

THE NEGATIVE EFFECTS OF THE USE OF AI ON ELECTORAL RIGHTS IN ROMANIA

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Abstract: The fundamental rights of humans and citizens are a constitutional reality, with deep implications in the existence of every person and in his relations with the state. It also represents an existential reality of every person, of society as an ensemble and a dimension of democracy.

A category of fundamental rights and freedoms is represented by the exclusively political rights. The exercise of these rights, as well as other fundamental rights, in an era of new technologies and digitalization, can be facilitated by the use of artificial intelligence or can be affected by its negative effects. The last elections held in Romania, elections for the President of Romania, demonstrated this.

Key-words: fundamental rights, electoral rights, artificial intelligence, election for the President of Romania.

Introduction

The current Romanian electoral system has suffered numerous changes in its almost 35 years of existence.

The electoral norms establish electoral rights, the requirements which must be met to exercise them, the guarantees which ensure their exercise and the responsibilities of state institutions regarding elections and the rules for conducting them and determining, centralizing and communicating the results².

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² I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, C.H. Beck Publ.-house, Bucharest, 2012, p. 82.

The Romanian Constitution refers to two fundamental electoral rights (the right to vote and the right to be elected), which represent human rights, essence of constitutionality and proclaimed by the first documents with constitutional value. After Romania's integration into the EU, Romanian citizens also acquired the right to vote and be elected to the European Parliament, rights introduced by revising the constitution in 2003. This is how the people, as owners of sovereignty, participate in the exercise of power in the state.

According to Romanian legal doctrine³, the right to vote and the right to be elected are believed to form the category of exclusive political rights, meaning those rights which by their content can be exercised by citizens solely for the purpose of participating in governing.

Although the right to vote is a fundamental right, Romanians exercise it in smaller and smaller numbers. During the presidential elections held after the 1989 Revolution, it is noted a continuous decrease of the number of voters.

Thus, the presence was of:

- 86,19% in 1990,
- in 1992 - 76,29% (1st tour), 73,23% (2nd tour),
- in 1996 - 76,1 % (1st tour), 75,90% (2nd tour),
- in 2000- 65,31% (1st tour), 57,50% (2nd tour),
- in 2004- 58,51% (1st tour), 55,21% (2nd tour),
- in 2009- 54,37% (1st tour), 58,02% (2nd tour),
- in 2014 - 53,18% (1st tour), 64,11% (2nd tour)
- in 2019 – 47,66% (1st tour), 49,87 % (2nd tour)
- In 2024- 52,55 % (1st tour)

To exercise the right to vote, the Romanian Constitution establishes in article 36 certain requirements which must be met by citizens who wish to exercise this right. According to the provisions of article 36 , the right to vote is limited to citizens who have turned eighteen up to or on the election day and have a Romanian citizenship, irrespective of the place where they reside, with the exception of the mentally deficient or alienated persons, laid under interdiction, as well as the persons disenfranchised by a final decision of the court.

The right to be elected is regulated by article 37 in the Romanian Constitution and refers to the ability of an individual to be elected to public office, if he fulfills the legal criteria.

³ I. Muraru, E.S. Tănăsescu, *op.cit.*, p. 83.

The eligibility requirements for President of Romania are established by the Romanian Constitution and are completed by the formal requirements set by Law no. 370/2004, which targets specific evidence which the candidate must bring when he submits his candidature.

The substantive requirements set by article 37 of the Constitution are the following:

1. The candidate must have the right to vote, i.e. to meet all the requirements of Constitutional provisions in this field.

2. The individual which run for office must have Romanian citizenship.

3. The candidate must reside in the country, a necessary fact for smooth running and good knowledge of public affairs involved by his official duties.

4. The candidate must have turned 35 years old by election day.

5. The individual who runs for office should not have been prohibited from joining political parties, which means he should not belong to the following categories: judges of the Constitutional Court, the Ombusman, magistrates, active members of the Armed Forces, policemen and other categories of civil servants, established by an organic law.

6. Should not have already performed the duty of Romanian President for two terms, irrespective of whether those terms were consecutive or not. According to the Constitution, the President has a 5-year mandate which start at the moment he takes the presidential oath.

The election of the Romanian President is done by the uninominal majority voting systems with two rounds. The President of Romania shall be elected by universal, equal, direct, secret and free suffrage. The candidate who, in the first ballot, obtained a majority of votes of the electors entered on the electoral lists shall be declared elected. In case no candidate has obtained such a majority, a second ballot shall be held between the first two candidates highest in the order of the number of votes cast for them in the first ballot. The candidate having the greatest number of votes shall be declared elected.

