Romania's Retroactive Amendment Constitutionally Upheld

Institutional Inaction May Cost the Union Dearly

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At the end of this month, German-Romanian mayor of Timișoara, Dominic Fritz, is set to lose his mayorship. His removal comes as a consequence of a newly enacted amendment to the law governing Romania's National Integrity Agency, which violates both the principle of nonretroactivity and the electoral rights of European Union citizens. Urgent action is necessary at Union level in order to prevent serious harm to the values and principles underpinning the Union's constitutional order flowing from Article 2 of the Treaty on European Union (TEU).

Background

German citizen Dominic Fritz was elected in 2020, and re-elected in 2024, as mayor of Timișoara, a medium-sized Romanian city with around 300,000 inhabitants. In 2025, Fritz received his Romanian citizenship. Since the same year, he is also the President of the centrist-reformist Save Romanian Union Party (USR).

In July 2024, the National Integrity Agency (ANI) declared Fritz in conflict of interests relating to administrative matters. ANI claimed that in 2020, the newly elected mayor approved a Zoning Plan to which an architect who had lent money towards his mayoral campaign contributed with documentation. The High Court of Cassation and Justice ruled in favour of ANI in June 2026, making the ANI's finding on the conflict of interests definitive. Under Article 228(5) of the 2019 Administrative Code and Article 25(2) of Law 176/2010 (ANI Law), such a finding resulted in a disciplinary sanction consisting of a 10% salary reduction for a maximum period of six months and prohibition to stand for office after the end of the mandate.

At the beginning of August 2026, a coalition made up of the left-wing nationalist Social Democratic Party (PSD) and the far-right Alliance for the Union of Romanians Party (AUR) introduced a new amendment to Law 176/2010 (ANI Law), under which a disciplinary sanction following a definitive conflict of interests finding by ANI leads to the person in question losing her public function on the spot, or after 30 days since the promulgation of the new amendment. Crucially, the amendment was worded as to have retroactive effect, applying to public officials who had already been sanctioned under the old, unamended law:

> *"Persons in respect of whom, by the date of entry into force of this [amendment], a definitive finding of incompatibility or conflict of interests has been made [...] shall cease to hold their public mandate, 30 days after the date on which this [amendment] comes into force."*

What's Happened, Happened

The amendment was challenged before the Romanian Constitutional Court (RCC) by the President of Romania and members of Parliament, claiming violation of Article 15(2) of the Constitution of Romania, alongside Article 1(3) and Article 16(3) of the Constitution. This should have been an open-and-shut case for the Constitutional Court. Article 15(2) explicitly codifies the nonretroactivity of law, lending it constitutional primacy: "law shall only act for the future". Article 1(3) declares Romania a democratic state governed by the rule of law, and Article 16(3) guarantees access to public positions to Romanian citizens, according to the law.

And yet, the Court ruled in Decision 883/2026 via majority that the amendment was constitutional, with only three judges dissenting. According to the majority, the necessity of high ethical standards for a public function and the importance of the rule of law enshrined in the Constitution justify treating "the future effects of a legal situation that arose prior to the entry into force of the [amendment] as an ongoing situation, to which the provisions of the [amendment] apply" (paras 120-121). While this may sound like nonsense masquerading as legal reasoning, the claim that "the future effects of a legal situation" must be treated as "an ongoing situation" warrants a closer engagement, due to its far-reaching ramifications. Any action taken in the past has effects in the future. By treating some "future effects" of a past legal situation that has already been definitively sanctioned as a fresh situation in the present, the majority collapsed time and eviscerated nonretroactivity in the same breath. The Court essentially gave a *carte blanche* to the legislature for a form of retroactive legislation that can only be described as legislative necromancy: revive a past legal situation, baptize it with an additional, distinct legal identity, and recast its consequences as ongoing.

