

SETTLEMENT BY THE CONSTITUTIONAL COURT OF LEGAL DISPUTES BETWEEN PUBLIC AUTHORITIES

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Abstract

The final conclusion of this paper is that among the constitutional legal disputes those of jurisdiction between public authorities come first in line. Also in their turn, can be considered as such those legal disputes created by the refusal or failure of public authorities to exercise their legal prerogatives by declining their competence or refusing to perform certain act which fall within their obligations. The President of Romania may be part of such constitutional legal disputes or may notify the Constitutional Court of the existence of such disputes between different public authorities.

Keywords: *constitutional legal dispute, the Constitutional Court, the President of Romania, the Prime Minister, the Supreme Defense Council, the Superior Council of Magistracy.*

Introduction

The starting point of this paper is the necessity to examine the legal disputes of a constitutional nature between public authorities.

Among these public authorities who can notify the Constitutional Court or may be part of such a legal dispute is also the President of Romania. His presence before the Constitutional Court can occur either as a matter of law, to notify the Constitutional Court, or as part of a constitutional legal dispute.

Section 1

The constitutional legal dispute in jurisprudence and legal doctrine

A state based society governs itself according to a pre-established set of rules and legal mechanisms, capable to guarantee order and constitutional architecture¹. The exercise of national sovereignty, according to the rules established by the Constitution, has a specific message resulting from the separation of powers theory and to governance requirements

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¹ See Gh.C. Mihai, *Fundamentele dreptului, Știința dreptului și ordinea juridică* (, The Fundamentals of Law, the Science of Law and Legal Order) Editura (Publishing house) C.H.Beck, București, 2009, p. 321 and next

based on scientific techniques and procedures². Governance and legislation are the vectors of national sovereignty, "creating a system of mutual transparency"³ by which the principle of separation of powers in a state, demonstrates its usefulness. A distinct place in the state institutional architecture is occupied by the Constitutional Court - a complex institution that is placed outside the three branches of government, but shares the nature of each of them, being thus a jurisdictional⁴, political and legal authority.

In exercising its powers, the Constitutional Court is involved in conflicting relations between the executive, the legislative and the judicial, between state and society, etc⁵.

The Constitutional Court attribution to resolve the constitutional legal disputes between the public authorities was introduced following the revision of the Constitution in 2003. The expert Romanian authors in this field⁶ consider that this attribution of the Court is inspired by the provisions of the European Constitutions, respectively by the resolution of conflicts between federal and federated authorities—from Germany⁷, Austria⁸ and Switzerland⁹ - or by the resolution of disputes between the state and the autonomous regional authorities (the authorities of the collectivities) - Spain¹⁰ or Italy¹¹.

The common denominator of the involvement of the Constitutional Court in constitutional disputes mediation is based on the need "not to let at the discretion of any judge from any level, the power to censor the legislator and to create an inconsistent, and therefore, inefficient practice"¹².

² See I.Muraru, E.S.Tănăsescu, (coord.), *Constituția României, Comentariu pe articole*, (Romanian Constitution, Comments by articles) Editura C.H.Beck, București, 2008, p.1375.

³ See M.Senellart, *Artele guvernării, De la conceptul de regim medieval la cel de guvernare*, Editura Meridiane, (The Arts of Governance, from the Medieval Regime Concept to that of Governance) (Meridiane Publishing House), Bucharest, 1988,p.245

⁴ The jurisdictional character of the Constitutional Court is directly stated by the Law of the organization of the Court nr. 47/1992, art. 1, para. (2), which states that this is „the only constitutional jurisdictional authority in Romania”.

⁵ See I.Vida, *Curtea Constituțională a României, Justiția politicului sau politica justiției?*, (The Constitutional Court of Romania, Political Justice and Justice Policy) Editura (publishing house) Monitorul Oficial, București, 2011, p. 42.

⁶ See G.Vrabie, M. Balan, *Organizarea politico-etatică a României*, (Romania’s Political and State Organization)Institutul European (European Institute), București,2004,p. 293 and M. Criste, *Scurtă prezentare comparativă a jurisdicției constituționale în țările Uniunii Europene*, (A Brief, Comparative Presentation of the Constitutional Jurisdiction in the EU countries) Revista Dreptul (Law Magazine), Editura (Publishing House) Universul Juridic, nr. 4/2010, p. 181.

⁷ According to the German Constitution "The Constitutional Federal Court decides that : ..3. in case of difference of opinions regarding the rights and obligations of the Federation and the Lander, especially regarding the execution of federal laws by the Lander and the exercising of surveillance by the Federation; 4. regarding the public law conflicts between the Federation and the Landers(Provinces), between Landers or within a Lander, whenever there is no possibility of appeal to another Court." (art.93)

⁸ Article 138 of the Austrian Constitution states that: „(1) The Constitutional Court may pronounce decisions on conflicts of jurisdiction c) between states, as well as between states and the Federation.

(2) The Constitutional Court pronounces decisions regarding the application by the federal Government or by the Government of the federate state of a legislative act, when this is in either the federation or the state jurisdiction.”

⁹Article 189 of the Switzerland Constitution also regulates jurisdiction : (2) The Court pronounces decisions on disputes between Federations and Cantons or between Cantons.”

¹⁰ Article 161 of the Spanish Constitution states that: „(1) The Constitutional Court has jurisdiction over the entire Spanish territory and has the competency to judge:..c) the competency disputes between the state and the autonomous communities or between the autonomous communities themselves”.

¹¹ Article 134 of the Italian Constitution confers competence to the Constitutional Court to decide with regard to "conflicts created by the allocation of powers in the branches of governance within the state, i.e. conflicts between the state and the regions as well as between regions.”

¹² See M. Criste, *op.cit.*, p. 181.

The constitutional and procedural aspects in Romania are developed by corroborating art. 146, letter e) of the Basic Law with the provisions of Articles 34-36 of the Law no. 47/1992, according to which legal disputes of a constitutional nature between public authorities are resolved at the request of the President of Romania, of one of the Presidents of the two Chambers, of the Prime Minister, or of the Chairman of the Supreme Council of Magistrates.

In order to analyze the decisions of the Constitutional Court regarding constitutional legal disputes, two aspects need to be clarified: 1. what is meant by constitutional legal dispute and 2. who are the authorities between whom such disputes can arise.

Regarding the first point, the doctrine demonstrates that by constitutional legal dispute is meant any positive or negative conflict of competency from the perspective of constitutional provisions and within their boundaries. According to the same views, there can be no legal constitutional disputes between the courts, including the High Court of Cassation and Justice, and other public authorities, since courts must review and resolve all cases by default, including those of general competence¹³.

