

Attributions of the Constitutional Court of Romania

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Abstract: The Constitution is the fundamental law, which includes all general rules and principles that are the essence of the rule of law. It organises and establishes the functions of the national authorities, and it enshrines the fundamental rights and freedoms, as well as their warranties. Due to its qualities, the Constitution is the peak of the pyramid of legal acts, and this generates a most important consequence – all normative acts have to be elaborated according to constitutional norms, and have to conform to it. In order to ensure the supremacy of the Constitution, the control of the constitutionality of the laws has been created. In our country, this control is an exclusive competency of the Constitutional Court of Romania. This control is the most important legal warranty of the supremacy of the Constitution.

Keywords: supremacy of the Constitution, Constitutional Court, attributions.

Introduction

The Romanian Constitution of 1991 was meant to be the expression of the sovereign will of the Romanian people and it enshrined in its content the aspirations of all Romanian citizens to abolish the communist regime and to establish a democratic constitutional regime.

The creation of a state under the rule of law, a democratic and social state materialized in the creation of the institutions meant to guarantee for the recent constitutional democracy. One of the most important institutions created after the Romanian Revolution of December 1989 is the Constitutional Court, which is the specialized organ with attributions regarding to the verification of the compliance of laws and other legal acts with the dispositions of the Constitution.

The regulation of the institution was made by means of the Law no. 47/1992 on the organization and functioning of the Constitutional Court¹.

After that, the constitutional reform in 2003 strengthened the role of the Constitutional Court, as a guardian of the rule of law, outlining its position in the system of the Romanian state's organs (Călinoiu C., Duculescu V., 2010; Vrabie, 1999)².

¹ The Law no. 47/1992 as amended was republished in the Official Journal of Romania, Part 1, no. 807/03.12.2010, when some texts were renumbered.

² C. Călinoiu, V. Duculescu, Constitutional Law and Political Institutions, IV th Edition, Ed. Lumina Lex, Bucharest, 2010, p.237. The Constitutional Court is a state organ, the legal rules regarding its establishment, organization and functioning and its competency confirm beyond any doubt this conclusion. - G. Vrabie, Political and State Organization of Romania, volume II, 3rd



The revising law amended and supplemented the constitutional dispositions that rule the functioning of the Constitutional Court – Title V, art. 142-147 of the Constitution, as a result of „the valuation of a decade of activity of the Constitutional Court, and they aim to enhance its efficiency, as a guarantor of the supremacy of the Constitution, of the constitutional control” (Constantinescu M., Muraru I., Iorgovan A., 2003).

Both art. 142 align. 1 in the Romanian Constitution and art. 1 align. 1 in the law regarding its functioning, enshrine the Constitutional Court as the guarantor of the supremacy of the Constitution.

The Constitutional Court is the unique authority of constitutional jurisdiction in Romania – art. 1 align. 2 of the Law no. 47, as it is independent of all public authority and it is ruled by the Constitution and its operation law, only.

Attributions

The Constitutional Court of Romania, as a political and jurisdictional organism, is the only competent authority to perform the constitutional control of the laws, a control which is meant to assure the supremacy of the Constitution.

The attributions of the Constitutional Court are expressly and limitedly enumerated in the Constitution and, according to legal dispositions, art. 11 of the law, in the exercise of its tasks, the Court pronounces decisions, rulings and issues advisory opinions.

As stipulated in art. 146 of the Constitution, the Court fulfils the following attributions:

► *to adjudicate on the constitutionality of the laws before their promulgation*, if notified by the President of Romania, one of the Presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least 50 Deputies or 25 Senators.

The decision is pronounced, after deliberation, by means of the vote of the majority of judges and it is communicated to the Romanian President.

If the law is found to be unconstitutional, the decision of the Court is communicated to the Presidents of the two Chambers and to the Prime-minister. In this situation, the Parliament is forced to re-examine the dispositions of the law which were declared unconstitutional or the law as a whole if it comes out that the law as an assembly is not constitutional, in order to comply with the decision of the Constitutional Court.

