law on legislative drafting did not require any response.

The Court's case law provides a first comparison, and it is not an external one, since the decision cites it. The 1994 decision relied on for the thesis that the legislature must find means compatible with non-retroactivity also holds that the right of appeal remains established by the law in force at the time the judgment was delivered, so that no new appeal can arise from a subsequent law. The rule then examined was, in the Court's words, a transitional provision and opened an appeal against already definitive judgments [41]. The Court had before it an academic opinion according to which the provision only applied the new law immediately to pending situations, which is essentially the reasoning adopted in 2026, and did not

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follow it [42]. It distinguished between judgments against which there was no longer any appeal, to which the new appeal attributed a consequence that the previous law did not provide, and judgments still open to extraordinary appeal, for which the new appeal replaced an existing one, and held only the first application unconstitutional. This line corresponds to the one separating incompatibility from conflicts of interest in this case and is the line that the 2026 decision refuses to draw. Another comparison concerns Law no. 176/2010 itself, although the decision does not invoke it. In 2018, the Court upheld a law that put an end to certain prohibitions imposed by the final evaluation reports, holding that the measure applied for the future and recognized the effects produced until then [43]. This is the first term of the distinction mentioned above, since in 2018 the new law suppressed the future production of an effect provided for by the old law, while in 2026, except in cases where the incompatibility already implied termination, it attributed an effect that the old law did not provide for. This is the precedent that the majority could have most easily invoked, since it also concerned bars established under the old law; the answer lies in the direction of intervention, and the decision nowhere marks the difference.

A precedent seems to support the majority view. In 1996, the Court held that a transitional provision applying a new law on political parties to existing parties was not retroactive, and the new law applied to ongoing legal situations [44]. The precedent is a genuine counterargument and confirms the criterion rather than eliminating it. Existing parties produce legal effects at any time, and the provision required of them conduct for the future within six months, that is the structure of Article X(3). The consequence depends on their conduct after the new law, not on an act done before it. Here, the finding occurred only once, and what survives is a sanction already fixed, not an ongoing relationship.

The separate opinion provides the jurisprudential verification. The proposition that a new ground for termination of a mandate by reference to previous conduct is retroactive goes back to a 2007 decision concerning local elected officials, taken up in 2017 for the boards of directors of public broadcasters, and the proposition that the duration of mandates can only be resized for the future goes back to a 2005 decision [45]. Together, the decisions reveal a substantial line of case law, tested in various areas, from the management functions of magistrates to the mandates of local elected officials, university governing bodies, the mediation council and public broadcasters. The line is broader than the criterion I try to apply in the current paper. The Court treated as retroactive not only a new ground for termination based on previous conduct, but also changes to the duration of ongoing

mandates and the status acquired at the beginning of them, while allowing the legislator to modify the duration of a mandate that does not have constitutional rank. On this broader line, the conclusion reached here about Article X(1) follows *a fortiori*. Thus, the line qualifies, for current mandates, the general formula mentioned in the first part, according to which a law that modifies for the future a legal situation that arose previously is not retroactive. The same picture emerges from the precedents on which each party relies. The majority and the separate opinion rely on a common set of decisions in establishing the intertemporal doctrine; the separate opinion then turns to the decisions in which the Court has applied the principle, several of them concerning current mandates, while the majority does not invoke any of them, its subsequent citations serving either to construct the constitutional premises of its reasoning or to assess the quality of the amending law [46]. At the decisive stage, the decision does not identify any precedent to support the interpretation it adopts. A constitutional court is entitled to develop its case-law, provided that it specifies when it does so and why; here, the previous line is neither followed nor expressly abandoned, so the two remain in unresolved tension.

6. Conclusions

Whatever one thinks of its result, the difficulty of the decision lies in a reasoning that uses a single term in two senses. The premise about the unexhausted effects presupposes what had to be proven, the reference to the Civil Code fills the gap it leaves, and the constitutional basis moves between two provisions without either of them supporting the interpretation. To this is added, independently, the silence regarding the objections based on electoral rights, on equality, on the separation of powers and on the rules of legislative drafting.