This doctrine argument was infirmed by the Constitutional Court by Decision no. 122, of 12 November 2008 on the demand for legal settlement of the constitutional legal dispute between the President of Romania on the one hand, and the judiciary, represented by the High Court of Cassation and Justice, on the other hand, and by Decision no. 838 of 27 May on the referral made by the President of Romania on the existence of a legal conflict between the constitutional judicial authority, represented by the High Court of Cassation and Justice, on the one hand, and the Parliament of Romania and the Romanian Government, on the other.

In the first case, the Constitutional Court has determined that there is a legal constitutional dispute between the President and the High Court, noting that a decision of the High Court of Cassation and Justice is not enforceable against the President, as the High Court failed to consider the decision of unconstitutionality pronounced by the Constitutional Court on the legal texts applicable in this pursued case. In fact, it is a constitutional legal dispute which consists in the disregard by the Supreme Court of a decision taken by the Constitutional Court, which makes it impossible for the President of Romania to comply with the decisions of both courts. This situation was determined by an appeal to the Bucharest Court of Appeal by a colonel who was retired by order of Minister of National Defense on reasons of old age. The colonel's appeal invoked the inobservance of the provisions of art. 66, Law no. 80/1995 on the status of the military. Thus, the Court of Appeal was notified that, in accordance with the law, certain categories of the military, with the rank of colonel, should have automatically been granted the rank of general upon retirement.. At trial, the Presidential Administration raised the objection regarding the unconstitutionality of art. 66, of the Law no. 80/1995. In this context, the Constitutional Court found that the criticized provisions are contrary to article 94, letter. b) of the Constitution, since these are provisions formulated in an imperative manner for the advancement in rank of "colonels and commanders".

In this context, the attribution of the President of Romania provided by Article 94, letter. b) of the Constitution, granting the degrees of marshal, general and admiral, appears to be a formal intervention to meet certain legal provisions.

After solving the exception of unconstitutionality and after the pronouncement by the Constitutional Court, the trial continued until the case was dismissed by the Bucharest Court

¹³ See I. Deleanu, *Instituții și proceduri constituționale- în dreptul român și în dreptul comparat-*, (Institutions and Constitutional procedures – in Romanian Law and in comparative Law) Editura (Publishing house) C.H. Beck, București, 2006,p. 865.

of Appeal on the ground that the court “analyzes only the legality of the challenged order” without taking into account the decision of the Constitutional Court.

The plaintiff appealed to the High Court of Cassation and Justice which proceeded to the re-trial of the case. In this regard, the Supreme Court referred to the provisions of Law no. 80/1995, which were in force previously to the law which declared them unconstitutional and which regulated granting of the rank of general upon retirement, to all soldiers who have held the rank of colonel for at least 5 years and obtained very good qualifications.

By virtue of the Constitutional Court decision, the Parliament adopted Law no. 81/2007, which amended the respective Article, in the sense that it stipulates the possibility and not the obligation of granting the rank.

In this context, the plaintiff addressed to the President of Romania through a bureau of judicial enforcement with the request of “being granted the rank of brigadier general upon his retirement”.

As it can be seen, an antithetical situation has been created. In this context the Court noted the existence of a constitutional juridical dispute between the High Court of Cassation and Justice and the Constitutional Court, generated by the fact that the Supreme Court did not take into consideration the Decision no, 384 of May 4, 2006, taken by the Constitutional Court, by which the Article 66 of Law no. 80/1995 was declared unconstitutional and, devoid, as such, of any legal efficiency.

The Constitutional Court resumed the trial and noted that the procedural parties in the proceedings, i.e. plaintiff and defendants were respectively the Ministry of Defense and the President of Romania. The Court found that the decision of the High Court of Cassation and Justice was not opposing the President of Romania.

In the second case, the Constitutional Court established that there is a legal constitutional dispute between the judicial authority, on the one hand, and Parliament of Romania and the Romanian Government, on the other. "In exercising the powers under Article 126. (3) of the Constitution, the High Court of Cassation and Justice is required to ensure consistent interpretation and application of the law by all courts, with the underlying principle of the separation and balance of powers, enshrined in Article 1. (4) of the Romanian Constitution. The High Court of Cassation and Justice has no constitutional competency to establish, amend or repeal the legal rules laid down by law or to perform their constitutional control. In fact, the President of Romania held that the courts have rendered judgments and decisions¹⁴ in favor of magistrates and of their legal experts and in favor of legal assistants and auxiliary staff who formulated claims, based on remuneration legislation of the judicial system. In exercising these functions it has been demonstrated that the courts and the High Court of Cassation and Justice had acted as legislative authorities, although the legal status of remuneration rights can be established only by law or by similar normative regulations with juridical power, respectively by a simple or emergency Government decision. Consequently, it was noted that courts have abusively attributed powers relating to the sphere of legislative power. In resolving this constitutional legal conflict, the Constitutional Court established that courts may not create legal rules. Consequently the courts attributions beyond the phrase "within the limits of the law" are unconstitutional to the extent that they intend to create legal rules that provide for rights other than those envisaged by the legislature in adopting laws. The mission of these constitutional courts is to achieve justice, according to paragraph 126.

¹⁴ The decisions on which reference is made are : Decizia nr. XXXVI din 7 mai 2007 privind recursul în interesul legii (Appeal in the interest of the law) și Decizia nr. XXI din 10 martie 2008 pentru examinarea recursului în interesul legii (for examining the appeal in the interest of the law).

(1) of the Basic Law, i.e. to solve by applying the law, legal disputes between subjects on the existence, extent and exercise of their subjective rights.

The expert authors in the field criticized the phrase "constitutional legal conflict" used by the Constitution and the Law no. 47/1992 on the organization and functioning of the Constitutional Court without specifying its content. Some authors have considered that the term "constitutional legal conflict between public authorities" is tautological, since a constitutional conflict is a juridical conflict¹⁵. Other opinions show that practice imposes itself as superior to theory, requiring new guidelines for solving bottlenecks between state authorities. Thus, the Constitutional Court has received not only legal complaints but also political complaints that have no legal connotation, although these conflicts aroused between the public authorities of the Romanian state¹⁶.

Therefore, in order to establish the features of the juridical conflict of a constitutional nature, the jurisprudence of the Constitutional Court and the doctrine in the field constitute the main tools. Thus, we consider, first, the conflicts of authority and the institutional bottlenecks, i.e. positive or negative conflicts of jurisdiction¹⁷.

Conflicts of authority are those conflicts of constitutional nature which occur as a result of concrete actions or deeds by which one or more authorities are assuming powers, attributions or competencies which, according to the Constitution, belong to other public authorities. Conflicts of authority may also occur by failure of public authorities to fulfilling their respective duties by declining jurisdiction or refusing to perform certain activities which fall within their duties¹⁸. Consequently, the subject of constitutional legal conflict arises from conflicts of competence, positive or negative, and that can lead to institutional bottlenecks¹⁹.