► *to pronounce, ex officio, on initiatives of revision of the Constitution.*

The law stipulates that, before submission to the Parliament in order to initiate the legislative procedure for the revision of the Constitution, the bill or the legislative proposal, accompanied by the opinion of the Legislative Council, shall be handed in to the Constitutional Court, which shall have to pronounce on the



observance of constitutional provisions in regard of such revision within ten days.

The Constitutional Court shall pronounce on the bill or the legislative proposal as a result of the vote of two thirds of the number of judges.

The Decision of the Court is communicated to the initiators of the bill or the legislative proposal, or to the representative of the initiators, as the case may be.

The bill or the legislative proposal is presented to the Parliament with the decision of the Constitutional Court.

In the time limit of 5 days after the adoption of the law revising the Constitution, the Constitutional Court will pronounce, *ex officio*, on it, and the decision is communicated to the initiators of the bill or the legislative proposal or to the representative of the initiators, as the case may be.

The Decision in which it is observed that Constitutional dispositions were not respected is sent to the Chamber of Deputies and to the Senate in order to re-examine the law for the revision of the Constitution in order to be brought into agreement with the decision of the Constitutional Court.

► *to adjudicate on the constitutionality of treaties or other international agreements*, if a case is submitted to the Court by one of the Presidents of the two Chambers, by a number of at least 50 Deputies or at least 25 Senators.

The Decision is pronounced, following deliberation, with the vote of the majority of judges and it is communicated to the President of Romania, to the presidents of the two Chambers of the Parliament and to the Government.

If the treaty or the international agreement is observed to be constitutional, it cannot be subject to another unconstitutionality exception. The treaty or the international agreement which is observed not to comply with the Constitution cannot be ratified.

► *to adjudicate on the constitutionality of the Standing Orders of Parliament*, when a case is submitted to the Court by one of the Presidents of the two Chambers, by a parliamentary group or by a number of at least 50 Deputies or at least 25 Senators.

The Decision is pronounced with the vote of the majority of the judges of the Court and it is notified to the Chamber whose regulation was debated.

If by the Decision certain provisions of the standing orders are found unconstitutional, the Chamber to which the case was submitted shall re-examine these provisions within 45 days, in order to bring them into accord with the stipulations of the Constitution. For this limited length of time, the provisions of the standing orders which are declared unconstitutional shall be suspended. At the expiry of the term of 45 days, the provisions of the Standing Orders declared unconstitutional shall cease their legal effects.



► to decide upon the exceptions rose before the courts of law or courts of commercial arbitration regarding to the unconstitutionality of laws and ordinances. This exception can be raised directly by the Advocate of the People, also.

The provisions which have been declared unconstitutional in a previous Decision of the Court cannot be subject to another exception raised to this jurisdiction.

The Decision which observes the unconstitutionality of a law or an ordinance or of a disposition in a law or in an ordinance which is in force is final and binding.

If the exception is admitted, the Court shall also pronounce upon the constitutionality of other provisions of the normative act being challenged, of which those mentioned in the case referral act cannot obviously and necessarily be dissociated.

Dispositions of the laws and ordinances in force which are found unconstitutional shall cease their legal effects in 45 days from the publication of the decision of the Constitutional Court if in the limits of the above mentioned interval neither Parliament nor the Government, as the case may be, have brought these unconstitutional provisions into agreement with those of the Constitution. During this limited period of time, the unconstitutional dispositions are suspended de jure.

The Decision which decided the unconstitutionality of a law or an ordinance or of a disposition thereof is communicated to the two Chambers of the Parliament and to the Government.

In respect of *the unconstitutionality exception raised by the Advocate of the People*, the above mentioned law for the revision of the constitutional provisions establishes that the Advocate of the People has the right to address directly to the Constitutional Court the exception of unconstitutionality with regard to laws and ordinances of the Government.

This is not a voluntary act of intervention in any given process and at in any jurisdiction – as the Constitutional Court fallaciously understood it³ - but a „direct action” in the constitutional contentious of the Constitutional Court, the „exception” – as unanimously admitted- being a part of the action and representing its very subject (Deleanu, 2006).