In relation to the criterion established in the first part of the paper, Article X(1) does not suppress the future effects of a situation constituted under the old law. Except in cases where the incompatibility has already entailed termination, it attributes to an exhausted situation a consequence that the old law did not foresee. The construction that saves it limits the principle not by legislation but by interpretation, which makes it all the more difficult to correct, although the decision itself recalls that the only exception that the Constitution allows is the more lenient criminal or contravention law [47]. The result is that the consequence is allowed to operate in a temporal configuration that the Court's previous case law had treated as retroactive, and the burden of explaining the distinction falls on the decision.

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It follows that the reasoning does not provide any criterion distinguishing the operation that it approves from that which the Court's previous case law treated as retroactive, as the opposite case also shows. Consistently applied, the reasons of the decision also benefit those favoured by the amending law, since conduct removed from the scope of conflicts of interest by another article of the law can no longer be subjected to the unexecuted remainder of the ban [48]. According to the criterion set out in the first part, the benefit does not raise any difficulty, being a suppression of the future production of an effect that the old law provided for, while the damage examined here is an attachment. The reasons that validate both operations by the same argument erase the very distinction on which Article 15(2) depends in order to function as a decision-making rule.

Following the publication of the decision, the two provisions examined in the paper passed unchanged, and the amending law entered into force as Law no. 180/2026 on 31 August 2026 [49].

A court called upon to apply Article X to a specific case must nevertheless identify the basis for a solution that it is obliged to comply with. The decision identifies constitutional considerations in favour of the integrity of the public office, but it does not formulate any sufficiently determinate intertemporal criterion showing why the termination provided for in Article X(1) represents the future application of a pre-existing legal effect, rather than the attachment of a new consequence to a completed fact, and the courts applying Article X will have to supply that criterion themselves.

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10. RCC Decision 9/1994.
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12. RCC Decision 35/1996.
13. RCC Decision 330/2001.
14. RCC Decision 409/2003.
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17. RCC Decision 375/2005.
18. RCC Decision 61/2007.
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22. RCC Decision 56/2014.
23. RCC Decision 418/2014.
24. RCC Decision 436/2014.
25. RCC Decision 713/2014.
26. RCC Decision 755/2014.
27. RCC Decision 377/2017.
28. RCC Decision 534/2017.
29. RCC Decision 52/2018.
30. RCC Decision 647/2018.
31. RCC Decision 650/2018.
32. RCC Decision 660/2019.
33. RCC Decision 641/2020.
34. RCC Decision 775/2020.
35. RCC Decision 340/2024.
36. RCC Decision 560/2024.
37. RCC Decision 319/2025.
38. RCC Decision 883/2026.
39. HCCJ Decision no. 23 of 29 June 2015, Panel for the Resolution of Points of Law.
40. HCCJ Decision no. 74 of 16 November 2020, Panel for the Resolution of Points of Law.
41. HCCJ Decision no. 1 of 18 January 2021, Panel for Appeals in the Interest of the Law.
42. Curtea de Apel Suceava, Decision no. 275 of 16 June 2020.
43. CJEU Judgment of 26 April 2005, C-376/02, Goed Wonen.
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45. ECHR Cherepkov v. Russia (dec.), no. 51501/99, 25 January 2000.
46. ECHR Lykourezos v. Greece, judgment of 15 June 2006.
47. ECHR Mółka v. Poland (dec.), no. 56550/00, 2006.

Notes:

[1] See RCC Decision 883/2026, together with the separate opinion. Points 3 and 4 were adopted "by majority vote" (para. 125) by a panel of eight members; the separate opinion is signed by judges Laura-Iuliana Scântei, Dacian-Cosmin Dragoș and by the President of the Court, Elena-Simina Tănăsescu. The amending law is cited in the form transmitted for promulgation on 7 August 2026 (PL-x 530/2026; L464/2026), the text of which the Court has analyzed; the provisions discussed in the paper have been transposed unchanged into Law no. 180/2026. The translations from Romanian are mine.

