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Note on the Decision of the European Court of Human Rights of 06.03.2025, Case of *Călin GEORGESCU v. Romania*, Application No. 37327/24[2]

Outline

Introduction

Following the annulment by the Constitutional Court of Romania of the presidential elections (the first round of voting) held at the end of 2024, the candidate who came first after the first round of voting brought an individual application against Romania before the European Court of Human Rights[3], alleging the violation of several of his rights enshrined in the European Convention on Human Rights[4] (including its additional protocols).

The case and the solutions handed down by the Court require both a substantive (I) and a procedural (II) analysis.

I. The Facts

The applicant alleged primarily a violation of the right to free elections (A), but also violations of other Convention rights (B).

A. The right to free elections

On the basis of Article 3 of Additional Protocol No. 1 to the Convention, which enshrines the right to free elections, the applicant argued that this right had been violated by the Constitutional Court's annulment of the presidential elections.

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[2] This jurisprudence note is written and published solely in the author's capacity as a university professor, in accordance with academic independence, without expressing the position or engaging the responsibility of any State, government or public authority, and without any connection to the author's position as a lawyer.
[3] Hereinafter, *the Court* or *the ECtHR.*
[4] Hereinafter, *the Convention.*

In its decision, the Court merely applied its established and very clear case law, according to which Article 3 of Protocol No. 1 is applicable only to the election of the "legislative body." *Ratione materiae,* this text is not of general applicability, but refers only to the appointment of the legislative body[5], which in principle means parliamentary elections (at the state level, at the sub-state level[6] , and at the supra-state level[7]).

According to the undisputed European case law to which the decision refers[8], the applicability of this article to presidential elections cannot be completely ruled out, but only in the very exceptional case where the head of state can be considered to be part of the "legislative body," if he has powers of legislative initiative and adoption or if he has real powers to control the adoption of legislation or to censure the main legislative authorities.

The Court does not forget to point out that, in practice, it has never concluded that a head of state fulfills these conditions, and therefore that Article 3 of Protocol No. 1 is applicable to presidential elections.

After recalling its consistent case law, the Court analyzed the constitutional role of the President of Romania in his relations with Parliament and the Government and in relation to the legislative process, concluding—very obviously and very trivially, not only for a constitutional law expert or a lawyer in general, but also for the average person with no legal training – that the President of Romania cannot in any circumstances be regarded as a component of the "legislative body" of Romania.

That being so, this complaint was considered incompatible *ratione materiae* with the provisions of the Convention and rejected as inadmissible.

It is not without importance to recall that, in its case law, the Court has ruled that Article 3 of Protocol No. 1 is not applicable to the election of the President of Russia, as the latter is not part of the "legislative body" of the Russian Federation[9]. A *minori,* the President of Romania can hardly be included in the "legislative body" of Romania.

Legally, such a gross error of judgment in referring the matter to the Court with this complaint can be explained either by a misunderstanding of the applicability of the right to free elections only to elections for the appointment of the "legislative body" (an aspect that can be imputed professionally to the lawyer who drafted the application), or by a misunderstanding of the role of the President of Romania in relation to the legislative power (an aspect imputable to both the lawyer who drafted the application and the applicant, in his capacity as former presidential candidate, which presupposes a minimum legal training on the constitutional role of the head of state).

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[5] See also: Silvio MARCUS-HELMONS, *Article 3 [du Premier Protocole Additionnel] [Article 3 of the First Additional Protocol],* in Louis-Edmond PETTITI, Emmanuel DECAUX, Pierre-Henri IMBERT (eds.), *[La Convention europeenne des droits de l'homme . Commentaire article par article [The European Convention on human rights. Commentary on each article],* 2nd ed., Economica, Paris, 1999, p. 1018; Jean-François RENUCCI, *Traité de droit européen des droits de l'homme* [*Treatise on European Human Rights Law],* 2nd ed., L.G.D.J., Paris, 2012, p. 340; Frédéric SUDRE, Laure MILANO, Béatrice PASTRE-BELDA, Aurélia SCHAHMANECHE, *Droit européen et international des droits de l'homme [European and International Human Rights Law],* 16th edition, P.U.F., Paris, 2023, pp. 882-883; Ludovic HENNEBEL, Hélène TIGROUDJA, *Traité de droit international des droits de l'homme* [*Treatise on International Human Rights Law],* 2nd edition, Pedone, Paris, 2018, p. 1173; Corneliu BÎRSAN, *Convenția europeană a drepturilor omului; Comentariu pe articole [European Convention on Human Rights. Commentary by Article],* 2nd ed., C.H.Beck, Bucharest, 2010, pp. 1789-1795.

