

THE LEGAL CONFLICT OF CONSTITUTIONAL NATURE AS REFLECTED IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT

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Abstract

In its activity, the Constitutional Court of Romania analyzes both acts and facts. The legal conflict of constitutional nature falls into the category of constitutional facts, in the last years being more and more present before the constitutional judges. Even if the activity of the Court is dominated by the verification of the constitutionality of the laws, ordinances or other legal acts, the requests regarding the resolution of the legal conflicts of constitutional nature begin to draw the attention of the public opinion, as they determine the constitutional litigation court to establish, by jurisprudential way, the conduct to be followed by public authorities regarding the designation of constitutional authorities or highlight the dangers that may occur in the situation in which certain constitutional norms are violated. The merits of the legal conflict of constitutional nature arise from the jurisprudence of the Constitutional Court which, in this matter, has manifested a continuous openness.

Keywords: *jurisprudence, Constitutional Court, the legal conflict, constitutional facts*

Introduction

The revision of the Romanian Constitution in 2003 allowed for the consolidation of the competence of the Constitutional Court of Romania by establishing a new attribution, namely that of solving the legal conflicts of constitutional nature. Thus, according to Article 146 letter e, the Constitutional Court resolves the legal conflicts of 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. This attribution was also taken over in Law no. 47/1992 [1] on the organization and functioning of the Constitutional Court.

By its constitutional and legal status, the Constitutional Court is called not only to ascertain the existence of the legal conflict of constitutional nature, but also to resolve such a conflict. The Constitutional Court analyzes the existence of the legal conflict of a constitutional nature, and in the case in which it finds that there is such a conflict, it indicates the conduct to be followed by the public authorities involved in the conflict.

The juridical nature of the legal conflict of constitutional nature

The meaning of the legal conflict of a constitutional nature does not differ from the text of the Constitution nor from the legal norms contained in the law of organization and functioning of the Constitutional Court. The Constitution provides only the right of the Constitutional Court to resolve the legal conflicts of constitutional nature and the legal subjects entitled to notify the Court with such a legal conflict, while Law no. 47/1992 regulates the actual procedure for solving the legal conflict of constitutional nature. With regard to the legal issues that may be brought before the Constitutional Court, it can be observed that they are restrictively regulated in the fundamental act, the constitutional provision does not distinguish whether the authorities they represent are or are not parties to the conflict before the Court, as the court points out in one [2] of its decisions.

Instead, the jurisprudence of the Constitutional Court outlines the content of the notion of legal conflict of constitutional nature. Thus, by Decision no. 148 of 16 April 2003 (Official Gazette issue 317 of 12 May 2003), the Constitutional Court has shown that these conflicts may arise between two or more constitutional authorities regarding the content or the scope of their attributions, deriving from the Constitution. The court does not solve political conflicts, but institutional blockages, respectively the positive or negative conflicts of competence.

This is a first decision of the constitutional litigation court, which refers to the notion of legal conflict of constitutional nature and by which the Court tried to establish its content; still, the complexity of the constitutional legal relations and the issues arising from them over which the constitutional court has been asked to rule from the moment the decision was adopted and until now has determined the evolution of the jurisprudence in the matter. From the jurisprudential analysis it will be possible to observe the inclination that the constitutional court has had for extending the scope of the notion of legal conflict of constitutional nature.

By Decision no. 53 of 28 January 2005, published in the Official Gazette of Romania, Part I, issue 144 of 17 February 2005, the Court settles that this legal conflict of constitutional nature involves concrete acts or actions by which one or more

authorities arrogate powers, attributions or competences that, according to the Constitution, belong to other public authorities, or the omission of some public authorities, consisting of declining competence or the refusal to perform certain acts that fall within their obligations.

By Decision no. 97 of 7 February 2008, published in the Official Gazette of Romania, Part I, issue 169 of 5 March 2008, the constitutional legal conflict is claimed to exist between two or more authorities and may concern the content or extent of their attributions, arising from Constitution, which means that these are conflicts of competence, positive or negative, and which can create institutional blockades.

By Decision no. 270 of 10 March 2008, published in the Official Gazette of Romania, Part I, issue 290 of 15 April 2008, the Court also held that the text of Article 146 letter e) of the Constitution “establishes the competence of the Court to resolve in any case any legal conflict of a constitutional nature arising between public authorities, and not only the conflicts of competence emerging between them”.

