



EFFECTS OF ROMANIA CONSTITUTIONAL COURT DECISIONS

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Abstract *The Constitutional Court is the only specialized body responsible for verifying conformity of laws and other regulations with the Constitution. Decisions of the Constitutional Court are when: ruling on the constitutionality of laws, before promulgation, treaties or other international agreements before their ratification by Parliament and Parliament regulations, decide on objections of unconstitutionality of laws and ordinances and the complaints that the constitutionality of a political party and solve legal disputes of a constitutional nature between public authorities. Decisions are pronounced in the name of the law, are generally binding and have effective only for the future.*

Key words:
Decision, the
Constitutional Court,
effects erga omnes

Introduction

The Constitutional Court is one of the main institutions established after the Romanian Revolution of 1989 in order to ensure new constitutional democracy. Regulation widely Constitutional Court was made by Law no. 47/1992 the organization and functioning of the Constitutional Court¹.

According to art. 1 para. 2 of the law above, the Constitutional Court is the sole authority of constitutional jurisdiction in Romania, being independent from any other public authority and is subject only to the Constitution and this law.

The literature states that "The Constitutional Court is a special political jurisdictional organ specialized to ensure – by the path of constitutional review - normative supremacy of the Constitution in the legal system and to fulfill other duties that fundamental law gave them express"².

The political character resulting from the designation of members of the Court - three judges are appointed by the Chamber of Deputies, three by the Senate and three by the President - art. 142 para. 3 of the Constitution. The nine judges are appointed for a term of nine years without the possibility of extension or renewal of the mandate.

As regards judicial nature, it is given by the powers which the Court has on the constitutional review of laws, the procedure to be followed before it and the nature of the solutions delivered.

Therefore, the Court is the only specialized body responsible for verifying conformity of laws and other regulations with the Constitution.

Effects of decisions of the Constitutional Court of Romania

Art. 11 of Law no. 47/1992, republished, establishes that in exercising its powers, the Constitutional Court pronounce decisions, rulings and notices.

Decisions of the Constitutional Court are the following cases:

- to adjudicate on the constitutionality of laws, before promulgation, upon notification of the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the People Lawyer, a number of at least 50 deputies or at least 25 senators, as well as ex officio, on initiatives to revise the Constitution.

Constitutional Court decides, upon notification expressly topics listed above, on the constitutionality of laws before their promulgation. The decision is rendered in the deliberations of the Court, and in cases of unconstitutionality of laws, before their promulgation, Parliament must reconsider those provisions to bring them into line with the Constitutional Court.

Regarding the verification of constitutionality initiatives to revise the Constitution, the law provides that, before referral to the Parliament to initiate legal proceedings to revise the Constitution, the Constitutional Court is obliged, within 10 days to rule on compliance with constitutional provisions on the review. Court decision, according to art. 21 para. 2 of the law, shall be communicated to those who initiated the draft of law or legislative proposal or, where appropriate, their representative.

If that were not complied with constitutional provisions on the review, the decision is sent to the Chamber of Deputies and the Senate, to review the law to revise the Constitution and for putting it in accordance with the decision of the Constitutional Court.

Court has jurisdiction to rule on the constitutionality of initiatives to revise the Constitution, regardless of initiator, therefore including legislative initiatives for review made by citizens, according to art. 144 lit. h) of the Constitution, that the Court "verify that the conditions for the exercise of legislative initiative by citizens"³.

- to ruling on the constitutionality of treaties or other international agreements before their ratification by Parliament, upon notification by one of the presidents of the two Chambers, a number of at least 50 deputies or at least 25 senators.

Under the provisions of the Basic Law, the Romanian Parliament, has competence in international relations, respectively to ratify international treaties and according to art. 11 para. 2 of the Constitution, treaties ratified by Parliament, according to the law, are part of national internal law.

Considering the effects they produce, the ratification of a treaty may take place only if no provisions contrary to the Constitution, as if a treaty also includes provisions requires prior review constitutional norms to ensure its supremacy.

Moreover, the Romanian Constitutional Court pointed out that international treaties are, in principle, an appropriate scope for control procedure and the Constitutional Court is also reasonable that the procedure be clarified constitutionality of treaties before their entry into force, specific procedures of inspection *a priori*⁴.

Therefore, if the Constitutional Court finds that the treaty or international agreement is unconstitutional can not be ratified.

The Court's decision shall be communicated to the President of Romania, the Presidents of both Houses of Parliament and Government.

