

*Decision No 128 of 6 March 2019
concerning the objection of unconstitutionality against the Law for approval of the
ceilings of some of the indicators specified in the 2019 fiscal-budgetary framework*

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Summary

I. As grounds for the objection of unconstitutionality, the President of Romania argued that, as a result of the final vote cast in the plenary of the decision-making Chamber, the parliamentary legislative procedure for the debate and the adoption of the law in Parliament ends. Neither the Constitution, nor the laws or the parliamentary regulations provide for the possibility of this procedure to re-open, by resuming the entire debate on the law already voted as a whole.

Following the vote thereon in the decision-making Chamber, the Law for approval of the ceilings of some of the indicators specified in the 2019 fiscal-budgetary framework was submitted to the Secretary General of the Chamber of Deputies, in order to exercise the right of referral to the Constitutional Court. Without a prior decision by the plenary of the Chamber of Deputies, the Standing Bureau of that Chamber decided to refer the draft law back to the Committee on Budget, Finance and Banks with a view to drawing up an additional report. The afore-mentioned Committee adopted an additional favourable report with 10 accepted amendments. The Chamber of Deputies met and voted the same law, this time with the amendments proposed by the additional report. At the time when the debate and adoption by the plenary of the Chamber of Deputies were resumed, this Chamber was no longer constitutionally vested and therefore its governing bodies (the Standing Bureau) or the operative bodies (Committee on Budget, Finance and Banks) were no longer competent to act in relation to this legislative initiative.

II. Having examined the objection of unconstitutionality, the Court has held that it may analyse the infringement of the rules of constitutional status and not of regulatory rank, if the latter have no constitutional significance, since they are not expressly or implicitly enshrined in the Constitution. By virtue of the principle of the autonomy of the two Chambers to adopt their own regulations, established by Article 64 (1), first sentence, of the Basic Law, the Court does not have jurisdiction to rule on the application of the regulations. The Deputies' complaints concerning the concrete acts of implementation of the provisions of the Regulation fall within the exclusive competence of the Chamber of Deputies.

The regulation of clear rules in relation to the legislative procedure and compliance with the rules thus laid down constitutes a guarantee against the abuse of powers of the parliamentary majority, hence a guarantee of democracy. In so far as the rules on the legislative procedure are enshrined in the Constitution, the Constitutional Court has jurisdiction to rule on their compliance by the Parliament and to duly sanction their infringement.

In view of the situation described in the referral act, the Court examined the interpretation of the words "made a final decision", contained in Article 75 (3) of the Constitution, to determine whether that provision allows the decision-making Chamber to decide on a draft law by vote and then, for various reasons, before the law is sent on promulgation, to reconsider its content, to resume its debate and vote.

In the light of the literal interpretation of the above article, it follows that a resumption of discussions and votes on a law on which the decision-making Chamber has definitively decided is excluded. As a result of this vote, the draft or legislative proposal becomes law, being signed by the Presidents of the two Chambers and must follow the constitutional procedural course, in the sense that it must be sent for promulgation, under the conditions of Article 77 (1) of the Constitution. The fact that, in the present case, the law was not sent for promulgation is not such as to give rise to another interpretation of those constitutional rules, but may call into question the way in which those rules have been observed.

A contrary interpretation would create perpetual uncertainty for all those involved in the legislative procedure. Moreover, the final vote on the law would be forever in doubt, and the term “final” referred to in Article 75 (3) of the Constitution would be meaningless. However, the Constitutional Court has held that no legal instrument provided for in the Constitution can be deprived of its effectiveness, rendering it meaningless and thus violating the constitutional principle of the rule of law.

In conclusion, the provisions of Article 75 (3) and Article 77 (1) of the Constitution have been breached. Even if, as explained in the opinion of the Chamber of Deputies, the reopening of the debate had a positive aim, namely to correct the law before being sent by Parliament for promulgation, the Court underlined that any “correction” had to be done in accordance with the constitutional provisions. Acceptance of the contrary view would enable the legislator to decide, in practice, whether or not to respect the Basic Law, which is in contradiction with the principle of the supremacy of the Constitution.

The Court has not, in the present case, found relevant the principle of the autonomy of the Parliament in terms of own regulations, since that autonomy cannot be exercised on a discretionary basis, in breach of Parliament’s constitutional powers.

III. For all these reasons, the Court, by unanimity, upheld the objection of unconstitutionality and found that the Law for approval of the ceilings of some of the indicators specified in the 2019 fiscal-budgetary framework was unconstitutional in its entirety.