The Constitutional Court went even further with the approach in this matter and through several decisions (Decision of the Constitutional Court no. 901 of 17 June 2009, published in the Official Gazette of Romania, Part I, issue 503 of 21 July 2009, Decision no. 1525 of 24 November 2010, published in the Official Gazette of Romania, Part I, issue 818 of 7 December 2010, Decision no. 108 of 5 March 2014, published in the Official Gazette of Romania, Part I, issue 257 of 9 April 2014 , Decision no. 285 of 21 May 2014, published in the Official Gazette of Romania, Part I, issue 478 of 28 June 2014, Decision no. 685 of 7 November 2018, published in the Official Gazette of Romania, Part I, issue 1021 of 29 November 2018, or Decision no. 26 of 16 January 2019, published in the Official Gazette of Romania, Part I, issue 193 of 12 March 2019) has stated that these legal conflicts of constitutional nature “are not limited to conflicts of competence only, positive or negative, which could create institutional blockages, but they concern any conflicting legal situations whose emergence resides directly in the text of the Constitution”.

Therefore, compared to the initial approach in which the legal conflict of constitutional nature was viewed by the constitutional litigation court through the prism of the institutional blockages, at present there is a broader view of the concept

enshrined in Article 146 letter e from the Constitution and which considers “any conflicting legal situations whose emergence resides directly in the text of the Constitution”.

Despite this new approach to the problem of the legal conflict of a constitutional nature, the Constitutional Court emphasizes in two decisions (Decision no. 685 of 7 November 2018 and Decision no. 26 of 16 January 2019) that the rule regarding the employment of the competence of the Constitutional Court “is that, insofar as there are mechanisms by which the public authorities can regulate themselves through their direct action, the role of the Constitutional Court becoming a subsidiary one. On the other hand, in the absence of these mechanisms, insofar as the task of regulating the constitutional system rests exclusively with the court, which is thus placed in a position to fight for guaranteeing its rights or freedoms against an unconstitutional but institutionalized legal paradigm, the role of the Constitutional Court becomes a major and essential one for removing the constitutional blockade”.

In our opinion it is a balanced approach of the constitutional judge, because, in general, the subjects of law involved in legal conflicts of constitutional nature have a strong political foundation, and a random involvement of the constitutional court in the settlement of such conflicts could lead to the institution’s disbelief and to accusations of political partisanship.

Regarding the meaning of the notion of “public authorities” between which a legal conflict of constitutional nature may arise, the Constitutional Court has shown [3] that there are only those authorities included in Title III of the Constitution, namely: the Parliament, composed of the Chamber of Deputies and the Senate, The President of Romania, as a single-person public authority, the Government, the central public administration bodies and the local public administration bodies, as well as the judicial authority bodies.

Because the constitutional court has recently adopted an important decision related to a legal conflict of a constitutional nature, we consider that it is appropriate to present some aspects derived from the manifestation of the will of the constitutional court. This is Decision no. 85 of 24 February 2020, by which the Constitutional Court sanctioned the unconstitutional conduct of the President of Romania in the procedure of

forming the Government. The decision is interesting both from the perspective of the object of the request, of its considerations, as well as of the prescribed conduct to the subject of law generating the legal conflict of constitutional nature.

DECISION no. 85 [4] of 24 February 2020 on the requests for the resolution of the legal conflicts of constitutional nature between the President of Romania and the Parliament of Romania, made by the President of the Chamber of Deputies and the President of the Senate

In order to adopt this decision, the Constitutional Court was notified with the requests for the resolution of the legal conflicts of constitutional nature between the President of Romania and the Parliament of Romania, formulated by the President of the Chamber of Deputies and the President of the Senate. According to Article 146 letter e of the Constitution, both the President of the Chamber of Deputies and the President of the Senate can hold the right to refer the Constitutional Court with the resolution of a legal conflict of constitutional nature.

The Constitutional Court has found that the requests made by the President of the Senate and the President of the Chamber of Deputies, respectively, concern a litigious, conflicting situation, as they refer to a dispute between the President of Romania and the Parliament regarding the nomination of the candidate for the position of Prime Minister. It has been appreciated that this conflict has a legal nature, as it refers to the extent and valorization of the competence of the President of Romania in this context, as well as a constitutional one in nature, as the whole litigation situation is confined to the constitutional provisions regulating the procedure of the Government's investiture, all together the constitutional provisions that set up the role of the President of Romania and of the Parliament, as well as the legal relations between the two public authorities.

From a procedural point of view, before entering the merits of the application, the Court initially checks the following aspects: the holder of the complaint; the quality of public authority of the parties in conflict; the legal character of the conflict under analysis; the constitutional nature of the conflict.

