

RESPONSIBILITIES OF THE CONSTITUTIONAL COURT IN RELATION TO THE SEMI-DIRECT GOVERNANCE FORMS

Nasty VLADOIU, Phd.*

*Academic Lecturer - Faculty of Law, University of Transylvania, Brasov
Judge-arbitrator - International Court of Arbitration of the Chamber of Commerce and
Industry of Romania
Attorney-Bar Bucharest*

Abstract

The only authority of constitutional jurisdiction in Romania, independent of any other public authority, the Constitutional Court was designed with the aim of guaranteeing the supremacy of the Constitution. By analyzing art. 146 from the Romanian Constitution and also Chapter III of Law no.47/1992 regarding the organization and functioning of the Constitutional Court, which establishes the responsibilities of the Constitutional Court, it can be noticed that this public institution, independent, fulfills a complex role, exercising its role also in order to semi-direct forms of governance: the referendum, legislative initiative and, if national law allows (which is not the case of Romania), the popular vote. Exercising its powers in this respect, we can see the Court's essential role in ensuring the sovereign people the opportunity to intervene and mitigate the representative democracy asperities of parliament type, but will need to keep people close to the legislator.

Keywords: *semi-direct government, referendum, legislative initiative, popular vote, sovereignty.*

I. Introduction

The only authority of constitutional jurisdiction in Romania¹, independent of any other public authority, the Constitutional Court was designed with the aim of guaranteeing the supremacy of the Constitution². The Constitutional settlement (art. 142-147 from the Romanian Constitution) and also the special law in the sphere -Law no. 47/1992 regarding the organization and functioning of the Constitutional Court, provide the necessary framework to achieve this goal and to ensure the balance between the will of the people and the institutions and public authorities.

The Court is a special and specialized jurisdictional body, which held the monopoly of the constitutional contentious. The Court settlement with a distinctive title indicates, without

* nasty.vladoiu@gmail.com

¹ See article 1, par.(2) of Law no.47/1992 regarding the organization and functioning of the Constitutional Court: "*The Constitutional Court is the sole body of constitutional jurisdiction in Romania*"

² See article 142 par (1), the Romanian Constitution: "*The Constitutional Court is guarantor for the supremacy of the Constitution.*"

doubts, the intent of constituent legislator to confer an independent position from all other public authorities, one naturally thing to the Court's purpose and that the supreme guarantee rule regards the three powers (legislative, executive, judiciary)³.

II. Powers of the Constitutional Court

The Constitutional Court's jurisdiction can not be disputed by any public authority⁴, in exercising the incumbent duties, the Court has the exclusive right to decide on its jurisdiction. In addition, the Court's competence is exclusively constitutional, unable to be extended, nor limited, only by Constitutional revision.

Analyzing art. 146 from the Romanian Constitution, and also Chapter III of Law no. 47/1992 regarding the organization and functioning of the Constitutional Court, which establishes the responsibilities of the Constitutional Court, it can be noticed that this public institution, independent, fulfills a complex role, mainly in following areas: the control of constitutional documents (laws as legal acts of Parliament, Government ordinances, Parliament regulations, treaties and other international agreements, initiatives to revise the Constitution, popular legislative initiatives), legal disputes between public authorities, the procedure for electing the President, the procedure for the organization and holding of referendum and checking the conditions which justify the interim in the exercise of the office of President of Romania, etc.

III. Responsibilities of the Constitutional Court in relation to the semi-direct governance forms

Analyzing the legal provisions governing the responsibilities of the Constitutional Court, it can hold two semi-direct forms of government: referendum and legislative initiative. If national legislation allows (which is not the case of Romania), another semi-direct form of government is popular vote.

Regarding the **referendum**, in accordance with paragraph 146 point (1) letter i) of the Romanian Constitution and art. 11 par (1) point B letter c) of Law no. 47/1992 regarding the organization and functioning of the Constitutional Court, the Constitutional Court shall ensure the keeping of procedure for organizing and conducting the referendum and to confirm it. As so, as a way of making semi-direct democracy, the electorate assists directly, within certain limits and forms, from exercise the power. The Constitutional Court's role in this situation, is to control this way of direct participation in government and to ensure the constitutionality of the exercise of these powers by the electorate.

Under national law⁵, there are three possibilities for direct consultation and expression of the will of the people's sovereignty by referendum, namely: *constitutional referendum*⁶, the

³ See V.M. Ciobanu, *Theoretical and practical Treaty of Civil Procedure*, vol. I, General Theory., National Publishing House, Bucharest, 1996, p 17.

⁴ See article 3 par. (3) of Law no. 47/1992 regarding the organization and functioning of the Constitutional Court.