There is one more aspect to be mentioned here: the dispositions with regard to the right to bring up an

³ In the Decision no. 148/2003, the Constitutional Court observed that the disposition regarding the possibility of the Advocate of the People to submit an exception of unconstitutionality is not a reasonable solution for a legal norm of a constitutional character, because the fact that the plea is raised by the Advocate of the People in favour of a person cannot be considered accountable for a real guarantee or a measure of protection for the citizen, as long as that person can exercise on his own the procedural right to raise an exception in court. Moreover, the Constitutional Court said, the Advocate of the People could not invoke a procedural position that would legitimate its participation in the process in front of the instances. As long as the rights of the citizens are warranted by the free access to justice, as well as the right to defence, it means that, in the juridical sphere, they can protect themselves against all unrightful application of the unconstitutional legal dispositions.

Anyway, the institution of the Ombudsman at an European level, observes the Court, is conceived as a public authority whose attributions are stipulated with regard to the relation between persons and the public administration, and not with the jurisdictional instances.

exception in front of the constitutional jurisdiction of the Advocate of the People shall be interpreted in the light of the principle of specialization and of the constitutional role of the Advocate of the People. The launching of the constitutionality control in its two forms is possible with regard to the rights and freedoms of the physical person only, as the right to notify the Advocate of the People is not an unlimited and absolute right (Călinoiu C., Duculescu V., 2010).

In the specialized literature, it is mentioned that the submission of a plea to the Constitutional Court made by the Advocate of the People, which is not based on the defense of the rights and liberties of the physical persons, surpasses his competence, and it is not admissible and should be rejected as such (Popescu C. L., 2004)⁴.

► *to settle the legal conflicts of a constitutional nature between public authorities*, at the request of the President of Romania; one of the presidents of the two Chambers; the Prime Minister or of the President of the Superior Council of the Magistracy.

The request for settlement of such dispute shall indicate the public authorities which are in conflict, the legal texts upon which the conflict is bearing, and also include a presentation of the parties' stance and of the applicant's opinion.

The decision which gives a solution to the legal conflict of a constitutional nature is final and it shall be communicated to both the applicant, and to the parties in dispute, before its publication in the Official Gazette of Romania, Part I.

We should highlight here the fact that the authorities who are susceptible to be involved in a conflict of a constitutional nature are only those which are referred to in Title III of the Constitution that is the Parliament, the President of Romania, the Government, the Central and Local Public Administration and the Judicial Authority.

Political parties are not included in this category as, according to constitutional provisions, they „contribute to the definition and expression of the political will of the citizens”⁵. This is also the case with parliamentary groups which are structures of the two Chambers of the Parliament.

With regard to this subject, the Court noted⁶ that an eventual conflict between a political party or a parliamentary group and a public authority cannot be included in the category of conflicts whose solution is included in its competences according to art. 146, letter e.

► *to supervise the observance of the procedure for the election of the President of Romania, and to*

⁴ C. L. Popescu, The Advocate of the People as a Incumbent of the Right to Submit a Plea to the Constitutional Court, according to the Revised Constitution, “Law” Review, no. 6/2004, p. 59.

⁵ Art.8 alignment 2 of the Constitution of Romania.

⁶ Decision of the Constitutional Court no. 53/28.01.2005 with regard to the requests to settle the conflict of a constitutional nature between the President of Romania and the Parliament, formulated by the President of the Deputies Chamber and the President of the Senate, published in the Official Journal of Romania, Part I, no. 144/17.02.2005.



confirm the ballot returns.

The result of the elections to the office of President of Romania is validated by the Constitutional Court.

Objections as to the registration or non- registration of a candidacy to the office of President of Romania, as well as to obstruction of a political party or formation, or of a candidate, to carry out electoral campaigning under the conditions of the law shall be resolved by the Constitutional Court, by a majority vote of the Judges, within the deadlines stipulated by the Law for the Election of the President of Romania.