Hence, legal disputes of competence²⁰ are the main component of constitutional legal conflicts, and in addition, any other differences between public authorities²¹. By Decision nr. 270/2008, the Constitutional Court noted the existence of a juridical conflict of a constitutional nature between a Public Ministry – the Prosecuting Magistracy affiliated to the High Court of Cassation and Justice, on the one hand, and the Parliament - Chamber of Deputies and the Senate - on the other hand, regarding the procedure to be followed regarding applications for the prosecution of members and former members of the Government for acts committed in the exercise of their duties, who were still deputies and senators at the date of the respective requests.

¹⁵ See I.Deleanu, *op.cit.* p. 865.

¹⁶See I. Vida, *op.cit.*, p. 97.

¹⁷ See Decizia nr. 148/2003 privind constituționalitatea propunerii legislative de revizuire a Constituției României, publicată în Monitorul Oficial al României, Partea I, nr. 317 din 12 mai 2003.(Decision no. 148/2003 regarding the constitutionality of the legislative proposal to revise the Romanian Constitution, published in the Official Gazette).

¹⁸ See Decizia (Decision) nr. 53/2005, publicată în (published in) Monitorul Oficial al României, (Official Gazette) Partea I, nr. 144 din 17 februarie 2005.

¹⁹ See Decizia (Decision) nr. 97/2008, publicată în (published) Monitorul Oficial al României, (Official Gazette)Partea I, nr. 169 din 5 martie 2008.

²⁰ In order for a positive or negative dispute of competence to exist, it is necessary that two public authorities declare either their incompetency or their interest in the solving of the same case. In the case of a positive competence dispute, two or more public authorities declare themselves competent to regulate or to solve one and the same problem. The existence of a negative competence dispute envisages the situation in which one or more public authorities refuse to regulate or solve a problem, although they have this right by Constitution. In this context, see I. Vida, *Curtea Constituțională a României*, p. 97 și urm.(Romania's Constitutional Court).

²¹ See Decision no. 270/2008, publicată în (published in) Monitorul Oficial (Official Gazette) al României, Partea I (Part One), nr. 290 din 15 aprilie 2008 .

Firstly, in examining the case, the Constitutional Court pointed out the provisions of Article 146 letter e) of the Basic Law, respectively that the competency of this court is to resolve any juridical conflict of constitutional matter arising between public authorities, and not only the conflicts of jurisdiction arising between them. Secondly, the Court noted that the involvement of the Ministry of Justice can not be accepted because its request addressed to the President of Romania to begin the prosecution of four persons- members or former members of the Government, who are parliamentarians, is based on the Law No. 115/1999 which was declared unconstitutional. Therefore, according to the rule of law, the provisions of the laws found to be unconstitutional are suspended by law for a period of 45 days. Therefore, in this particular case, the provisions of Article 109(2) of the Constitution are directly applicable; these provisions establish that the requests regarding the prosecution of members or former members of the government for acts committed in the exercise of their duties must to be addressed either to the Chamber of Deputies, or to the Senate, if they are still members of either of them.

Under these circumstances, the juridical conflict may also involve the omission or refusal from the part of some public authorities to exercise their legal prerogatives by declining their competence, or by refusing to perform certain tasks which are part of their duties²².

Furthermore, the "opinions, judgments of value or claims by warrant holders regarding other public authorities"²³ do not constitute legal conflicts between public authorities, "as they are not subject to legal consequences and remain within the limits of the freedom of expression of political opinions according to the restrictions provided for in Article 30 paragraph. (6) and (7) of the Constitution"²⁴. Therefore, the phrase "constitutional legal conflict" refers to any conflicting legal situation whose birth lies directly in the text of the Constitution and does not limit conflicts of competence, positive or negative, that could create institutional bottlenecks²⁵.

The Court held that, under its powers that are expressively and restrictively provided for, in Art. 146 of the Constitution and Law no. 47/1992, which ensures, by way of constitutional control, the legislative supremacy of the Constitution in the normative legal system, the Court does not have the competence to censor the legality of decisions and resolutions, or to hold that they have no legal effect²⁶.

In this context, by the phrase "public authority" the Constitutional Court understands "the Parliament consisting of the Chamber of Deputies and the Senate, the President of Romania, as unipersonal public authority, the Government, the public and central administration bodies, as well as the judiciary organs and legislative bodies – the High Court of Cassation and Justice, the Public Ministry (Department of the Public Prosecutor) and the Superior Council of Magistracy."²⁷

²² See Decizia (Decision) nr. 435 din 26 mai 2006, publicată (published) în Monitorul Oficial (Official Gazette), nr. 576 din 4 iulie 2006.

²³ See I. Deleanu „*Instituții și proceduri constituționale*”, (Institutions and Constitutional Procedures) Editura (publishing house).C.H. Beck, 2006, p. 865.

²⁴ Decizia (Decision) nr. 53/2005, publicată în (published in) Monitorul Oficial(Official Gazette) al României, Partea I, nr.144 din 17 februarie 2005.

²⁵ See Decision no. 901/2009, publicată (published) în Monitorul Oficial al României, Partea I, nr. 503 din 21 iulie 2009.

²⁶ See Decision no. 988 din 1 octombrie 2008, publicată (published) în Monitorul Oficial al României, Partea I, nr. 784 din 24 noiembrie 2008.

²⁷ See Decision no. 988/2008, publicată (published) în Monitorul Oficial al României, Partea I, nr. 784 din 24 noiembrie 2008; In this context, see also Decision no. 53/2005, publicată (published) în Monitorul Oficial al României, Partea I, nr. 144 din 17 februarie 2005.

The plaintiff's involvement in a legal conflict of a constitutional nature, which triggered the complaint, is not a condition of its admissibility, and in this sense, the Court holds that the constitutional provision does not distinguish if the plaintiffs are or are not parties in the conflict about which the Court was notified²⁸.

The subjects of the authority conflict exceed the holders of the seizin rights, who can be „the Parliament consisting of the Chamber of Deputies and the Senate, the President of Romania in his quality of unipersonal public authority the Government, the public and central administration bodies as well as the judiciary bodies- the High Court of Cassation and Justice, the Public Ministry (the Department of the Public Prosecutor) and the Superior Council of Magistracy²⁹.

The Constitutional Court holds in its jurisprudence³⁰, that both the political parties– as public law entities that help define and express the political will of citizens, as well as the parliamentary groups, which are structures of the Chambers of Parliament, do not fit in the category of these authorities.