[6] E.*g.*: ECtHR, Judgment of January 11, 2005, Case of *Py v. France,* Application no. 66289/11.

[7] E.*g.*: ECtHR, Judgment of February 18, 1999, Case of *Matthews v. United Kingdom,* Application no. 24833/94.

[8] ECtHR, Decision of September 2, 2004, *Boškoski v. the former Yugoslav Republic of Macedonia,* Application No. 11676/04; ECtHR, Decision of May 27, 2004, *Guliyev v. Azerbaijan,* Application No. 35584/02; ECtHR, Decision of February 19, 2013, *Kribovokov v. Ukraine,* Application No. 38707/04.

[9] ECtHR, Judgment of July 4, 2013, *Anchugov and Gladkpv v. Russia,* Application Nos. 11157/04 and 15162/05.

B. Other Convention rights

Apart from the main complaint, alleging a violation of the right to free elections, the application contains two further complaints, one concerning procedural rights and the other concerning other political rights.

As regards procedural rights, the application invokes the right to a fair trial and the right to an effective remedy, i.e. Articles 6 and 13 of the Convention, allegedly violated by an unfair procedure before the Constitutional Court and by the absence of an effective remedy against the Constitutional Court's judgment.

Article 6 of the Convention, which enshrines the right to a fair trial, is not a right of unlimited applicability *ratione materiae*, but only covers two types of proceedings, civil and criminal proceedings[10] (bearing in mind that "civil" and "criminal" are autonomous European concepts). In its "civil" dimension, as established by the Court in its case law[11], Article 6 is not applicable to electoral disputes[12], which have a political dimension and are closely linked to the exercise of national sovereignty. The Court also considered that the Constitutional Court's judgment annulling the presidential elections does not concern any "criminal" charges against the applicant.

It should be noted that the Court has accepted the applicability of Article 6 in proceedings before national constitutional courts[13], but in cases of constitutional disputes (whereas the present case concerns an electoral dispute) arising from civil or criminal proceedings.

In turn, Article 13 of the Convention enshrines the right to an effective remedy in the event of an alleged violation of a right recognized by the Convention. It is therefore not an independent right[14], since the isolated violation of Article 13 of the Convention can never be invoked, but a right whose applicability is conditional on the applicability of another Convention right; a violation of Article 13 of the Convention may therefore be invoked in an application taken in conjunction with another right contained in the Convention or in an additional Protocol. That being so, since neither Article 3 of Protocol No. 1 nor Article 6 of the Convention are applicable, Article 13 of the Convention taken in conjunction with Article 3 of Protocol No. 1 and/or Article 6 of the Convention is not applicable either.

For these reasons, the Court found that Articles 6 and 13 of the Convention are not applicable and that the complaint alleging a violation of these procedural rights is inadmissible.

As regards political rights other than the right to free elections, the applicant alleged a violation of Articles 10 and 11 of the Convention regarding freedom of political expression

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[10] See also: Jean-Claude SOYER, *Article 6 [de la Convention] {Article 6 of the Convention],* in L.-E. PETTITI, E. DECAUX, P.-H. IMBERT (eds.), *op. cit.,* p. 240; J.-F. RENUCCI, *op. cit.,* p. 430; F. SUDRE, L. MILANO, B. PASTRE-BELDA, A. SCHAHMANECHE, *op. cit.,* p. 563; L. HENNEBEL, H. TIGROUDJA, *op. cit.,* pp. 1317-1318; C. BÎRSAN, *op. cit.,* p. 360; Luc GONIN, Olivier BIGLER, *Convention européenne des droits de l'homme (CEDH). Commentaire des articles 1 à 18 CEDH* [*European Convention on Human Rights (ECHR). Commentary on Articles 1 to 18 ECHR],* Stämpfli Edition & LexisNexis, Bern & Paris, 2018, p. 278.

[11] ECtHR, Decision of February 19, 2004, *Mutalibov v. Azerbaijan,* Application No. 31799/03; ECtHR, Judgment of October 21, 1997, *Pierre-Bloch v. France,* Application No. 24194/94.

[12] See also: J.-C. SOYER, *op. cit.,* p. 253; J.-F. RENUCCI, *op. cit.,* p. 467; F. SUDRE, L. MILANO, B. PASTRE-BELDA, A. SCHAHMANECHE, *op. cit.,* p. 576.

[13] See also: J.-F. RENUCCI, *op. cit.,* pp. 445-446; F. SUDRE, L. MILANO, B. PASTRE-BELDA, A. SCHAHMANECHE, *op. cit.,* p. 570.

