

# THE PRINCIPLE OF BICAMERALISM REFLECTED IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF ROMANIA

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## **Abstract**

*The paper aims to highlight the practice of the Constitutional Court regarding the principle of bicameralism, a principle enshrined in Article 61 paragraph 2 of the Romanian Constitution. This principle was recently invoked by the Constitutional Court when it declared the Romanian Administrative Code unconstitutional as a whole. The bicameral structure of the Parliament has implications not only on the organization but also on the way the country's legislative authority works. The law, as a normative legal act [1], the result of the will of the legislative power, must be adopted in compliance with the constitutional, legal and regulatory conditions of the legal technique and procedure. Under these conditions, the principle of bicameralism is included, a principle whose content has been outlined by numerous decisions of the Constitutional Court.*

**Key-words:** *Parliament, law, Constitutional Court, decisions, the principle of bicameralism*

## **1. INTRODUCTION**

The Romanian Parliament has a bicameral structure, comprising of the Chamber of Deputies and the Senate. It is the supreme representative body of the Romanian people and the only legislative authority of the country; its statute being regulated by Article 61 paragraph 1 of the Constitution. The Parliament has a general material competence, having the possibility to primarily regulate any matter of public interest [2]. By adopting the Romanian Constitution in 1991, the tradition of the bicameral parliament was restored. The bicameral structure of the Parliament was first regulated in 1864 by the Development Status of the Paris Convention, which was also taken over by the Constitutions of 1866, 1923 and 1938. Bicameralism was eliminated during the communist period, when the role of legislative authority was played by the Great National Assembly, a unicameral body.

By its place and role within the constitutional architecture, the Parliament is regarded in the literature as “a central institution of the development of democracy” [3]. Until the revision of the Constitution in 2003, the legislative power functioned in a genuine or integral [4] bicameral system in the sense that the two Chambers had the same legitimacy, the same way of organization and the same attributions in the legislative and parliamentary control plan [5]; the modification and completion the fundamental law made the system conceived by the Constituent Assembly in 1991 to lose its significance or, as one author [6] argued, “following the constitutional review, the Parliament of Romania has turned from a bicameral Parliament into practically three unicameral parliaments”. With the revision of the Constitution in 2003, a functional bicameralism system has been put into operation.

The Constitutional Court, in its jurisprudence [7], has appreciated that the bicameral system concretizes the separation of powers not only among the classical, legislative, executive and judicial powers, but also within the legislative power.

The principle of bicameralism, as a principle of organization and functioning of the institution of the Romanian Parliament, is found regulated in Article 61 paragraph 2 of the Romanian Constitution. The rules contained in Article 61 paragraph 2 of the Constitution must be, however, corroborated with those contained in Article 75 of the Fundamental Law on the Legislative Powers of the Chambers of the Parliament, rules which establish, for each of the two Chambers, either the status of the first Chamber to be notified or that of decisional Chamber. The content of the principle of bicameralism has evolved over time, a key role in clarifying its significance belonging to the Constitutional Court, which, through its decisions, emphasized its importance within the legislative mechanism.

## **2. THE PRINCIPLE OF BICAMERALISM REFLECTED IN THE JURISPRUDENCE OF THE CONSTITUTIONAL COURT OF ROMANIA**

Before moving on to analyzing the issues of the bicameralism principle, we appreciate the importance of highlighting the advantages that the Constitutional Court has identified in the case of the bicameral structure of the legislative forum. These were included in the Constitutional Court Decision no. 799 [8] of 17 June 2011, a decision

adopted following the analysis of the draft law on the revision of the Constitution of Romania and which is a reference document for the analyzed matter.

The Court considers that the bicameral system avoids the concentration of power in the Parliament, because the two Chambers of Parliament (the Senate and the Chamber of Deputies) prevent each other from becoming the support of an authoritarian regime. At the same time, there are debates and a framework for successive analysis of the laws by two different bodies of the legislative forum, which offers a better guarantee of the quality of the legislative act. In the bicameral system, the second reading of the law is made by another assembly, compared to the unicameral system in which the reading of the law is made by the same body, and even if it is done several times, there is the risk that the second reading becomes a formality or even be removed for urgent reasons. Another advantage identified by the Constitutional Court is that bicameralism minimizes the risk of domination of the majority, favoring dialogue between the two Chambers, as well as among the parliamentary groups.

Returning to the principle of bicameralism, it is often invoked in the petitions submitted to the constitutional court, being an element of analysis in the extrinsic control of constitutionality, the principle of bicameralism falling within the constitutional norms related to the legislative procedure.

In Decision no. 710 [9] of 6 May 2009, the Constitutional Court has shown that the principle of bicameralism materializes in the institutional dualism at both parliamentary and functional level, the norms contained in Article 75 of the fundamental act establishing the legislative competence according to which the two Chambers have, in the cases expressly defined, either the status of the first Chamber to be notified or the Chamber of Reflection, or the Chamber of Decisions. At the same time, the Court considers that in view of the indivisibility of the Parliament as the supreme representative body of the Romanian people and its uniqueness as a legislative authority of the country, the law, as a specific act of the Parliament, must be the result of the concurrent consensus of both Chambers of the Parliament. The Court considers [10] that the deliberative function of the Parliament can only be achieved in a real and effective manner to the extent that both Chambers express their views on the normative content of the laws they adopt.