The procedure of solving legal disputes of constitutional nature is required by the provisions of Law no. 47/1992 34-36. Under these provisions, the complaint/notification addressed to the Court, as well as the request for the settlement of the legal conflict of constitutional nature shall be made in writing and reasoned. The request of legal settlement of a legal conflict of constitutional nature must be formulated according to a specific structure and it has to mention the public authorities in conflict, the legal texts debated by the conflicting parties, a presentation of each party position and the opinion of the plaintiff that formulated the notification. After filing the complaint, the President of the Constitutional Court follows the procedural provisions of the law, notifies the parties in conflict, asks for their views on the content of the conflict and for possible ways to solve it and designates the magistrate judge and the assistant rapporteur responsible for the formulation of the report. Formulation of views by the conflicting parties is not mandatory, but they are part of the procedural role. On the date of receipt of the last point of view, but no later than 20 days after receiving the request, the Chairman of the Constitutional Court sets the deadline for hearing and summons the conflicting parties. The debates take place in contradictory terms, even if the public authorities concerned do not meet the deadline for presenting their point of view, or do not present themselves after being legally summoned. The debate takes place in the Plenary Court, provided that a quorum of two thirds of the number of judges is present in the Court, at least six judges, respectively. The following are being analyzed during the debate: the report submitted by the magistrate -judge, the notification, the views presented, the evidence and the submissions of the parties. The deliberations are held in secret. In the situation when a judge asks the debate to be interrupted for a better study of some debated issues or for further clarification of certain aspects, the Chairman of the Constitutional Court, on its own initiative, or at the request of at least one third of the judges of the Plenum, who consider that the request is justified, will postpone the pronouncement for another date. The Court shall issue a decision adopted by the vote of a majority of judges. The result of the deliberation is recorded in the minutes of the meeting, which is signed by the judges who attended and by the assistant magistrate, under the sanction of nullity. The decision by which

²⁸ See Decision no. 838/2009, publicată (published in) în Monitorul Oficial (Official Gazette) al României, Partea I, nr. 461 din 3 iulie 2009.

²⁹ See Decision no. 988/2008, publicată în (published in) Monitorul Oficial (Official Gazette) al României, Partea I, nr. 784 din 24 noiembrie 2008.

³⁰ See Decision no. 53/2005, publicată în (published in) Monitorul Oficial (Official Gazzete) al României, Partea I, nr. 144 din de 17 februarie 2005.

the constitutional legal conflict is settled is final, generally compulsory and it is communicated to the plaintiff who notified the court and to the conflicting parties, prior to its publication in Monitorul Oficial (Official Gazette) of Romania, Part I. The direct relations between the Romanian Constitutional Court and the President of Romania are characterized by a bivalent nature, deriving primarily from the direct appointment of three of the nine judges³¹ of the Constitutional Court by the President of Romania and, secondly, by the fact that all the 9 individually appointed judges swear their oath before the President of Romania and the Presidents of both Houses of Parliament. Also, the Constitutional Court may be notified by the President of Romania under Art. 146, letter a) of the Constitution by direct action on the constitutionality of a law or in connection with the objection of the unconstitutionality of a law as a legal act of Parliament. The bivalent nature of the relationship between the President of Romania and the Constitutional Court lies in the bilateral relations between the two institutions, the type of issuer - recipient and vice versa. Of particular interest are the situations when the President of Romania may notify the Constitutional Court to resolve legal disputes of a constitutional nature between public authorities as well as the situations when the President of Romania was involved in a conflict of this kind. In the following, we present some of the most important and representative decisions of the Constitutional Court on constitutional legal disputes that Romanian President referred to the Court or cases when he has been a party in a constitutional legal conflict.

SECTION II

The President of Romania's right to notify the Constitutional Court on the settlement of a constitutional legal dispute between public authorities

The Romanian President's attribution to request the Constitutional Court to resolve a constitutional legal conflict between public authorities, in accordance with Art. 146 a) of the Constitution, signifies a counterweight to the other public authorities to achieve the right balance of powers enshrined by the provisions of Article 1. (3) of the Constitution. This right is exercised when the President of Romania expresses his point of view on possible ways of resolving the conflict, which is implicitly based on founded or unfounded allegations and attitudes of the public authorities, or on supporting the public authorities involved in the conflict.

President of Romania may notify the Constitutional Court of the existence of a legal dispute between public authorities, without him being party to the conflict. The French common law states that there is no action if there is no interest. In this respect, we believe that the involvement of the Head of state in conflict resolution between public authorities assumes the existence of interest as long as it manifests itself under its constitutional role of mediator between the powers of the state or in his quality of the guarantor of the supremacy of the Constitution.

This can be exemplified by the request for notification addressed by the President of Romania to the Constitutional Court regarding the existence of a legal constitutional conflict between the Romanian Government and the Supreme Council of National Defense.

As grounds for this notification it is stated that the Government prevented Supreme Council of Defense (CSAT) to achieve its attributions of developing a national security

³¹ The Constitutional Court consists of 9 judges nominated for a mandate of 9 years, which cannot be extended or renewed. Three of these judges are nominated by the Chamber of Deputies, three by the Senate and three by the President of Romania. See Law nr. 47 /1992: the organization and functioning of the Constitutional Court, (republished in the Official Gazette, Part I, nr.807 of December 3, 2010.

legislation, by eliminating this authority from the decision making process - a task that belonged to it, as established by law. The notification is intended to address this conflict in which the Supreme Defense Council was denied the right to approve certain legislative projects. Also, this Council has no active or passive position in court to request the annulment of acts issued without its approval.

The subjects of the constitutional legal disputes are the Government Emergency Ordinances no. 77/2007 and no. 30/2007 through which the Government has removed the Council from the compulsory decision making process "at least in two other cases relating to secondary legislation", to which is added as an example the Government Decision no 416/2007 on the organizational structure and staff of the Ministry of Interior and Administrative Reform and Government Ordinance no. 1.317/2007 amending and supplementing the Government Decision no. 416/2007.

In the notes written on the constitutional legal conflict between the Government and the Supreme Defense Council annexed, the President of Romania provides details on the action which constitutes the object of the file, noting that by eliminating the Supreme Defense Council from decision making, the Government "prevented C.S.A.T. to fulfill its constitutional obligations to organize and coordinate in a unitary manner, the activities concerning national security and defense," and thus this institution becomes devoid of its essential role. Furthermore, the Head of State highlighted that he notified the Constitutional Court only after he has exhausted all mediation means that were within his reach under his constitutional role of mediator. In this respect, it is pointed out that the Government, refused to correct the error when it was reported.