In Decision 883/2026, the alleged future effect of the conflict of interests in question was deemed by the majority to be that the "office/position/mandate is compromised in terms of integrity" (para 123). The amendment, according to the majority, did nothing else but "put an end to the serious impairment of the integrity of the office/position/mandate and restore its credibility and distinctive qualities". For the majority, it did not matter that Fritz had already been sanctioned by losing 10% of his salary under the Administrative Code and that after finishing his mandate in 2028, he would have been unable to run again for re-election for the duration of three years, as the old, unamended ANI Law had mandated. Indeed, the majority considered that

> *"prohibiting the legislature from protecting the integrity of the office/position/mandate, after being substantially compromised by an unlawful act on the party of its temporary holder, on the grounds that the latter has been subject to a sanction, amounts to an abandonment of the standards of protection associated with public office and a regression in the rule of law."*

Here the blueprint for the legislative necromancy enabled by the Court becomes clearly visible: the amendment resurrected Fritz's past, settled legal situation, the conflict of administrative interests, for which he had already been sanctioned, and attached a distinct, additional legal identity: the substantial undermining of the integrity of office/position/mandate. This allowed the Court to claim that

> *"In practice, the intemporal rule does not provide for a disciplinary sanction applicable to the holder of the office/position, but rather automatically suspends or terminates the office/position which has been vitiated by the acts of its holder" (para 122)*

as if the holder of the elected office is in no way whatsoever affected by the automatic suspension or termination of the elected office.

EU Connection

As if the holder of the elected office was not voted in by anyone. At no point in Decision 883/2026 did the majority engage with the repercussions of its reasoning on democracy and electoral rights. Only the dissenting judges acknowledged that the amendment was contrary to the jurisprudence of the European Court of Human Rights (ECtHR) as laid down in *Lykourezos v. Greece* (para 57) , where the ECtHR found that *ex post* legislation forcing elected representatives out of their seats, once elected in full accordance with the law, freely, and democratically, represents a breach of the principle of legitimate expectation attached to the right to free elections, under Article 3 Protocol No. 1.

What is more striking is the complete lack of engagement with EU law in the *Dominic Fritz* case, even though his case is of paramount importance for the EU legal and political order. From the onset, the parties challenging the constitutionality of the amendment before the Constitutional Court should have

included a strong avenue of attack based on EU law arguments. After all, Romania's Constitution explicitly codifies the right of Union citizens to elect and be elected to local public administration bodies in Article 16(4), and the Constitutional Court itself ruled that EU membership is foundational to Romania's democratic constitutional order in 2024.

The new amendment to the ANI Law infringes upon a plethora of EU law provisions. Above all else, on Article 2 TEU. Contrary to what the Constitutional Court claims, it is the evisceration of nonretroactivity that would constitute rule of law regression, breaching both domestic (RCC Ruling 2/2024) and EU principles of non-regression (*Repubblika*, para 63). Regarding electoral rights and thus democracy, a connection to EU law could have easily been established even without Fritz's German citizenship, since the right to vote in municipal elections falls under the scope of Article 22 of the Treaty on the Functioning of the European Union (TFEU), Article 40 of the EU Fundamental Rights Charter, and Article 3 of Directive 2026/1194. With Fritz's German citizenship, the new ANI Law amendment violates not only the right of Union citizens to vote, but also to stand as a candidate in elections. Both these rights, if they are to be effective, must be understood as protecting the principle of legitimate expectation, and be interpreted as preventing *ex post* legislation that removes elected office holders from their position and terminates their already-existing democratic mandate.

Time for EU Militant Democracy

Democracy and rule of law are at the core of the Union's very identity. The practical expression of the ANI Law amendment represents a manifest and particularly serious breach of these two core values, grave enough to warrant a finding of Article 2 TEU infringement by the Court of Justice of the European Union (CJEU), following *Commission v Hungary (Valeurs de l'Union)* (para 551). It is also grave enough and obvious enough to warrant the European Commission skipping the pre-infringement dialogue and enact an infringement procedure against Romania as soon as possible, given the extremely short time limit until Fritz loses his mandate. Undoubtedly, the Commission should apply maximum pressure and request interim measures under Article 279 of the TFEU from the Court of Justice in order to stop the application of the amendment. In Romania, narrow-minded and hateful extremists already celebrate Fritz's removal. Institutional inaction may cost the Union dearly.

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