- to adjudicate on the constitutionality of Parliament regulations, upon notification by one of the presidents of the two Chambers, a parliamentary group or a number of at least 50 deputies or at least 25 senators.

If the decision is found unconstitutional provisions of the Rules of the Constitutional Court, the Chamber will review hearing within 45 days, these provisions to bring them into line with the Constitution. During this period, the provisions of the regulation unconstitutional are suspended. After the expiry of 45 days, statutory provisions unconstitutional legal lapse.

- to decide on objections of unconstitutionality of laws and ordinances, brought up before courts of law or commercial arbitration, as well as those raised directly by the People Lawyer.

There may be exception provisions found to be unconstitutional by a previous decision of the Constitutional Court.

Referral to the Constitutional Court is ordered by the court before which the exception of unconstitutionality.

The decision as to the unconstitutionality of a law or ordinance or a provision of a law or an order is final and compulsory.

The provisions of laws and ordinances in force declared unconstitutional ceases legal effects within 45 days from the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, agree with the unconstitutional provisions of the Constitution. During this time the provisions declared unconstitutional are suspended by law.

The decision as to the unconstitutionality of a law or ordinance or a provision of a law or an order shall be communicated to the two Houses of Parliament and Government.

A clarification is required regarding the exception of unconstitutionality of the People Lawyer, the Constitutional Court addressed directly and not through a court, namely the exception must concern the rights and freedoms of the individual.

The literature shows that a complaint to the Constitutional Court made by the People Lawyer, who is not motivated by protecting the rights and freedoms of individuals, beyond its competence, inadmissible and must be rejected as such⁵.

- to solve legal disputes 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 the President of the Superior Council of Magistracy.

Authorities likely to be involved in a constitutional legal conflict are only those provided in Title III of the Constitution, namely Parliament, the President of Romania, the Government, the central public administration and local public administration and judicial authority.

Are excluded from this category political parties because, according to constitutional provisions, they "... contribute to defining and expressing the political will of the citizens ..." ⁶ as well as parliamentary groups are structures of both Houses of Parliament⁷.

The decision to settle constitutional legal conflict is final and shall be communicated to the author's complaint and the conflicting parties prior to its publication in the Official Journal of Romania, Part I.

- to decide on appeals that referring to the constitutionality of a political party.

Political parties may be declared unconstitutional in cases provided by art. 40 para. 2 of the Constitution, or when the purpose or activity, militate against political pluralism, or the rule of law, the sovereignty, integrity or independence of Romania.

The admission decision shall be communicated to the Bucharest Court to deletion of the political party, unconstitutional from the Register of political parties.

Conclusions

The State rule by law means the rule of law. The top of the pyramid laws is the Constitution, whose supremacy must be ensured by a special mechanism which resulted in a legal institution called the constitutionality of laws. By this control is performed the verification of compliance with constitutional laws.

The constitutionality of laws is an important tool in ensuring the supremacy of the Constitution.

The literature states that "constitutional jurisdiction has become progressively a central position within the institutions of liberal countries by ensuring constitutional balance and protect the rights and freedoms ..."8.

Constitutional Court of Romania is the sole authority of constitutional jurisdiction in Romania, being independent from any other public authority and obeys only the Constitution and the Law on its organization and running9. Decisions of the Constitutional Court are pronounce in the name of the law, are generally binding and effective only for the future. They shall be published in the Official Journal of Romania, Part I.

According to art. 147 para. 4 of the Constitution, decisions of the Constitutional Court of the publication, are generally binding and effective only for the future so that the constitutional text should apply their mandatory10.

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⁴ Constitutional Court Decision no. 148/2003 on the constitutionality of the legislative proposal to revise the Constitution of Romania, published in the Official Journal of Romania, Part I, no. 317 / 12.05.2003.

⁵ C.L.Popescu The People Lawyer under the right to notify the Constitutional Court according to the Constitution reviewed, "Right" Journal no. 6/2004, p. 59.

⁶ Art. 8 para. 2 of the Constitution.

⁷ L. Dragne, Constitutional Law and Political Institutions, vol. II, Second edition revised and updated, Ed. Legal Universe, Bucharest, 2012, p. 167.

⁸ J. Chevallier, Rule of Law, Ed. Legal Universe and Ed. Universitaria, Craiova, Bucharest, 2012, p. 82.

⁹ Law no. 47/1992 on the organization and functioning of the Constitutional Court, republished.

¹⁰ L. Dragne, Constitutional Law and Political Institutions, vol. I, Second edition revised and updated, Ed. Legal Universe, Bucharest, 2011, p. 18.