[2] Paras. 4, 7 and 8 (senators) and 25, as well as 27-32 (the President of Romania), the two relationships being distinguished at para. 32; regarding the Government, paras. 74-76; regarding the President of the Senate, paras. 68 and 69; the separate opinion, section (2.2), point (ii).

[3] Paras. 121-123.

[4] RCC Decision 9/1994, which became final upon dismissal of the appeal by RCC Decision 94/1994; the passage is quoted in the separate opinion, section (2.2), point (i.1), while the majority cites the decision, at para. 114, for other propositions. See also Ioan Muraru, commentary on Article 15, in *Constituția României. Comentariu pe articole* [The Constitution of Romania. Article-by-Article Commentary], eds. Ioan Muraru, Elena-Simina Tănăsescu, 2nd ed., C.H. Beck, Bucharest, 2019, pp. 133 et. seq.
[5] Mihail Eliescu, "Aplicarea legii civile în timp și în spațiu. Conflictele de legi" [The Application of Civil Law in Time and Space. Conflicts of Laws], in Tratat de drept civil. Partea generală [Treatise on Civil Law. General Part], vol. I, Editura Academiei, Bucharest, 1967, p. 80, *apud* Marieta Safta, *Drept constituțional și instituții politice* [Constitutional Law and Political Institutions], *vol. I. Teoria generală a dreptului constituțional. Drepturi și libertăți* [vol. I. General Theory of Constitutional Law. Rights and Freedoms], Hamangiu, Bucharest, 2023, p. 247, where the proposition that it is absurd to require a subject of law to answer for conduct predating the rule governing it is also set out.
[6] See RCC Decision 883/2026, paras. 115 and 116, taking over RCC Decision 755/2014, para. 19, and RCC Decision 56/2014.
[7] RCC Decision 650/2018; Ioan Muraru, *op. cit. supra,* note 4, p. 133, marg. no. 11.
[8] RCC Decision 9/1994, referenced in RCC Decision 883/2026, para. 114.
[9] RCC Decision 755/2014, para. 19, referenced in RCC Decision 883/2026, para. 115, and restated in RCC Decisions 340/2024 and 560/2024 (para. 24), both cited in the separate opinion, section (2.2), point (i.2); see also Ioan Muraru, *op. cit*. *supra*, note 4, pp. 134-135, marg. no. 19.
[10] Article 6(2) and (6) of the Civil Code; see also Article 3 of Law no. 71/2011 and Decision no. 23 of 29 June 2015 of the High Court of Cassation and Justice, Panel for the Resolution of Points of Law, paras. 68 to 70, also invoked by the President of Romania (para. 26), according to which the new law may not attribute to past acts and facts effects they could not produce under the law in force when they occurred, whether those effects would arise before or after its entry into force.
[11] See RCC Decisions 330/2001, 458/2003 and 291/2004, also cited in the separate opinion, section (2.2), point (i.2); the majority does not invoke the formula, and the Government recalls a variant of it (para. 74).
[12] Article 25(2) of Law no. 176/2010 on integrity in public office, in its former wording, reproduced in part in RCC Decision 883/2026, para. 107.
[13] RCC Decision 418/2014, holding the second sentence of the former Article 25(2) constitutional in so far as the words "the same office" refer to all elective offices provided by Article 1 of Law no. 176/2010. The Government's assertion is at para. 73.
[14] Article 25(3) of Law no. 176/2010, in its former wording.
[15] Article 160(1)(b) of the Administrative Code lists, among the grounds on which a mayor's mandate terminates by operation of law, "the establishment and sanctioning, under the law on integrity in the exercise of public offices and dignities, of a state of incompatibility"; Article 193(2) applies Articles 160 to 162 correspondingly to the president of the county council, and Article 204(2)(b) provides the same ground for local

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and county councillors; for conflicts of interest, Article 228(5) treats the breach as a disciplinary offence, sanctioned by a reduction of the indemnity by ten per cent for at most six months. For members of Parliament, Article 7(1)(e) of Law no. 96/2006 on the Statute of Deputies and Senators, republished, provides that the mandate ceases in case of incompatibility, as set out in RCC Decision 775/2020. The separate opinion observes that, as regards incompatibilities, termination and disciplinary liability applied alternatively rather than cumulatively, with specific legislation confining liability, for instance in the case of conflicts of interest, to the disciplinary sphere (section (2.1)).