The requests of the President of the Senate and the Chamber of Deputies have underlined, in essence, the fact that the President of Romania acted discretionarily by appointing the candidate for the position of Prime Minister, in the sense that he proposed the same person who, the day before, had received a vote of no confidence from the part of the Parliament of Romania, in order to cause the dissolution of the Parliament and to determine early elections.

In its analysis, the Constitutional Court found that the litigation situation refers to the constitutional provisions regarding the nomination of the candidate for the position of prime minister, to all the constitutional norms and principles that configure the procedure for appointing the Government, the role of the President of Romania and the Parliament, as well as the legal relations between the two public authorities, in a specific context, determined by the adoption of a censure motion and the immediate appointment, as a candidate for the position of prime minister, of the same person who fulfills the position of prime minister of the dismissed Government.

After finding the existence of the legal conflict of constitutional nature, the Constitutional Court resolved this conflict and showed the conduct that the public authorities involved in the legal conflict of constitutional nature must have. Thus, the Court ruled that “the whole set of acts/facts/statements of the President of Romania demonstrates the distortion of the natural meaning of the constitutional norms regarding the nomination of the candidate for the position of prime minister, the fact that there was not even the intention of appointing a candidate to obtain the vote of confidence of the Parliament, but rather that there was the intention not to obtain it, and, from this perspective, an antagonistic position of the President to the Parliament, with the violation of the obligation of constitutional loyalty governing the interpretation and application of the Constitution and the relations between the public authorities of constitutional rank, which consequently determine a legal conflict of constitutional nature between the President of Romania and the Parliament”.

From the point of view of the conduct, in the accomplishment of the attribution provided by Article 103 paragraph (1) of the Constitution, the President of Romania was obliged to re-designate the candidate for the position of prime minister, the Court

drawing attention that this designation must respect both the letter and the spirit of the Constitution, as well as the obligation of loyal constitutional behavior.

Solving the legal conflict of constitutional nature, the constitutional litigation court drew attention to deviations from the constitutional norms and sanctioned this unfair conduct in relation to the text of the fundamental law.

Conclusions

As a guarantor of compliance with the fundamental norms, the Constitutional Court has the power to resolve legal conflicts of a constitutional nature, disputes between different public authorities regulated in Title III of the Romanian Constitution. The Constitutional Court does not resolve political conflicts [5], but is called, through the notification made by the institutional actors expressly provided by the constitutional text, to solve legal conflicts of constitutional nature. Considering that one of the conditions for achieving the fundamental objectives of the Romanian state is a good functioning of the public authorities, following the principles of separation and balance of powers, without institutional blockages, an aspect underlined in the jurisprudence of the Constitutional Court (Decision no. 460 of 13 November 2013), in the case of the emergence of an institutional blockade that cannot be solved by the self-regulation mechanism, the constitutional litigation court is called to unblock the situation. Of course, from the point of view of the meaning of the notion of legal conflict of a constitutional nature, it does not intervene only in case of institutional blockade, but in any conflicting legal situations whose emergence resides directly in the text of the Constitution. Moreover, it can be observed, analyzing the evolution of the jurisprudence in this matter that the meaning of the notion of legal conflict of constitutional nature is in a continuous dynamic.

Regarding the consequences of the manifestation of the Constitutional Court will, regardless of the authority that generated the legal conflict of constitutional nature, it has the obligation, within the coordinates of the rule of law, to respect and comply with those established by the decision of the Constitutional Court (Decision no. 85 of 24 February 2020).

The decision resolving the legal conflict of a constitutional nature is final and communicated to the author of the referral, as well as to the parties in conflict, before its publication in the Official Gazette of Romania, Part I [6].

References:

- [1] Republished in the Official Gazette of Romania, Part I, issue 807 of 3 December 2010.
- [2] Decision of the Constitutional Court no. 284 of 21 May 2014, published in the Official Gazette of Romania, Part I, issue 495 of 3 July 2014.
- [3] Decision of the Constitutional Court no. 284 of 21 May 2014, published in the Official Gazette of Romania, Part I, issue 495 of 3 July 2014.
- [4] Published in the Official Gazette issue 195 of 11.03.2020
- [5] Cristian Ionescu, Contencios constitutional, Universul Juridic Publishing, Bucharest, 2010, p. 195
- [6] Tudorel Toader, Marieta Safta, Curs de contencios constitutional, Hamangiu Publishing, Bucharest, 2017, p. 155