Violation of electoral rights or how the use of new technologies and AI has affected the electoral process

The year 2024 was marked by the organization of all types of elections in Romania, culminating in elections for the President of Romania. Thus, on November 24, the first round of the presidential elections took place.

But, on 6th of December, the Constitutional Court of Romania made an unprecedented decision (Decision no. 32 from December 6th 2024⁴) in the country's history to cancel the entire electoral process to elect the President of Romania. Thus, the second round of the presidential election, which was to take place on December 8, was not held.

Normally, the Constitutional Court had to be notified by electoral competitors and could order the annulment of the elections if electoral fraud was found through non-compliance with the ballot regime, multiple voting, electoral tourism, and this fraud led to a change in the classification of candidates for the second round of the elections.

However, in the analyzed situation, the Court self-referred, indicating that "is pending the examination of the aspects relating to the fairness and legality of the electoral process regarding the elections for the President of Romania in 2024, ***brought to public knowledge*** on December 4, 2024 by declassifying the content of the Information Notes...".

The Court invoked, in its decision to cancel the elections, the Court's role as guarantor of the supremacy of the Constitution (art. 142, paragraph (1) of the Constitution) and its attribute of overseeing compliance with the procedure for electing the President of Romania and confirming the results of the vote (art. 146 letter f) of the Constitution).

So, the legal basis for the self-referral was the role of the CCR as guarantor of the supremacy of the Constitution.

As a result of declassification of the documents presented at the meeting of the Supreme Council for National Defense of the Country of November 28, 2024 belonging to the Ministry of Internal Affairs - General Directorate of Internal Protection, the Foreign Intelligence Service, the Romanian Intelligence Service and the Special Telecommunications Service, the Constitutional Court decided to take action regarding the fraud of the entire electoral process.

From the examination of the declassified documents, the Court found that the electoral process regarding the election of the President of Romania was vitiated throughout its course and at all stages, by multiple irregularities and violations of electoral legislation that distorted the free and fair nature of the vote expressed by citizens and the equality of opportunity of electoral competitors, affected the transparent and fair nature of the electoral campaign and disregarded the legal regulations regarding its financing. All these aspects had a converging effect of disregarding the essential principles of democratic elections.

⁴ https://www.ccr.ro/wp-content/uploads/2024/12/Hotarare_32_2024.pdf

According to the declassified "Information Notes", the main aspects imputed to the electoral process are those regarding the manipulation of voters' votes and the distortion of equal opportunities for electoral competitors, through the non-transparent use and violation of electoral legislation of digital technologies and artificial intelligence in the conduct of the electoral campaign, as well as through the financing of the electoral campaign from undeclared sources, including online.

The Court observed that, in the coordinates in which the electoral process regarding the election of the President of Romania in 2024 was carried out, the freely expressed nature of the citizens' vote was affected.

As in the case of any fundamental right, the right to vote has certain characteristics. These are borne out of both constitutional provisions as well as of those of the special laws in the field. One of these characteristics is the free and fair nature of the vote expressed by citizens, feature that was found to have been violated. The freely expressed vote refers to the ability of the citizen to take part or not in elections, and in the first situation, to ensure his consent is not vitiated, so that he is forced or determined by illegal means to vote differently from how he wanted to.⁵

The freely expressed nature of the vote was violated by the fact that voters were misinformed through an electoral campaign in which one of the candidates benefited from aggressive promotion, carried out in circumvention of national legislation in the electoral field and through the abusive exploitation of the algorithms of *social media platforms*.

It was also found that the candidate also benefited from preferential treatment on social media platforms, which had the effect of distorting the voters' manifestation of will.

The manipulation of the vote was even more obvious as the electoral materials promoting a candidate did not bear the specific signs of electoral advertising.

In presidential elections, the electoral campaign begins 30 days before the election date (October 25, 0 a.m. for the election organized this year) and ends on the Saturday morning before the election date, at 7:00 a.m. Competitors can express themselves during the electoral campaign through rallies, street advertising (posters only), the use of television, radio, press and other mass media, as well as through the online environment.