[16] High Court of Cassation and Justice, Panel for the Resolution of Points of Law, Decision no. 74 of 16 November 2020. The referral concerned the first sentence of Article 26(3) of Law no. 176/2010 and arose in a case in which a mayor's mandate had been found terminated after an evaluation report establishing a state of incompatibility. The operative part concerns actions against the prefect's order finding a mandate terminated "following the establishment of a state of incompatibility or the existence of a conflict of interests"; the proposition that either state leads to termination is stated expressly only in the reasons, at para. 74. Under Article 521(3) of the Code of Civil Procedure, what binds the courts is "the resolution given to the points of law". For the provisions of the Administrative Code, see Articles 160(1)(b), 193(2), 204(2)(b) and 228(5). The later decision is Decision no. 1 of 18 January 2021 of the High Court of Cassation and Justice, Panel for Appeals in the Interest of the Law, which interprets Article 160(1)(b) of the Administrative Code and concerns incompatibility alone.

[17] For the divided practice, see, on the one hand, RCC Decision 647/2018, paras. 36 and 37, describing the administrative conflict of interests of local and county councillors as one "which is not, even at present, a ground for termination by operation of law of the mandate", and, on the other, Curtea de Apel Suceava, Decision no. 275 of 16 June 2020, holding that Article 25 of Law no. 176/2010 "certainly provides for the possibility of termination of the mandate in the case of a conflict of interests" and that RCC Decision 647/2018 concerns councillors, not mayors. For the presupposition of Article X(1), see the point of view of the President of the Chamber of Deputies, reproduced at para. 47 of RCC Decision 883/2026, where the provision is described as regulating "the conditions in which the exercise of a public office may continue" by a person in respect of whom there is a final finding of incompatibility or conflict of interests.

[18] Court of Justice of the European Union, judgment of 4 May 2023, C-40/21, T.A.C. v Agenția Națională de Integritate, delivered on a reference from the Curtea de Apel Timișoara, whose summary of the subject matter refers to a "penalty additional to the termination of the term of office"; the judgment is cited neither by the majority nor by the separate opinion.

[19] Article 25(2^1), introduced by Article II point 18 of the amending law, under which the integrity inspector "orders by report the individualisation of the bar of up to 3 years and its proportionate application", reducing it by 10 percent where no final sanction for failure to file declarations has been imposed in the preceding three years, by 20 percent where no

evaluation report has become final in that period and by 20 percent where the incompatibility lasted less than six months.

[20] See RCC Decision 883/2026, para. 84. The new Article 25(2) provides that the person definitively found in breach "is prohibited from holding a public office, dignity or elective office […] for a period of up to 3 years, which operates from the date on which the evaluation report or the judicial decision became final, from which moment the person forfeits the right to hold the office […], which terminates by operation of law on the same date"; under Article X(1), the office "terminates by operation of law […] thirty days after the entry into force of the present law".

[21] Article 29(4) of Law no. 176/2010 and Article 91(4) of Law no. 161/2003, as amended by Article II point 21 and Article III point 15 of the amending law.

[22] Alexandru Athanasiu, "Mult zgomot pentru nimic (I)" [Much Ado About Nothing (I)], Juridice.ro, 14 September 2026, and "Mult zgomot pentru nimic (II)" [Much Ado About Nothing (II)], Juridice.ro, 21 September 2026; contra, Marian Nicolae, "'Mult zgomot pentru nimic'? Niciodată nu este destul să discutam despre legi (LEGES) și drept (IVS)" ['Much Ado About Nothing'? It Is Never Enough to Discuss Laws (LEGES) and Law (IVS)], Juridice. ro, 21 September 2026.