⁵ See Law no. 3/2000 regarding organization and holding of the referendum

⁶ See D. Ciobanu, *Constitutional and political institutions. Parliamentary procedure.*, Hyperion Publishing, Bucharest, 1991, p 149.

assumption of Constitution review – art. 151 par. (3) from the Romanian Constitution⁷, *referendum organized in case of dismissal of the President of Romania*, art. 95 par (3) from the Romanian Constitution⁸ and *advisory referendum* – art. 90 from the Constitution⁹, by asking the people to express their will on matters of national interest.

The results of semi-direct participation of citizens in government, through organizing the referendum, are binding, in accordance with the Law nr. 3/2000 regarding the referendum, but only in the assumption that the organized referendum for revising the Constitution and the Romanian president's dismissal. As so, art. 6 par.(2) provides that: "The organization and holding of a referendum on revising the Constitution and also its results, are required " and art. 8: "The referendum on Romanian President dismissal is mandatory and shall be decided by Parliament, in accordance with art. 95 from the Constitution".

Assuming advisory or binding referendum, held pursuant to article 90 from the Constitution, to request the people's will on matters of national interest, the referendum held before (a priori) for adoption any provision by the competent public authorities, there is no available normative obligation to devote referendum results. However, in this case we consider that is required to maintain the same binding, arising both from the national sovereignty of the people who expressed their will, and the importance of the issues which make the subject of the referendum- "matters of national interest" (the phrase has a meaning quite large, left to the discretion of the President of Romania¹⁰).

Given the subject of the organization of the referendum, but also the compulsoriness of its results, we believe that, being is the presence of semi-direct participation to government, the Constitutional Court's responsibility to ensure compliance procedure for the organization and holding of the referendum, and also to confirm its results with a judgment, which is presented to the Parliament before publication, increases. In addition, the Constitutional Court's decision confirming the outcome of the referendum has an essential constitutive role, because, although it will devote the electorate, it would not take effect without certification.

Another semi-direct form of government is exercising **legislative initiative** by the citizens, regarding the Constitutional Court, meets the essential tasks, in order to ensure the supremacy of the Constitution, respectively it checks the conditions for exercising the legislative initiative, by the citizens¹¹. An instrument of direct democracy, the popular initiative represents a way to alleviate some roughs of representative democracy, of parliamentary type, especially regarding the danger of removing the legislature from the real popular will, that is called to express¹². Legislative initiative is a way to direct participation to

⁷ See article 151 (3) of the Constitution: *"The review shall be final after its approval by a referendum, held within 30 days from the date of passing the project or of its proposing of revision."*

⁸ See article 95 par. (3) from the Constitution: *"If the suspension proposal is approved, within 30 days I will be organized a referendum for dismissal of the President."*

⁹ See article 90 of the Constitution: *"the President of Romania, after consultation with Parliament, ask people to express, by referendum, will on matters of national interest"*.

¹⁰ See the Decision of Constitutional Court no. 567 of 11 July 2006 regarding the plea of unconstitutionality of the provisions of section 12. (1) of the Law on organization and holding of referendum nr. 3/2000: *"Only the President of Romania has the right to decide which are matters of national interest and, within them, to establish by decree the specific issue that is subject to referendum and date of it. "*

¹¹ See article 146 letter j) of the Constitution and article 11 par. (1) point B letter d) of the Law no. 47/1992 on the organization and functioning of the Constitutional Court.

¹² See I. Muraru, M. Constantinescu, *Constitutional Court of Romania*, Albatros Publishing House, Bucharest, 1997, p 187;

exercise power, because, under Article 74¹³ and Article 150¹⁴ from the Romanian Constitution, at least 100,000 citizens entitled to vote, in the case of organic or ordinary laws, respectively at least 500,000 citizens entitled to vote, in order of constitutional laws, can prepare a legislative proposal, by respecting the provisions of Law no. 189/1999 regarding the exercise of legislative initiative by the citizens, republished (Official Gazette nr. 516 of June 8, 2004).

This semi-direct form of government is, in essence, "a form that people limit the discretion of Parliament to legislate in an issue of a more or less general concern. Legislative initiative is a mean by which people can force Parliament to legislate in a particular matter; it is sufficient that a legislative proposal or an intention for regulatory legal to require the enough number of signatures for the Parliament to be obliged to take it into consideration".¹⁵

We must **distinguish between the referendum and the exercise of legislative initiative**, as semi-direct forms of government. As so, in the assumption of an organized referendum for revising the Constitution and the one to dismiss the president of Romania, their organization and also the results of the referendum are binding, unlike the exercise of legislative initiative, which is only a possibility of a minimum number of citizens to engage in lawmaking, through a legislative proposal. If the optional referendum, asking people to express their will on matters of national interest, legislation can give the President, after consulting Parliament, to decide the organization or not of a referendum regarding the adoption of a law. However, in the assumption of legislative initiative, Parliament is obliged to take in consideration the legislative proposal which met the legal number of signatures. The fact that Parliament is compelled to do so does not mean that he is obliged to adopt the law project text or to adopt without changes.