► *to ascertain the circumstances which justify the interim in the exercise of the office of President of Romania, and to report its findings to Parliament and the Government.*

The vacancy of the office of the President of Romania, according to art.4, alignment 2 of the law, is observed at the request of the President of the Chambers of Parliament or of the interim President which exercises the attributions of President of Romania during the period in which he is suspended from the office.

The request to observe the existence of the situations which justify the interim to the office of President of Romania will be accompanied by the necessary proofs, and the observance of these circumstances is done by the Constitutional Court, with a vote of the majority of the judges.

► *to issue an Advisory Opinion on the proposal to suspend the President of Romania from office.*

The proposal to suspend the President of Romania from office, together with the proofs it is based on are sent in a copy to the Constitutional Court, by the president that presided the common meeting of the two Chambers.

The advisory opinion on the suspension from office of the President of Romania according to art. 43 of the law, is issued by the Constitutional Court as a result of the debates on the proposal of suspension and on the proofs presented.

The President of Romania will be notified on the date established for the debate, and he may offer explanations regarding the imputations brought to him.

The advisory opinion of the Constitutional Court is communicated to the presidents of the two Chambers and to the President of Romania.

► *to supervise the observance of the procedure for the organization and carrying out of a referendum, and to confirm its results.*

The plenum of the Constitutional Court decides with a majority of two thirds on the validity of the referendum.

The Decision of the Constitutional Court establishes if the procedure was respected for the organization and carrying out of the referendum and it confirms its results. Before it is published in the Official Journal of Romania, Part I, the decision of the Constitutional Court is presented to the Chamber of Deputies and to the



Senate, in their common session.

► *to verify the compliance with the conditions for the exercise of the legislative initiative by citizens.*

According to article 48 of the law, the Constitutional Court, ex officio or on the basis of the act submitted by the President of the Chamber of Parliament at which the citizens' legislative proposal has been registered, shall pronounce upon:

- the constitutionality of the legislative proposal which forms the object of the citizens' initiative;
- the fulfillment of the conditions relative to the publication of this proposal and whether the lists of supporters are duly certified by the mayors of the administrative-territorial units or by their empowered representatives;
- the attainment of the minimum number of supporters required for the promotion of such initiative, as well as the observance of their territorial dispersion in counties and in the Municipality of Bucharest, as provided in the Constitution.

► *to decide on the objections on the constitutionality of a political party.*

The objection on the constitutionality of a political party can be formulated by one of the presidents of the Chambers of the Parliament or by the Government.

The decision of the Court is not be subject to any appeal.

Political Parties can be declared as unconstitutional in the cases provided in art. 40 align. 2 of the Constitution, as amended, when their aims or their activity militate against political pluralism, the principles of a State governed by the rule of law, or against the sovereignty, integrity or independence of Romania.

The decision granting the objection shall be notified to the Tribunal of Bucharest for striking the unconstitutional party off from the register of lawfully constituted political parties.

► *to carries out all other attributions stipulated in the organic law of the Court.*

The Decisions and the rulings of the Constitutional Court are pronounced in the name of the law, are generally binding and with effects only for the future. They and the advisory opinions are published in the Official Journal of Romania, Part I.

Conclusions

Therefore, the Constitutional Court is the solely specialized organ that has attributions with regard to the verification of the conformity of the normative acts with the fundamental law.

The Romanian constitutional legislator opted for the European model of control for the constitutionality of laws, which means that this control was entrusted to this specialized organ, the Constitutional Court, an

institution established by the Romanian Constitution in 1991.

The control of the constitutionality of the laws is an important instrument for the warranty of the supremacy of the Constitution.

According to the law on its organization, the Constitutional Court is the unique authority with a constitutional jurisdiction in Romania, as it is independent of all other public authority and it is only complying with the Constitution and its organization and operation law⁷.

The extension of the constitutionality control on laws in all states of the world is a proof of its efficiency in the constitutional order of all countries.

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*** Law no.47/1992 on the Organization and Operation of the Constitutional Court, republished.

⁷ Law no.47/1992 on the Organisation and Operation of the Constitutional Court, republished, as amended by the Law no. 232/2004 for the amendment and supplementation of Law no. 47/1992.