



ROMANIA CONSTITUTIONAL COURT

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PRESS RELEASE

Having regard to the judgment of the European Court of Human Rights (ECtHR) of 5 May 2020, in the case of Kövesi v. Romania, the Plenum of the Constitutional Court of Romania, by a majority of votes, makes the following clarifications:

1. Although recent public statements purport the idea that there has been a violation by the Constitutional Court of Mrs Kövesi's right to a fair trial, entailing an invalidation of the Constitutional Court Decision No 358/2018, we note that the ECtHR did not carry out a review in relation to the legal reasoning and the solution adopted by the Constitutional Court. It would not even have had the authority to do so.
2. The ECtHR judgement established the violation of the right to a fair trial by reference to a separate legal framework, that preceded and was unrelated to the one analysed by the Constitutional Court. The legal framework analysed by the ECtHR concerns purely legal aspects, regulated by Law No 303/2004 on the status of judges and prosecutors, while the Constitutional Court's decision was related to the provisions of Article 94 (c) and Article 132 (1) of the Constitution.
3. In the aforementioned decision, which is generally binding and effective for the future, the Constitutional Court ruled on the constitutional relations between the Minister of Justice and the President of Romania, as well as on the nature of their acts, in the procedure of removal from office of the chief prosecutor of the National Anti-Corruption Directorate (DNA), on the basis of a competence stipulated by the Constitution. The decision thus pronounced may not be censored by any other authority.
4. Mrs Kövesi was not a party and she could not have been a party to the proceedings for resolution of the legal dispute of a constitutional nature provided for in Article 146 (e) of the Constitution, which refers

exclusively to the relations between public authorities with regard to the exercise of their constitutional powers, and by no means to legal relations involving natural persons. Moreover, in all of the States where the laws provide for the resolution of conflicts of jurisdiction between public authorities by constitutional courts, such proceedings do not concern, by definition, fundamental rights and freedoms.

5. Therefore, the Constitutional Court could not have violated the right to a fair trial of an individual and that conclusion arises from the mere fact that the Constitutional Court examined another issue, exclusively related to the competences of public authorities.
6. In their public statements, the public authorities, namely the President of Romania and the Prime Minister, use incomplete and inaccurate arguments/reasons, without corroborating the nature, content and obligations resulting from the two judicial acts [Decision of the Constitutional Court and ECtHR judgment], which calls into question these public authorities' loyal constitutional behaviour towards the Constitutional Court.
7. The public is given some information that does not fully explain the legal issue. The Constitutional Court recommends that the two judgments be read in good faith and be commented based on the legal arguments contained therein.
8. The decisions of the Constitutional Court are generally binding and are not subject to review, as they have *res judicata* authority.
9. Publicly invoking the need for a review of the decisions of the Constitutional Court represents a very serious infringement of the Court's and its judges' independence.
10. It is for the legislator to comply with the ECtHR judgment, insofar as it becomes final, by identifying an appropriate legislative solution in the light of the legal framework covered by that judgment, and not of the one covered by Constitutional Court Decision No 358/2018.

**Foreign Relations, Press and Protocol Unit
of the Constitutional Court**