

The integrity of the democratic process and judicial control

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I. Introduction

“Elections are the new front line” – this short and clear statement was made by President Maia Sandu in her speech delivered on the occasion of the 35 years anniversary of the Venice Commission in October 2025. It is not only true for the democracy under threat in Moldova. It also hints to an imminent danger democracy faces in a number of states today.

In particular, we look at the danger for the integrity of the democratic process, in terms of Constitutional theory: the guarantee of free elections, which is at the heart of the principle of democracy in the constitutions of all member states of the Council of Europe. The protection of the integrity of the democratic process covers both, the constitutional principle and the individual right to free elections.

Electoral law forms part of the core of the democratic principle. In recent years, the European Court of Human Rights has developed its case law on Article 3 Protocol No. 1 of the Convention. We can find similar guarantees in all constitutions of member states based on principles often going beyond the Convention and deeply rooted in national democratic traditions.

In the era of modern technologies democracies face new challenges. Among these challenges is the growing phenomenon of disinformation in electoral campaigns. New technologies, changes in the media landscape as well as the increasing relevance of social media put the principle of free elections under significant pressure. The use of disinformation to influence electoral outcomes threatens the balanced relationship between governance by a few and the right of the people to democratic self-determination. In recent years, we have seen numerous

cases of election interference and strategic manipulation of information for political purposes in several states on both sides of the Atlantic.

It is of utmost importance to protect democratic processes against manipulation. At this point, constitutional adjudication steps in. In many states, Constitutional Courts have become key actors in ensuring effective democratic control.

Against this background, I am going to demonstrate how the integrity of the democratic process is protected through judicial control. First, I will refer by way of example to two recent decisions by the Constitutional Courts in Austria and in Romania. In the second part, I will highlight some conclusions of the Urgent Report on the Cancellation of Election Results by Constitutional Courts, adopted by the Venice Commission in January 2025. Thirdly, the use of this report in the most recent **Bradshaw** case will be discussed. The fourth and final part deals with the cooperation between Constitutional Courts, the Strasbourg Court and the Venice Commission and its possible influence on the future case law of Constitutional Courts and the European Court of Human Rights.

II. The decisions of the Constitutional Courts in Austria and in Romania

I will now turn to Court decisions and I begin with the decision of the **Austrian Constitutional Court** of July 2016 in which the Court annulled the second round of the presidential election.

The election was annulled by the Court first because it found violations in the counting process of postal votes. In addition to violations in the counting process, the Constitutional Court found that the principle of free elections had been violated because some election results had been communicated before the last polling station had closed. In particular, through social media, information on the election result was made known to a large number of persons entitled to vote. According to the released information, the election victory of one candidate was "quite certain" and a "turn-around" of the result was unlikely. Moreover, the released information contained relatively detailed information on the counting progress made and the results of some individual municipalities.

According to the Court, it could not be excluded that the systematic disclosure of such preliminary information, and its further uncontrolled spread by third parties, may have

influenced voting behavior and, as a result, the outcome of the election. This holds true even more so with today's communication technology facilitating the immediate and extensive dissemination of such information across the entire federal territory. According to the Court, it had to be assumed that the distribution of the information could have had an influence on the election results. The Court therefore concluded that the prior publishing of information contravened the principle of free elections. As Art 3 of Protocol No 1 is not applicable to presidential elections the Court applied a similar guarantee under national constitutional law.

In **Romania**, after the first round of the elections of November 2024, the **Constitutional Court** first validated the first round of the election. Only three days later, after reports of Romanian Intelligence Agencies had been published suggesting potential foreign influence and algorithm manipulation, the Court invalidated the presidential elections – *ex officio* – in their entirety, ordering a full rerun. After reviewing information discussed at a meeting of the Supreme Council of National Defence, the Constitutional Court concluded that the entire electoral process for the 2024 presidential election was affected, at all stages, by multiple irregularities and violations of electoral law. These violations distorted the free and fair nature of the vote, undermined the equality of opportunities among electoral competitors, affected the transparency and fairness of the electoral campaign, and disregarded the legal rules on campaign financing. According to the Court, all these aspects had the converging effect of violating the essential principles of democratic elections.

The Court then emphasised the fundamental importance of the right to free elections, describing it as a *sine qua non* of democracy. Indeed, free and fair elections are described as an expression of popular sovereignty and a fundamental principle of the Romanian State. Consequently, the state has an obligation to ensure a transparent electoral process in all its components in order to guarantee the integrity and impartiality of elections. This also entails a positive state obligation to prevent unjustified interference in the electoral process, including the need to address the risks posed by organized disinformation campaigns.

The Constitutional Court observed that the election had been conducted in a manner that had affected the freely expressed will of the voters. In particular, the Court found that the freely expressed nature of the vote was violated because voters had been misinformed through an electoral campaign in which one candidate benefited from aggressive promotion carried out

in circumvention of national electoral law and through the abuse of social media algorithms. These practices created a manifest inequality between this candidate and the other candidates. While the use of digital technologies and artificial intelligence in election campaigns is not prohibited, the Court stressed that such use must be transparent in order to safeguard the integrity and impartiality of elections.

As a consequence of these findings, the Constitutional Court held that the entire electoral process had to be resumed. Following the publication of the relevant documents and the Court's decision, the electoral authority excluded the candidate Mr. Georgescu from the renewed electoral process, and the Constitutional Court subsequently confirmed this decision. In essence, the Romanian Constitutional Court identified two main categories of violations: voter manipulation through misinformation and irregularities in campaign financing.