According to the Prime Minister's point of view, it is stated that disobedience in submitting legal acts for approval to the Council brings no prejudice in terms of the provisions of the paragraph 107. (1) first sentence of the Constitution, because, taking into account his role when forming a government, the Prime Minister should coordinate the activity of the governmental team to ensure the autonomy and responsibility of each member of the Government, in the properly assigned function, thus the Prime Minister is bound to respect the specific duties of each of these functions ". Consequently it is shown that the way in which the Government and its structures act or should act, does not trigger institutional bottlenecks, if not followed by actions or inactions that could impede the fulfillment of its constitutional attributions.

On the second piece of notification, respectively the request regarding the findings of the Constitutional Court on the lack of either active or passive quality of the Supreme Council of National Defense, the Prime Minister said that this is inadmissible, because the constitutional court has the competence to rule only in those cases expressly provided for in the Constitution and the Law no. 47/1992.

After examining the request of legal settlement of the constitutional legal conflict between the Government of Romania and the Supreme Council of Defense, the written notes of the President of Romania and the views of the Prime Minister, the Constitutional Court decided that there is no constitutional conflict between these authorities.

Thus, on the request to determine the existence of a constitutional legal conflict between the Romanian Government and the Supreme Council of National Defense, consisting essentially in that the Government removed the Council from the mandatory process of decision making, the Court pointed out that this is not about the presence of such a conflict, but about a case of failure by the Government to fulfill a legal obligation within a legislative process, which, however, does not affect the legislative process by creating an institutional bottleneck.

The Constitutional Court has established that only the courts can determine the legal standing of the Supreme Council of Defense. The solution provided by the Constitutional Court is questionable at least from two points of view.

Firstly, the Constitutional Court is also compelled to comply with the provisions of Art. 1 paragraph (5) of the Constitution, stating that "In Romania, the observance of the Constitution, its supremacy and the laws shall be mandatory". Could the Court not see that in this case there was a breach of a legal provision regarding the right of the Supreme Council of Defense to approve a draft law? By being denied its right of approval, the Supreme Council of National Defense is devoid by a legal instrument in its constitutional activity of organizing and coordinating in a unitary manner the national security and defense of the country.

Secondly, the Constitutional Court was not called in this particular case, to determine on whether or not the Supreme Council of Defense is standing active or passive in a legal process. It only had to establish whether this public authority had been or not a party in a legal conflict of constitutional nature. If by all means, the procedural quality is to be decided by the trial court, any findings on the status of a party in a legal constitutional conflict is of the exclusive competence of the Constitutional Court.

To conclude, we appreciate that the Decision No. 97 of 7 February 2008³² which states that there is not a legal conflict of constitutional nature between the Supreme Council of National Defense and the Government, deviates from the provisions of the country fundamental law because, in its content, it estimates that an approval on a legal matter by an authority confirmed by law, can be avoided by the Government, by virtue of its prerogatives to coordinate the activities of its members. Such avoidance of an approval is both against the law as well as against the Romanian Constitution. It should be mentioned here that the laws are not mandatory for citizens only, but also for the public authorities, including the Government.

SECTION III

President of Romania, part of a constitutional dispute

a) Notification to the Constitutional Court of the existence of a legal constitutional dispute between public authorities formulated by the President of the Chamber of Deputies and by the President of the Senate³³

The Constitutional Court was notified of a legal constitutional conflict in which one of the parties was the Head of State.

Thus, the President of the Chamber of Deputies applied to the Constitutional Court a request for legal settlement of a legal constitutional conflict created by the President of Romania between this public authority and the Parliament.

The request claims that there is a legal conflict of constitutional matter between the President of Romania, on the one hand, and the Parliament, the Chamber of Deputies and the Senate, on the other hand, as a result of the President of Romania's conduct contrary to the Constitution" respectively the allegations made by the President in an interview with

³² Publicată în Monitorul Oficial (published in the Official Gazette) nr. 169 of 05.03.2008.

³³ Taking into account that the requests formulated by the President of the Chamber of Deputies and by the President of the Senate are on the same subject, because they both request the settlement of a dispute between the President of Romania and the two Chambers of Parliament, that was created by one and the same statement made by the President of Romania, the Constitutional Court decided to join the two cases in a single one, on 26 January 2005.

“Adevarul” newspaper, published in No. 4.513 of 6 January 2005, under the title “I am the fan of early elections to get rid of an immoral solution called P.U.R.” As grounds for notification it is stated that the allegations relating to Parliament and to parliamentary parties are beyond the constitutional powers of the President of Romania and are contrary to the Constitution.

In his points of views attached, the President of Romania requests the Constitutional Court to reject as inadmissible, the claims formulated by the President of the Chamber of Deputies and by the President of the Senate, pointing out that this case it is not about the existence of a legal conflict of constitutional nature between public authorities, but it is rather a conflict of political nature on legal texts concerning the attributions of the authorities involved (positive or negative conflicts of jurisdiction). Thus, given the fact that there can be no legal dispute of constitutional nature between political parties and a public authority which can trigger the Constitutional Court competence to settle the matter, it is stated that, in this case, the allegations attributed to the President of Romania are not acts, actions or omissions, but rather simple statements with exclusively political character. In this context it is recalled that, according to the provisions of the Constitution, the President of Romania shall be guaranteed the freedom of political speech and he can not be held legally liable “for political opinions expressed during the exercise of his mandate”.

In their views, the Presidents of both Chambers of Parliament considered that the requests for legal settlement of a constitutional legal conflict between the President of Romania and the Romanian Parliament are founded. As motivation for these requests it is reiterated the conduct of the President of Romania as contrary to the Constitution as his public statements exceed the tasks and attributions provided under the Constitution for the presidential institution, which in its relation to the Parliament has the right to only address messages regarding the main political issues of the nation. In this respect, it is shown that the term “constitutional legal conflict” envisages the fulfillment of attributions which are specific to each public authority which has “a constitutional legal status” and the violation of this legal status represents “the basis for requests formulated under Article 146 letter e) of the Constitution”.

By Decision No. 53, of 28 January 2005³⁴, the Constitutional Court adjudicates on legal settlement of the constitutional legal conflict between the President of Romania and the Parliament, formulated by the President of the Chamber of Deputies and the

President of the Senate³⁵. The Court held that does not find itself in the presence of a constitutional dispute. In this regard, it was shown that a possible conflict between a political party or a parliamentary group and a public authority is not included in the category of disputes to be settled by the Constitutional Court's jurisdiction under Article 146, letter e) of the Constitution. Consequently, opinions, judgments of value, or statements of a holder of a public dignity mandate - such as the Romanian President in his quality of unipersonal public authority, or such as the chief of a public authority or other public authorities do not

³⁴ Published in Monitorul Oficial (Official Gazette) nr. 144 din 17.02.2005.