[23] Para. 48; for his position as a whole, paras. 46 to 49. For the Government, paras. 71 and 74 to 76; for the President of the Senate, paras. 68 to 70.

[24] Article X(3) was not challenged; it formed part of the text transmitted for promulgation and passed unchanged into Law no. 180/2026.

[25] Paras. 115 and 117 to 124, the filter being introduced at para. 121.

[26] Para. 122, according to which "the protection of the integrity and authority of public office as such, as a legal abstraction, is a consequential and distinct effect of the unlawful conduct of the civil servant or holder of public dignity, an effect which must receive its own regulation in normative terms once it has been definitively established that the person is in a conflict of interests or in a state of incompatibility".

[27] Para. 115, taking over RCC Decision 755/2014, para. 19, according to which "in other words, immediate application of the new law means that a legal situation produces those legal effects which are provided by the law in force at the time it was constituted (*tempus regit actum*)".

[28] Para. 123, where the intertemporal rules are said to "recognise the sovereignty of the old law as regards the personal sanctions applied or applicable to the holder", the future effect consisting "in the existence of an office, dignity or mandate impaired as regards integrity", and where the amending provision is said to institute "two administrative sanctions applied to the holder"; see also paras. 108 to 111.

[29] Para. 32 (the President of Romania) and para. 76 (the Government).

[30] Para. 49.

[31] Paras. 26, 31 and 40 (the President of Romania) and para. 76 (the Government, for which the law in force when the finding became final fixed the nature and extent of the sanction completely and the moment from which the bar ran). The separate opinion holds that Article X proceeds "from the erroneous premise that an administrative sanction in the

course of execution […] could determine the legal characterization of the very state […] as facta pendentia" (section (2.2), point (ii)). The contrary reading is that of the President of the Chamber of Deputies, for whom the bar is "still in the course of execution" (para. 47).

[32] RCC Decision 436/2014, paras. 28 to 30, and RCC Decision 660/2019, paras. 54 et seq., reproduced in the separate opinion, section (2.2), point (i.2), and not cited by the majority. The authors of the referrals (paras. 5 and 23) and the separate opinion had stressed the difference in content between the bar and the loss of office.

[33] Para. 121; for Article 6(2), paras. 26 and 29.

[34] Paras. 118 and 119. A clerical error cannot be excluded, Article 16(1) not being divided into sentences, but it would leave the imprecision in a paragraph that lays down a premise of the reasoning.

[35] Para. 108, where the conduct attracts "a principal and a complementary sanction", and para. 111, where the provisions institute "a single form of liability with legally well-defined sanctions"; para. 122, where the transitional rule "does not regulate a personal sanction".

[36] Separate opinion, section (2.2), point (ii).

[37] Paras. 7 and 8 (the senators) and 38 to 42 (the President of Romania), where it is argued that automatic termination "retroactively annuls the sovereign will of the electorate expressed in accordance with the rules valid on polling day" and that persons who engaged in identical conduct are treated differently "solely by reason of a factor wholly external to their fault or conduct, namely the date on which the court delivered the final judgment"; for the President of the Senate, para. 70, invoking Articles 26 and 54 of Law no. 24/2000; for the separation of powers, para. 42; for legal certainty, paras. 8, 36 and 42, relying on the judgment of the Court of Justice of the European Union of 26 April 2005 in Case C-376/02, Goed Wonen. European Court of Human Rights, Lykourezos v. Greece, judgment of 15 June 2006.

[38] Paras. 85, 112 and 119. Point 4 of the operative part finds the provisions "constitutional in relation to the objections raised", while para. 124 holds that they "do not infringe Article 15(2) read together with Article 1(3) and the first sentence of Article 16(3)". The separate opinion concludes that Articles 36 and 37 are infringed (section (3)).

[39] European Court of Human Rights, Cherepkov v. Russia (dec.), no. 51501/99, 25 January 2000; Mółka v. Poland (dec.), no. 56550/00, 11 April 2006.