III. The Urgent Report of the Venice Commission

These two decisions underline both the increasing importance of judicial intervention in electoral processes. Following the election in Romania, an urgent report of the Venice Commission of 27 January 2025 on the Cancellation of Election Results by Constitutional Courts addressed the issue comprehensively.

On the basis of main features that distinguish the Romanian decision from other cases of election annulment, including the Austrian case, the Venice Commission formulated a number of recommendations. They concern three aspects: first, the power of Constitutional Courts to annul elections; secondly, the use of digital technologies and artificial intelligence in electoral campaigns; and thirdly the impact of external influence by another state on the electoral process.

In particular, the Venice Commission reached the following three conclusions:

- Given the serious consequences of the ex post annulment of election results, the discretion of judges deciding electoral matters must be guided and limited by clear legal conditions.
- Any decision concerning the annulment of election results must be accompanied by adequate procedural safeguards. These include a fair, objective and transparent

procedure, a sufficiently reasoned decision, and reliance on clearly established facts demonstrating irregularities that are so significant that they may have influenced the outcome of the election.

- With regard to online campaigning and social media, the Venice Commission emphasises that, although these forms of campaigning may be novel in their methods and impact, they must still be subject to the general rules on campaign finance and transparency. It is the task of the judge to assess whether a candidate's online campaigning has violated these rules.
- Finally, judicial decisions annulling elections must precisely identify the violations and the evidence relied upon. Such decisions must not be based solely on classified intelligence, as this would undermine the requirements of transparency and verifiability.

IV. The use of documents of the Venice Commission by the ECtHR

Recommendations of the Venice Commission may influence future case law of the European Court of Human Rights. A recent example in the field is the judgment in the case of **Bradshaw and Others v. the United Kingdom**, a case dealing with electoral integrity in the digital age.

The central issue before the Court was therefore whether the United Kingdom had violated its positive obligations under Article 3 of Protocol No. 1 of the Convention by failing to investigate allegations of Russian electoral interference and to establish an effective legal framework to protect the integrity of its elections. The Court accepts that there was credible evidence of foreign interference in the United Kingdom's democratic processes of sufficient intensity to impair "the very essence" of the right to elections that ensure the free expression of the will of the people.

Ultimately, the Court emphasises that "the dissemination of disinformation is capable of posing a significant threat to democracy" and acknowledged Russia's systematic efforts to destabilize democratic systems across Europe and the US. The Court finds that there was **no violation of Article 3 Protocol No. 1** accepting that the United Kingdom enjoys a wide margin of appreciation in deciding how to counter these threats, and it concludes that, despite initial shortcomings, the member state has taken sufficient measures through parliamentary

inquiries, new legislation and the establishment of specialized government units, thereby acting within its discretion.

However, it makes it clear that democratic rights in the digital age require active protection not just of the voting process, but of the entire information environment in which elections take place. Meanwhile, the judgment has become final.

What is crucial is the fact that in *Bradshaw and Others v. the United Kingdom*, the European Court of Human Rights refers to the **Venice Commission's Urgent Opinion** as one source within a broader set of sources used to assess the challenges posed to electoral integrity in the digital age. In particular, the Court refers to the Venice Commission to form its argument of the State's positive obligations under Article 3 of Protocol No. 1. It relies on the Commission's assessment that Europe has entered "a new era of information disorder," in which the communication ecosystem has been distorted by misleading, manipulative and false information. The Court establishes that the dissemination of disinformation is capable of posing a significant threat to democracy and of seriously encumbering voters in the formation of their electoral choices.

At the same time, the Court also relies on the Venice Commission's analysis to support a more cautious approach on the margin of appreciation. Referring to the Commission's acknowledgment that it is considerably more difficult to establish objectively the impact of external influence campaigns than to prove irregularities in voting or counting, the Court highlights the inherent uncertainty surrounding the effects of disinformation on individual voters and on election outcomes. These challenges are one factor that made the Court conclude that the UK enjoys a wide margin of appreciation in deciding how to counter these threats.

The way in which the European Court of Human Rights deals with the Venice Commission's Urgent Report in **Bradshaw and Others v. the United Kingdom** shows how these opinions influence future case law. Rather than serving as binding authority, Venice Commission opinions increasingly function as reference points in the interpretation that help courts to support their arguments and address challenges of contemporary democracies.

By referring to guidelines of the Venice Commission, the Court is able to strike a balance between developments in legal scholarship on the one hand and judicial restraint on the other hand. By openly acknowledging the uncertainty surrounding the impact of disinformation and

influence on campaigns, the Commission supplies Courts with a stable basis for granting States a margin of appreciation. This double contribution – supporting both the positive obligations and the justification of deference – makes Venice Commission opinions particularly attractive to Courts operating in politically sensitive fields such as elections.

V. Conclusion

I would like to conclude my speech by adding a last remark on the role of Constitutional Courts in the protection of the democratic process in general. Constitutional Courts like all courts are inherently reactive institutions:

- they respond to violations once they occur, but they are not designed to prevent them in advance,
- they can intervene to protect the integrity of elections, but
- they do not serve as the sole guardian of democratic processes.

While Constitutional Courts play an essential role in safeguarding electoral integrity, it must be emphasised that the responsibility for ensuring fair conditions, lawful procedures, and appropriate safeguards – particularly when it comes to the annulment of election results – does not rest with Constitutional Courts alone. Rather, the responsibility lies primarily with legislators, regulatory authorities and the broader international framework. Protecting the integrity of the democratic process requires constant vigilance from all actors, including the European Court of Human Rights because nothing less than the very core of the democratic principle itself is what is ultimately at stake.