³⁵ On the basis of the same Art.146 letter.e), the President of the Senate, on 10 January 2005, notified the Court with a request of settlement of a constitutional legal dispute between public authorities which was registered under no.122 of the same date. By this request the same reasons are invoked as those in the request addressed by the President of the Chamber of Deputies. Furthermore, the President of the Senate solicited the Constitutional Court to pronounce “a decision by which it should draw attention to the President of Romania on his unconstitutional conduct, and it should compel him to publicly apologize to the Presidents of the two Chambers and to all the parliamentary structures which were affected by his unconstitutional conduct”.

constitute by themselves legal conflicts between public authorities. Opinions or proposals regarding the way a public authority or its structures may act or should act, even if critical, do not trigger institutional bottlenecks, if not followed by actions or inactions that could impede the performance of those constitutional public authorities.

Such opinions or proposals remain within the limits of freedom of expression of political opinions, with the restrictions provided for in Article 30 paragraph (6) and (7) of the Constitution. Also, the decision states that any candidate for the function of President of Romania proposes to the electorate a political doctrine, a program for the implementation of which he will act, if elected, during his mandate, and this was precisely the situation in this case.

b) Notification by the President of the Senate to the Constitutional Court on the existence of a constitutional dispute between public authorities. The President of the Senate notified the Constitutional Court” of the existence of a legal dispute of a constitutional nature between the Parliament of Romania and the President of Romania, on the ground of constitutional infringement of the Parliament’s right to approve the appointment of members of the Government, a right that relates to the Parliament's exercise of its attributions regulated by Article 85 paragraph (1) in conjunction with Article 85 paragraph (3) of the Constitution. “In this case, according to the request of conflict settlement, the conflicting public authorities are the Romanian Parliament and the President of Romania.

It is stated as grounds for this notification that a legal conflict of constitutional nature has been created between the Parliament and the President of Romania, by the President of Romania, who eluded constitutional and organic provisions regarding the appointment of members of the Government, provisions that establish that it is the Parliament’s attribution to approve the Prime Minister’s proposal, prior to the exercising by the President of Romania of his attributions to appoint members of the Government. This case relates to the appointment of interim ministers.

Therefore, the Constitutional Court is requested to proceed in the settlement of the legal dispute of a constitutional nature, i.e. to summon the public authority that ignored the constitutional provisions (in this case the President of Romania) ”to remedy the situation created by the violation of Article 85, paragraph (3) of the Constitution, by canceling the issued unlawful acts” and to call the Prime Minister of Romania to seek the approval of the Parliament of Romania for the appointment of members of the Government, whenever he has to apply the provisions of Article 85 paragraph (3) of the Constitution .”

In the Senate’s point of view, the Romanian President violated the constitutional and organic rules for the appointment of a member of the Government, thus creating a constitutional legal conflict. The Chamber of Deputies considered that ”there is actually no constitutional legal conflict between the Parliament of Romania and the President of Romania”. It is stated that the provisions of Article 85, paragraph (3) of the Constitution regarding Government reshuffle, are not applicable in the situation of this constitutional legal conflict. In this sense, it is pointed out that the term for Government reshuffle provided by Article 85, paragraph (2) and (3) of the Constitution ”refers to the continuation of the Government’s mandate and has nothing in common with a transitional period in its activity”.

President of Romania has communicated his point of view to the effect that “there is no constitutional legal dispute between the Parliament of Romania and the President of Romania, because the facts do not relate neither to attributions which the President of Romania would have to exercise and did not exercise, nor to the arrogation of powers belonging to other public authorities”. Moreover it is pointed out that “the interpretation, according to which the Parliament’s approval is required when changing the structure or the

political composition of the Parliament by appointing interim ministers, is excessive and is questioning the very essence and capacity of the ad-interim institution to ensure the continuity of the Government until the appointment of interim ministers”.

The Court, by its Decision No. 1.559 of 18 November 2009, on the request for settlement of a legal constitutional dispute between the Parliament of Romania and the President of Romania, formulated by the President of the Senate³⁶, notes that by presidential decrees were not appointed titular ministers in the vacant posts, but only ministers of the same cabinet, in order to ensure the interim of office until the appointment of new ministers, within the 45-day period provided by Article 107, paragraph (4) of the Basic Law. Since the appointment of ad-interim ministers, governed by the provisions of Article 107 of the Constitution, does not involve the exertion of the Parliament’s attributions to which reference is made to in Article 85 paragraph (3) of the Basic Law, one cannot claim the infringement by the Romanian President of this competence, or of the “preliminary procedure” imposed under the same constitutional text. It may be noted that according to the Constitution, the appointment of interim ministers is a preliminary procedure, prior to the government reshuffle and only the appointments in the latter situation (i.e. reshuffle) need parliamentary approval.

Thus the Court found no legal conflict of a constitutional nature between the Parliament of Romania and the President of Romania, with regard to the issuance of presidential decrees relating to the appointment of interim ministers. Another case on which the Constitutional Court was notified by the President of the Senate is that of a legal conflict of constitutional nature in which President of Romania is part and which concerns a similar case as the one outlined above; respectively the appointment of a Deputy Prime Minister who also exercised concomitantly, the function of Minister of Administration and Interior, for a period not exceeding 45 days. As in the previous case, the conflict was created by the appointment of an interim minister who exercised a government function for a limited period of time. In such situations, even if there is a change in the Government structure, this does not equal with the appointment of a new member of the Government. Only in this latter situation one can claim that there is a change in the structure of the Government and if necessary, the parliamentary approval is needed. As such, by Decision No. 1560 of 18 November 2009³⁷, it is stated that there is no constitutional legal conflict between the Romanian Parliament and the President of Romania, since the Head of State may appoint an interim minister at any time, even if this temporarily changes the Government structure.

c) Notification by the Prime Minister of the Constitutional Court of the existence of a constitutional dispute between public authorities.

The Prime Minister notified the Court of the existence of a legal dispute of a constitutional nature between the President of Romania and the Government and requested the restoration of the constitutional legality order of the President’s institutional relationships with the Government of Romania.

The motivation of the request shows that the Head of State refused to appoint as minister of foreign affairs, a person proposed by the Prime Minister, following the resignation of a former minister, and thus, according to the plaintiff „brought serious prejudice to the Government” and ”created a critical situation with regard to Romania’s international relations” According to the complaint, the Romanian President refused "to perform an executive attribution as established by Article 85. (2) of the Constitution, Article 8. (1) and

³⁶ Publicată în (Published in) Monitorul Oficial (Official Gazette) nr.823 din 30.11.2009 .

³⁷ Publicată în (Published in) Monitorul Oficial (Official Gazette) nr. 824 din 30.11.2009 .

Article 10 of Law no. 90/2001, thus "creating a constitutional legal conflict between two public State authorities, i.e. the President and the Government."