[40] For the electoral dimension examined through the principle of democracy and the German case law on the stability of representative bodies, see Codrin Timu, "Decizia Curții Constituționale nr. 883/2026 în lumina jurisprudenței germane: România între statul de drept și statul democratic?" [Constitutional Court Decision No. 883/2026 in the Light of German Case Law: Romania between the Rule of Law and the Democratic State?], Juridice. ro, 7 September 2026.

[41] RCC Decision 9/1994, where a judicial decision is held to be "subject to the conditions of substance and form laid down by the law under which it was delivered" and the right relating to appeals to remain "fixed by the law in force at the moment of delivery"; the rule examined opened an appeal against final decisions "irrespective of the date on which they

were delivered", and the objection was upheld in part. The passage was reproduced in RCC Decision 377/2017, para. 82. Its contractual justification has been criticised (Marian Nicolae, "Curtea Constituțională și principiul supremației dreptului (Rule of Law). De la garantarea supremației Constituției la denaturarea și rescrierea acesteia: *Tempus regit processum*" [The Constitutional Court and the Principle of the Supremacy of Law (*Rule of Law*). From Guaranteeing the Supremacy of the Constitution to Distorting and Rewriting It: *Tempus regit processum*], Juridice. ro, 11 December 2018, footnote 23).

[42] RCC Decision 9/1994, which records the opinion of Professor Gheorghe Beleiu, requested by the Court, and the Government's view that the provision conferred new rights; the reasoning distinguishes judgments delivered before and after 26 July 1992 and describes the removal of the extraordinary appeal as an aspect of retroactivity that the new recourse annihilates for the second category.

[43] RCC Decision 52/2018, para. 42, on a law supplementing Law no. 176/2010 which terminated the bar imposed on persons who had been members of Parliament between 2007 and 2013; in the present proceedings it is mentioned only at para. 26.

[44] RCC Decision 35/1996, on what became Article 46(2) of Law no. 27/1996, under which "within 6 months of the entry into force of the present law, existing political parties shall bring themselves into conformity with its provisions"; see Ioan Muraru, op. cit. supra, note 4, p. 134, marg. no. 15.

[45] Separate opinion, section (2.2), point (i.3). The first proposition belongs to RCC Decision 61/2007, taken up by RCC Decision 534/2017, para. 70, which concerns the governing boards of the public broadcasters; RCC Decision 51/2012, placed alongside them, concerns the extension of local mandates in progress. The second belongs to RCC Decision 375/2005, cited by the separate opinion as no. 375/2004. See also RCC Decision 681/2012, on the governing bodies of universities, and RCC Decision 713/2014, on the councils of mediators, both concerning mandates in progress, and, for the modification of the regime attached to an exhausted situation, RCC Decision 319/2025, paras. 42 to 45. For the qualification, RCC Decision 641/2020, para. 72, holding that no constitutional provision prevents the legislator from altering the duration of a mandate that is not of constitutional rank, a hypothesis that concerns duration rather than the attachment of a new consequence to an earlier fact.

[46] The comparison concerns paras. 105 to 124 of RCC Decision 883/2026 and section 2 of the separate opinion. The decisions cited by both, among them RCC Decisions 9/1994, 409/2003, 755/2014 and 830/2008, appear in the majority's reasons at paras. 114 to 116; those cited only by the separate opinion appear in its subsections on the application of the principle and on mandates in the course of exercise (section (2.2), points (i.2) and (i.3)).

[47] Paras. 115 and 116. The construction examined here is a judicially constructed exception, which is no less an exception for that.

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[48] Ovidiu Podaru, "Limbajul abstract și efectul său particular de bumerang. Câteva gânduri pe marginea recentei decizii a CCR nr. 883 din 17 august 2026" [Abstract Language and Its Particular Boomerang Effect. Some Thoughts on the Recent RCC Decision No. 883 of 17 August 2026], Juridice. ro, 28 August 2026, concerning Article V of the amending law; the characterization of that benefit as a suppression is mine.

[49] Law no. 180/2026 amending and supplementing certain normative acts in the field of integrity, in force from 31 August 2026.