Even if the Chambers have, in the matters of the Constitution, their own right of decision the rigors of the principle of bicameralism require both Chambers of the Parliament to debate and express their position on the same content and the same form of the legislative initiative. This latter aspect is also underlined in Decision no. 472 [11] of 22 April 2008, which states that the parliamentary debate on a draft law or a legislative proposal can not ignore its assessment in the plenary session of the two Chambers of our bicameral Parliament. To substantiate this assertion, the Constitutional Court of Appeal states that the amendments and additions brought by the Decisional Chamber to the draft law adopted by the first Chamber notified must relate to the matter envisaged by the initiator and the form in which it was regulated by first Chamber. Otherwise, it is the case that a single Chamber, namely the Decisional Chamber, to legislate, which is in conflict with the principle of bicameralism.

On the same line of ideas is Decision no. 1093 [12] of 15 October 2008 stating that, when debating a legislative initiative, the Chambers have a right to decide on it, as long as both Chambers of Parliament have debated and expressed on the same content and form of the legislative initiative.

By Decision no. 413 [13] of 14 April 2010, the Constitutional Court set the initial criteria, which are essential to determine the cases in which the principle of bicameralism is violated by the legislative procedure.

These cumulative key criteria are:

- a) the existence of major legal differences between the forms adopted by the two Chambers of the Parliament;
- b) the existence of a distinct, significantly different configuration between the forms adopted by the two Chambers of the Parliament.

The law must represent the work of the whole Parliament. This means that each Chamber should make its own contribution to the implementation of the legislative approach, in which case the legislator must respect the constitutional principles under which a law can not be adopted by a single Chamber [14].

By Decision no. 1 [15] of 11 January 2012, the Constitutional Court states that the application of this principle can not have the effect of “diverting the role of the Reflection Chamber of the first Chamber to be notified [...] in the sense that this would be the

Chamber which would definitively fix the content of the draft or the legislative proposal (and, in practice, the legislative content of the future law), which means that the second Chamber, the Decisional Chamber, will not be able to amend or supplement the law adopted by the Reflection Chamber, but only the possibility of approving or rejecting it". Under these circumstances, "it is indisputable that the principle of bicameralism presupposes both the cooperation of the two Chambers in the process of drafting the laws, and their obligation to express their position on the adoption of laws through vote (...)".

A legislative initiative, ruling the Court in another decision [16], may be amended or supplemented by the first Chamber seized without its decision being limited by the content of the legislative initiative in the form submitted by the initiator, as the Decisional Chamber has the right to modify, complete or renounce the initiative in question.

Further to its argument, the Court held [17] that Article 75 paragraph (3) of the Constitution using the expression "decide definitively" on the Decisional Chamber, does not exclude but rather presupposes that the draft law or legislative proposal adopted by the first Chamber notified be debated in the decisional Chamber where amendments and additions may be brought to it, but the decisional Chamber can not substantially alter the subject matter and the configuration of the legislative initiative, with the consequence of misappropriation from the aim pursued by the legislator.

In Decision no. 619 [18] of 3 October 2018, the Court emphasizes the fact that bicameralism is not based on the idea that both Chambers must decide on an identical legislative solution. In the Decisional Chamber, deviations are admitted, which are inherent, from the form adopted by the first Chamber notified, without, however, changing the essential subject of the draft law/legislative proposal. The decisional Chamber has the possibility to set aside from the vote in the first Chamber notified, because otherwise it would limit its constitutional role and the decision-making character attached to it would become illusory. However, the changes to the form adopted by the first Chamber notified must include a legislative solution that preserves its overall conception and being properly adapted [19].

From the analysis of the jurisprudence [20] of the Constitutional Court, there arise the main elements of the principle of bicameralism in relation to which one can decide its observance. These elements are as follows [21]:

1. If there are major, substantial, legal differences between the forms adopted by the two Chambers of the Parliament;
2. If there is a significantly different configuration between the forms adopted by the two Chambers of the Parliament;
3. If the original purpose of the law has been seized, in the sense of the political will of the authors of the legislative proposal or philosophy, the original conception of the normative act.

If, initially, in the process of verifying the violation of the principle of bicameralism, the Constitutional Court insisted on the need for the cumulative existence of the first two criteria, in time it added to the already established ones a third criterion, that of the original purpose of the law. Therefore, only if the three criteria resulting from the jurisprudence of the Constitutional Court are cumulatively met, the constitutional principle of bicameralism is affected, a principle which governs the legislative activity of the Romanian Parliament [22].

### **3. CONCLUSIONS**

In its activity of controlling the constitutionality of the law, namely the extrinsic constitutional control, the Constitutional Court verifies, first of all, whether the principle of bicameralism is respected, given the existence of major, substantial differences of legal content between the forms adopted by the two Chambers, and then looks at whether there is a significantly different configuration between the forms adopted by the two Chambers of the Parliament, as an essential element in respecting the principle of bicameralism, and finally verifies whether the original purpose of the law has been respected. If the three criteria are found to be met, the Constitutional Court declares unconstitutional the normative act analyzed in its entirety. Therefore, the defect of unconstitutionality related to the way of adopting a law affects in its entirety the validity of that normative act in its entirety and the consequence is the termination of the legislative process regarding the respective law.

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