The President of Romania communicated his views, pointing out that the right to appoint a minister "can not be a strictly formal one" but one that has elective legitimacy, which gives him "his own right of political appreciation of a person's competence for membership in the Government". Regarding the notification of the President's refusal to acknowledge the resignation of the former minister and to declare his post vacant, it is shown that, within the 20 days deadline provided by the Constitution, the Decree No. 193 of 12 March 2007 was issued, published in the Official Gazette, Par I, no. 177 of 14 March 2007. In response to the second complaint, concerning the situation of the proposed Foreign Minister, the President highlights that based on his direct attributions of representing the state in international relations, he is "motivated constitutionally, legally and morally to have a word to say in the appointment of a Foreign Minister". This point of view is supported by the Constitutional Court Decision No. 53, of 28 January 2005 on appointments by the President of Romania, as well as on his right of "veto" in his relations with other state authorities.

In his point of view, the Prime Minister states that after taking note of a minister's resignation, the President of Romania "has an obligation and not a right in this matter". Therefore, notification is made on the existence of a legal conflict of a constitutional nature between the President of Romania and the Prime Minister who acknowledge the President's refusal to dismiss the resigned minister from his function within a 20 days period. However, the Prime Minister's point of view shows that this conflicting situation ceases by the issuance of the Decree No. 193 of 12 March 2007, published in the Official Gazette, Part I, No. 177 of 14 March 2007. Regarding the President's refusal to appoint as minister the person proposed by the Prime Minister, it is stated that this is still creating a constitutional legal dispute and that the only way to end it is that the President of Romania "immediately meets the constitutional obligations of the incumbent" according to the Constitutional Court Decision No. 384 of 4 May 2006.

In response to the views of the President of Romania, the Prime Minister states that the President's attributions in foreign policy are irrelevant because "domestic and foreign policies are determined by the Government program, approved by the Parliament and its implementation lies in the responsibility of the Government and, therefore, the Prime Minister has the right to elect people to form the governmental team".

Regarding the proposal of the Prime Minister to appoint a new minister, proposed under Article 85 paragraph (2) of the Constitution, the Constitutional Court Decision no. 356 of 5 April 2007³⁸ noted that the appointment of the Government by the President of Romania does not take place at the proposal of the Prime Minister, but upon notification by the Presidents of both Chambers of Parliament and on the basis of the Parliament's approval of the Government program and of the complete list of Government members.

Thus, the Romanian President's constitutional obligation is based on the Parliament decisions, and in the process of their execution, the President issues decrees of appointment of members of the Government, followed by the oath of allegiance required by law. The candidatures for minister positions registered on the Government list, proposed by the candidate for Prime Minister, are heard by those permanent commissions of the Parliament Chambers which have the competence to judge on the candidate's object of activity and which on the basis of the final findings emit favorable opinions or opinions of rejection; in the case of rejection notices, the candidate Prime Minister, proposes another candidate for

³⁸ Publicată în (published in) Monitorul Oficial (Official Gazette) nr. 322 din 14.05.2007.

minister position. Based on these opinions, the President of Romania invests the appointment, followed by the oath of allegiance and the entry in function.

The Court also notes that, as the Parliament does not exercise a right of veto, but an activity of verification of compliance with the requirements of the function, so does the President of Romania have no veto power regarding the Prime Minister's proposal but he has the right to verify the compliance of the candidate with the respective function and, if it is the case, to ask the Prime Minister for another candidate proposal. In all cases the rejection of application must be motivated.

With regard to possible effects of a constitutional nature and of the law, produced as a result of legal operations for the settlement procedures covered by this constitutional dispute, it is noted that the initial refusal of the President of Romania to appoint a member of the Government following the Prime Minister's proposal, triggered a legal conflict of this nature. But the Court found that this legal dispute ended by issuance of the Presidential decree No. 237 of 22 March 2007 regarding vacant posts of Government members, of the decree No. 237 of 22 March 2007, on the designation of a Government³⁹ member as interim minister⁴⁰, and of the decree No. 379 of 4 April 2007 on revocation from function and appointment of members of the Government⁴¹.

In exercising the attributions provided under Article 85 paragraph (2) of the Constitution, the President of Romania does not have a veto right, but may request the Prime Minister to drop the proposal made, if it finds that the proposed person does not meet the legal conditions for exercising the respective Government membership function.

In fact, the President of Romania has, in this case, the right of veto on the proposal made by the Prime Minister. According to the constitutional provisions on this matter, in the case when the Prime Minister proposes the revocation of a minister and the appointment of another person on that post, the President of Romania has no right to refuse the proposal made by the Prime Minister.

This is a case of legal competence, in which the proposal made by the Prime Minister can not be rejected by the President of Romania. The ultimate argument to be invoked in this sense is the joint accountability of the members of the Government towards the Parliament, a process in which the President of Romania is not involved.

This joint accountability represents the necessary hindrance for the Parliament to revoke a minister following a simple motion that formulates accusations against a minister.

A similar case was settled by the Constitutional Court Decision no. 98/2008⁴² on the Prime Minister's request for the settlement of a legal constitutional dispute between the President of Romania and the Romanian Government. In this case, the dispute refers to the refusal of the President to grant the proposal submitted by the Prime Minister on the appointment as Minister of Justice of Mrs. Nicolai, after the resignation of Tudor-Alexandru Chiuariu and the vacancy announcement of the respective post by presidential decree No. 1.128/2007. The President of Romania motivated his rejection of the Prime Minister's proposal by invoking the Decision of the Constitutional Court No. 356/2007. In the

³⁹ Publicat în (published in) Monitorul Oficial (Official Gazette) al României, Partea I, nr.177 din 14 martie 2007.

⁴⁰ Publicat în (published in) Monitorul Oficial al României (Official Gazette), Partea I, nr.200 din 23 martie 2007.

⁴¹ Publicat în (published in)Monitorul Oficial al României (Official Gazette), Partea I, nr.235 din 4 aprilie 2007.

⁴² Publicată în (published in)Monitorul Oficial (Official Gazette) nr.140 din 22.02.2008.

proceedings, the Court reiterated the view expressed by the decision invoked by the President of Romania, i.e. the fact that according to its attributions established by the Basic Law, the Court can not examine and resolve disputes of political nature between the President of Romania and other public authorities.