[14] See also: Andrew DRZEMCZEWSKI, Christos GIAKOUMOPOULOS, *Article 13 [of the Convention],* in L.-E. PETTITI, E. DECAUX, P.-H. IMBERT (eds.), *op. cit.,* p. 458; J.-F. RENUCCI, *op. cit.,* p. 415; F. SUDRE, L. MILANO, B. PASTRE-BELDA, A. SCHAHMANECHE, *op. cit.,* p. 684; C. BÎRSAN, *op. cit.,* p. 360; L. GONIN, O. BIGLER, *op. cit.,* pp. 684-685.

and freedom of political association.

On this complaint, the Court found that, despite the fact that the applicant was represented by a lawyer of his choice, there were no factual allegations that the applicant was the "victim" of an action or omission on the part of the respondent State, nor were there any legal arguments to the effect that this conduct constitutes a violation of the Convention. The Court reiterated its case law[15], noting that it cannot speculate on the substance of a complaint, especially when the applicant is represented by a lawyer. In our opinion, such a finding by the Court indicates serious professional misconduct on the part of the applicant's lawyer, which may also constitute a disciplinary offense, as a lawyer is not entitled to take on a case that exceeds her professional competence.

The Court also noteed, with regard to the part of the complaint based on Article 11 of the Convention and concerning freedom of political association, that the applicant was an independent candidate, which means that Article 11 is not even applicable.

On this basis, the Court also rejected as inadmissible the complaint based on Articles 10 and 11 of the Convention, as manifestly ill-founded.

II. The proceedings

Apart from the final decision on inadmissibility, this case also raises two questions of European judicial procedure, concerning interim measures (A) and the deciding judicial formations (B).

A. Interim measures

In the European proceedings, the applicant, relying on Article 39 of the Rules of Court[16], requested interim measures[17], namely a stay of execution of the Constitutional Court's judgment annulling the presidential elections and the resumption of the electoral process.

The Court ruled on the request for interim measures in a decision dated January 21, 2025[18].

In this decision, the Court found that Article 39 of the Rules is applicable only in cases of imminent risk of irreparable damage to a right guaranteed by the Convention which, by its nature, cannot be adequately restored or compensated. The Court reiterated that interim measures may only be ordered in exceptional circumstances, when necessary in the interests of the parties or the proper conduct of European judicial proceedings.

The press release of the Registry, setting out the reasons for the decision of the Chamber, merely repeats the provisions of Article 39 (1) of the Rules: "*The Court may, in exceptional circumstances, whether at the request of a party or of any other person concerned, or of its own motion, indicate to the parties any interim measure which it considers should be adopted. Such measures, applicable in cases of imminent risk of irreparable harm to a Convention right, which, on account of its nature, would not be susceptible to reparation, restoration or adequate compensation, may be adopted where necessary in the interests of the parties or the proper conduct of the proceedings*."

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[15] ECtHR, Judgment of March 20, 2018, *Radomilja and Others v. Croatia,* Application Nos. 37685/10 and 22768/12.

[16] Hereinafter, *The Rules.*

[17] See also: J.-F. RENUCCI, *op. cit.,* pp. 1032-1033; F. SUDRE, L. MILANO, B. PASTRE-BELDA, A. SCHAHMANECHE, *op. cit.,* pp. 301-303.

[18] See: ECtHR - Registry, Press release no. ECHR 022 (2025) of January 21, 2025.

In accordance with its established case law on interim measures, the Court found that the applicant's request, in relation to the complaints raised in the application and the grounds set out, does not refer to a risk of irreparable damage.

For these reasons, the Court rejected the request for interim measures, as it does not fall within the scope of Article 39 of the Rules, and decided not to impose on the Romanian Government the interim measures requested.

B. The judicial formations of the Court

The decision of January 21, 2025, rejecting the request for interim measures was adopted by a chamber of the Court composed of seven judges.

The decision on admissibility of March 6, 2025, rejecting the application as inadmissible, was adopted by a committee of three judges.

Both decisions were adopted unanimously by the judges sitting in the judicial formation. The decision of the committee can only be adopted unanimously, in accordance with Article 28 (1) of the Convention. As for the decisions of the chambers, they may be adopted by a majority of the judges sitting (at least 4 votes out of 7).

The judge elected to represent Romania did not sit on the committee ruling on the inadmissibility of the application. Within committees, the judge elected to represent the respondent State may participate (there is no prohibition, as in the case of a single judge, under Article 26 (3) of the Convention), but this is not mandatory under Article 28 (3) of the Convention.