The electoral campaign is carried out according to the rules established in the electoral legislation. Thus, among other things, 1. a maximum value of contributions for the electoral campaign carried out by an electoral competitor is imposed, 2. each electoral

⁵ M. Andreescu, A. Puran, *Drept constituțional. Teoria generală și instituții constituționale. Jurisprudență constituțională*, 4th Edition, "C.H. Beck" Publishing House, Bucharest, 2020, p.325.

competitor is required to register with the Permanent Electoral Authority a coordinating financial representative who receives a unique identification code of the political party, political alliance, organization of citizens belonging to national minorities or independent candidate which will be printed on all electoral propaganda materials that will be produced and used in the electoral campaign belonging to the electoral competitor he represents, 3. online electoral propaganda materials will contain the unique identification code assigned by the Permanent Electoral Authority.

In the present case, the Court notes that a candidate violated the electoral legislation relating to the financing of the campaign for the presidential elections. Thus, the declarations submitted to the Permanent Electoral Authority by one of the candidates regarding his campaign budget, which he reported as 0 lei, are in contradiction with the data presented in the “Information Notes” of the Ministry of Internal Affairs - General Directorate of Internal Protection and the Romanian Intelligence Service. However, it is well known that an electoral campaign involves significant costs and expenses, and the situation analyzed reveals an obvious incongruity between the scale of the campaign conducted and the non-existence assumed by the candidate regarding the expenses incurred. The principle of transparency of the financing of the electoral campaign was thus violated, raising suspicions regarding the fairness of the conduct of the elections.

Starting from the regulations of the Code of Good Practice in Electoral Matters⁶ and the Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence⁷ of the Venice Commission (European Commission for Democracy through Law of the Council of Europe), the Court showed that it is necessary to identify online electoral advertising as such, indicating the sponsor and the dissemination technique used, as well as the obligation of social media platforms to permanently disclose data on political advertising and electoral sponsors.

In the same time, we must also take into account the provisions of Regulation (EU) 2024/900 of the European Parliament and of the Council of 13 March 2024 on the transparency and targeting of political advertising⁸, showing that “an increase in the

⁶ The 2002 Code of Good Practice in Electoral Matters is the Council of Europe's reference document in the field of elections; <https://www.venice.coe.int>

⁷ Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence, approved by the Council for Democratic Elections at its 81st meeting (Venice, 5 December 2024) and adopted by the Venice Commission at its 141st Plenary Session (Venice, 6-7 December 2024); <https://www.venice.coe.int>

⁸ <https://eur-lex.europa.eu>

sophistication of disinformation, diversification of actors, the fast evolution of new technologies and intensified spread of information manipulation and interference in the democratic electoral and regulatory processes are important challenges”.

Another aspect retained by the Constitutional Court concerns the fact that the same candidate benefited from preferential treatment on social media platforms, which had the effect of distorting the expression of the voters' will.

The Court showed that equal opportunities must also be assessed through the prism of the electoral behavior of the competitors, regarding the use of social networks, new technologies, artificial intelligence systems and campaign financing.

In the present case, taking into account the provisions of art. 37 of the Constitution, the Court notes that equality of opportunity of electoral competitors was affected, which reflects an alteration of the very right to be elected. The irregularities in the electoral campaign affected the electoral competitors, since they created a clear inequality between the candidate who manipulated digital technologies and the other candidates participating in the electoral process. Thus, the significant exposure of a candidate led to a directly proportional reduction in the online media exposure of the other candidates in the electoral process.

As a conclusion, the right to vote and the right to be elected are essential for establishing and maintaining the foundations of a genuine and effective constitutional democracy, governed by the rule of law, and are guaranteed by the Constitution, and the role of the Constitutional Court in the constitutional architecture is that of guarantor of the supremacy of the Constitution.

Following the decision to cancel the presidential elections, the electoral process for the election of the President of Romania will be resumed in its entirety, the Government setting the date for the first round for the election of the President of Romania as May 4, as well as a new calendar program for carrying out the necessary actions.

References

M. Andreescu, A. Puran, *Drept constitutional. Teoria generală și instituții constituționale. Jurisprudență constituțională*, 4th Edition, “C.H. Beck” Publishing House, Bucharest, 2020

I. Muraru, E.S. Tănăsescu, *Drept constituțional și instituții politice*, C.H. Beck Publishing House, Bucharest, 2012

The 2002 Code of Good Practice in Electoral Matters is the Council of Europe's reference document in the field of elections

Interpretative declaration of the Code of good practice in electoral matters as concerns digital technologies and artificial intelligence, approved by the Council for Democratic Elections at its 81st meeting (Venice, 5 December 2024) and adopted by the Venice Commission at its 141st Plenary Session (Venice, 6-7 December 2024)

<https://www.venice.coe.int>

<https://eur-lex.europa.eu>

<https://www.ccr.ro>