On the other hand, the Court concluded that the appointment of ministers by the President of Romania is an act of executing the Parliament's decision and of investment of ministers by the Head of State on this basis. The decision taken by the supreme representative body of the Romanian people (Article 61. paragraph (1)) of the Constitution is a compulsory act, which the President can not refuse without committing a serious violation of the Constitution. With regard to the President's power to revoke or appoint at the Prime Minister's proposal, certain members of the Government, the Court concludes that in this case the President does not execute a decision of the Parliament, but is in a position to decide himself the appointment of ministers at the proposal of the Prime Minister. The decision-making process at this stage being by definition an act of will, it is obvious that the President is free to receive the Prime Minister's proposal, or to request him to make another proposal. Consequently, the possibility creating an institutional bottleneck may occur under the circumstances that the public authorities with complementary competences aiming to achieve the same constitutional goal, would repeatedly fail to cooperate and to agree. Thus, as noted, the President of Romania, in exercising his attributions under Article 85 paragraph (2) of the Constitution may not accept the Prime Minister's proposal to appoint a person in a vacant minister post and may require another proposal. Under these circumstances, the Constitutional Court considers that in order to eliminate future assumptions that may create institutional bottlenecks, starting from those premises an answer should be found for these two problems, namely for how many times can the President refuse the Prime Minister's proposal and if the Prime Minister has the right to repeat the first nomination.

The role assumed by the Constitutional Court in view of preventing future institutional bottlenecks, on the bases of the cases already submitted to the Court, is outlined, in our opinion in the provisions of Article 146, letter e) from the Romanian Constitution, according to which, the Constitutional Court settles constitutional legal disputes between public authorities upon requests from the President of Romania, from one of the Presidents of the two Chambers, from the Prime Minister or from the Supreme Council of Magistrates" in conjunction with Article 142 paragraph (1) of the Constitution, according to which the Constitutional Court is the guarantor for the supremacy of the Constitution".

Thus, regarding the number of cases in which the President of Romania may ask the Prime Minister to present another nomination for the vacant post of Minister, the Court finds that in order to prevent the occurrence of an institutional bottleneck in the legislative process, the constitutional legislator referred to Article 77, paragraph (2) of the Basic Law, the right of the President of Romania to request the Parliament to re-examine a law once again before its promulgation. The Court considers that this solution has the constitutional value of a principle in the settlement of legal conflicts between two or more public authorities with complementary attributions in adopting measures under the Basic Law, and that this principle is generally applicable in similar cases. When applicable to Government reshuffle and appointment of ministers in case of vacancy of posts, this solution is likely to remove the institutional bottleneck that might be generated by the possible repetition of refusal by the President to appoint a minister at the Prime Minister's proposal. Limitation to only one rejection of the proposal is justified by the fact that any further liability for another nomination pertains exclusively to the Prime Minister. Consequently, the Constitutional Court is to note that, in applying the Article 82 paragraph (2) of the Constitution, the

President of Romania has not the right of veto, and thus he may ask the Prime Minister only once and on grounded reasons to make a new proposal for the appointment of another person as Minister.

Regarding the possibility of the Prime Minister to reiterate the first proposal, the Court would find that this possibility is excluded by the very fact that this proposal was rejected by the President of Romania. Therefore, the Prime Minister must propose another person for the appointment in the vacant post of Minister.

With regard to these considerations by the Constitutional Court, we would like to highlight that in this case too, we are facing a limited competence issue, since the President of Romania has the obligation to appoint the person proposed by the Prime Minister. In such circumstances, the President of Romania is unable to choose a person or another, having to appoint the person proposed by the Prime Minister taking into account his position in the state. Just by making this appointment, and thus fulfilling a constitutional duty, the institutional bottleneck can be avoided. Otherwise, this bottleneck is created by the President of Romania himself.

d) Notification by the President of the Superior Council of the Magistracy of the Constitutional Court on the existence of a constitutional dispute between public authorities

In accordance with the provisions of Article 133 paragraph (1) of the Constitution, "the Superior Council of the Magistracy is the guarantor of the independence of justice", which legitimizes the representation by the Superior Council of the Magistracy of the judicial authority in the relations between the judiciary and other public authorities. This legitimacy derives also from the provisions of Article 146 letter a) of the Constitution governing the right of the President of the Superior Council of the Magistracy to notify the Constitutional Court for settlement of constitutional legal disputes between public authorities.

The President of the Superior Council of the Magistracy notified the Constitutional Court requesting the settlement of a constitutional legal disputes of the judiciary, on the one hand, and the President of Romania and the Prime Minister of the Government, on the other hand.

As grounds for notification it is stated that one of the state powers - the judiciary is actually put at risk, as public the statements of the President of Romania and of the Prime Minister on judicial authority created a state of confusion and tension that have degenerated in a constitutional legal dispute, preventing the normal performance of duties of constitutional courts and of prosecutors.

The President of Romania communicated his point of view by which he solicits the rejection of the request formulated by the President of the Superior Council of the Magistracy as being inadmissible, taking into account that the statements made by the President of Romania are political statements and, as such, fall within the constitutional immunity enjoyed by the President in the exercise of his office and, by their nature, such statements can not generate a constitutional legal dispute.

The Prime Minister of the Romanian Government has communicated his views by pointing out that in this case there are no concrete acts and actions of the Prime Minister which by their occurrence could have prevented the normal performance of constitutional duties of the judiciary, and his political opinions regarding justice were not a subrogation to the duties and competences of the courts and did not constitute an interference in the justice act, likely to cause legal effects.

The President of the Superior Council of the Magistracy did not release the respective point of view.

By Decision No.435 of 26 May 2006 on the request by the President of the Superior Council of the Magistracy for the settlement of a constitutional legal conflict between the judicial authority, on the one hand, and the Romanian President and Prime Minister, on the other hand, the Constitutional Court found that there is no concrete evidence in support of a verbal conflict between the President of the Romanian state and the judiciary, which would have legal effects likely to lead to an institutional bottleneck or to hinder the exercise of constitutional prerogatives by any public authority, which could be remedied only by the Constitutional Court pronouncement of a solution susceptible to be executed.. However, the Court notes that, of course, freedom of expression and criticism is essential to constitutional democracy, but it must be respectful, even when expressing firm criticism. Since the independence of the judiciary is guaranteed by the Constitution, the Court considers that an effective protection of the magistrates is imperative in the constitutional sense against attacks and vilifications of any nature, all the more so that the magistrates who are deprived of any right to reply with regard to their work of restoring legal order, they should be able to count more on support from the other state authorities, i.e. the legislative and the executive. The Constitutional Court finds that the statements of the President of Romania and of the Prime Minister have not given rise to a constitutional legal conflict between the public authorities - the judiciary, on the one hand, and the Romanian President and Prime Minister, on the other hand according to provisions of Article 146 letter e) of the Constitution.

Conclusions

In conclusion, according to constitutional rules, the President of Romania, as the guarantor of the supremacy of the Constitution and the mediator between the state authorities, between state and society, has the right to notify the Constitutional Court of the existence of a constitutional legal dispute between public authorities. Also the President of Romania may be part of such a dispute by virtue of a qualification that can come from one of the Presidents of the parliamentary Chambers, from the Prime Minister or from the President of the Superior Council of Magistracy.

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