Legislative initiative may take a form more or less formal, can distinguish between a legislative initiative submitted and an unformulated¹⁶ one. The *formulated initiative* exists when people's vote is held on a law project already drafted, technically speaking, like any other law project, and *unformulated initiative*, by contrast, implies that people requires to Parliament only to prepare a law project in a specific question, to debate it and to vote it.

To ensure participation of people in semi-direct governance by this way of legislative initiative, Law no. 47/1992 regarding organization and functioning of the Constitutional Court expressly provides the responsibilities of the Court in this way. So, the Court propose a judgment establishing the constitutionality of proposed legislation, the fulfillment of the conditions regarding the publication of the proposal, certificating the supporters lists and gathering the minimum number of supporters¹⁷.

¹³ See article 74 from the Constitution: "(1) Legislative initiative belongs, as appropriate, the Government, Deputies, Senators, or of at least 100,000 voting citizens. Citizens exercising the right of legislative initiative must come from at least one quarter of the counties and in each of those countie, and in Bucharest, it must be registered at least 5,000 signatures in support of this initiative.(2) There may be legislative initiative of citizens on matters concerning taxation, international affairs, amnesty or pardon. (...)"

¹⁴ See Article 150 from the Constitution: "(1) Revision of the Constitution may be initiated by the President on the Government proposal, at least a quarter of the deputies or senators and at least 500,000 voting citizens. (2) Citizens who initiate constitutional revision must come from at least half the counties and in each of these counties and in Bucharest must be registered at least 20,000 signatures in support of this initiative. "

¹⁵ See D. Ciobanu, *op. cit.*, p. 151;

¹⁶ See D. Ciobanu, *op. cit.*, p. 151;

¹⁷ See art. 48, Law no. 47/1992 regarding the organization and functioning of the Constitutional Court: "The Constitutional Court, on its own or on referral to the President of the Chamber of Parliament who had legislative initiative of citizens, shall decide on: a) the constitutional character of the legislative proposal subject to citizens'

As predicted, another semi-direct form of participation in government, if required by law and the Constitution, but not the Romanian Constitution, is the **popular vote**, which allows that, in a certain period after the adoption of a law by Parliament, only a certain number of citizens to be able to request a referendum on the law, as so having the power to reject the law already adopted if the majority of those who participated in the referendum rejected this law. We need to do **distinguish between popular vote and a posteriori referendum**, held after the adoption of the law by Parliament. If in the hypothesis of a post legislative referendum, the approval of the people is a legal prerequisite for improving the law¹⁸, if the conditions of popular vote, as a form of semi-direct participation to government, its object is to reject a law already promulgated, in force, producing effects legal.

IV. Conclusions

Given the existing legislation, both the governing organization and functioning of the Constitutional Court, as guarantor of the supremacy of the Constitution, and those that allow semi-direct involvement of people in government, it needs to be found the essential role of the Court to ensure the possibility sovereign people to intervene and mitigate the representative democracy asperities of parliamentary type, but also the necessity to keep the legislator close to people.

References:

1. D. Ciobanu, *Constitutional and political institutions. Parliamentary procedure*, Hyperion Publishing, Bucharest, 1991.
2. V.M. Ciobanu, *Treaty of theoretical and practical of Civil Procedure. General Theory*. vol. I, National Publishing House, Bucharest, 1996;
3. M. Constantinescu, A. Iorgovan, I. Muraru, E.S. Tanasescu, *Revised Romanian Constitution. Comments and explanations*, All Beck Publishing House, Bucharest, 2007.
4. S. Deaconu - *Constitutional Law*, C.H. Beck Publishing House, Bucharest, 2011;
5. I. Muraru, M. Constantinescu, *Constitutional Court of Romania*, Albatros Publishing House, Bucharest, 1997.

initiative; b) conditions relating to publication of this proposal and if the lists of supporters are certified by the mayors of administrative units or by their delegates; c) gathering g the minimum number of supporters to promote initiative, referred to in paragraph 74. (1) or, where appropriate, art. 150 par. (1) of the Constitution, republished, and the observance of territorial dispersion in counties and in Bucharest, under the same articles. "

¹⁸ See D. Ciobanu, *op. cit.*, p. 150;