The committee adopted the decision of inadmissibility without communicating the application to the Romanian Government, so the proceedings were not adversarial, as the inadmissibility was manifest and did not require further examination.

In reality, the manifest inadmissibility of the application, in light of the clear and consistent case law of the Court, could easily have brought the matter within the jurisdiction of a single judge to adopt a decision of inadmissibility. However, since decisions on inadmissibility adopted by single judges are very briefly reasoned (Article 52A (1) of the Rules), it was solely for educational purposes and in view of the “political” importance of the solution that the case was examined by a committee, so that the decision could be more fully reasoned. The Court thus applied Article 49 (1) of its Rules: "*Where the material submitted by the applicant is on its own sufficient to disclose that the application is inadmissible or should be struck out of the list, the application shall be considered by a single-judge formation unless there is some special reason to the contrary.*"

As regards interim measures, Article 39 (2) and (5) of the Rules empower the Grand Chamber, the Chamber, the President of the Court, the President of the Grand Chamber, the President of a Section or a duty judge designated for that purpose to make a decision. *In concreto*, the decision was adopted by a Chamber.

We are of the opinion that the decision of inadmissibility was adopted by a committee in a manner that violated the Convention and the Rules and that, in the particular circumstances of the case, it should have been adopted by a chamber.

Thus, under Articles 26-31 of the Convention and 49 and 52-54 of the Rules, only a lower judicial formation may refer a case to a higher formation: a single judge may refer the application for examination either to a committee or to a chamber; a committee may refer the application to a chamber; a chamber may decline jurisdiction in favor of the Grand Chamber.

But there is no rule in the Convention or the Rules allowing a higher formation to refer a case to a lower formation. This procedure is not necessary because a higher formation may adopt a solution that a lower formation would have adopted. Thus, a decision of

inadmissibility, such as the one in the case we are analyzing, may be adopted by a single judge, a committee, a chamber, or the Grand Chamber.

However, the application was initially referred for analysis to a chamber, as it was the chamber that adopted the decision on the request for interim measures (the request for interim measures could also have been analyzed by the President of the Court, the President of the Section or a designated judge, without involving the chamber). Once the case was on the chamber's docket, i.e. once the case was brought before the chamber, that formation of the Court did not have the power to refer the case back to a single judge or to a committee as a lower formation of the Court (since it could itself adopt a decision of inadmissibility), but it can only rule on the case itself or decline jurisdiction in favor of the Grand Chamber. Any decision of inadmissibility by the chamber: could have been adopted in the same way as that of the committee, i.e. without notification to the Government; could have been adopted by a majority (a majority within a chamber of seven judges means four votes, which is more than the unanimous vote of the three judges of a committee); would have been final (without any means of appeal), like the decision of the committee.

Even if the decision of inadmissibility was adopted by a committee, and not by the chamber that initially received the case, in violation of the rules in the Convention and Rules of procedure and jurisdiction, as it is final, and therefore without appeal, it is presumed to be irrefutably valid.

It should also be noted that, pursuant to Article 41 of the Rules, the Court decided to give priority to the application, given its sensitive "political" nature.

Conclusions

The individual application lodged by a candidate in the Romanian presidential elections, following the annulment of those elections by the Constitutional Court, alleging primarily a violation of the right to free elections and the right to a fair trial, is manifestly inadmissible and has been rejected as such in a simplified procedure, in accordance with the clear and consistent case law of the Court, as the Convention articles relied upon were not applicable *ratione materiae.*

The "publicity" given nationally to the lodging of the individual European application suggests that the European procedure was used solely for political propaganda purposes. This aspect could have led the Court to identify an additional ground for inadmissibility, namely the abusive nature of the application. As for the lawyer who represented the applicant in the European proceedings, in clear contravention of clear and consistent European case law, she either demonstrated professional incompetence or acted as a lawyer of convenience.

Given the significant "political" nature of the case, the Court preferred not to assign the application to a single judge, who would have issued a very brief decision on inadmissibility, but to a panel of judges, in order to provide a comprehensive and "educational" statement of reasons for the public, while deciding, for the same reason, to fast-track the case.

As the case was originally assigned to a chamber, which ruled on the request for interim measures, it was that chamber which should have adopted the decision of inadmissibility, its decision to refer the case for analysis to a lower formation, namely a committee, being contrary to the Convention and the Rules. Nevertheless, the decision of inadmissibility is final and not subject to appeal and is therefore presumed to be absolutely valid.