



ROMANIA
THE CONSTITUTIONAL COURT

Palatul Parlamentului

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PRESS RELEASE

On 7 July 2020, the Plenum of the Constitutional Court ruled on the exception of unconstitutionality of the provisions of Article 88 ind. 1 – Article 88 ind. 9 of Law No 304/2004 on judicial organization, as well as of the Government Emergency Ordinance No 90/2018 on measures for the operationalisation of the Department for the investigation of offences committed within the judiciary.

Following deliberations, the Constitutional, Court decided:

By a majority of votes,

1. It rejected the exception of unconstitutionality and found that the provisions of Article 88 ind. 1 (1)-(5), Article 88 ind. 2 – ind. 7, Article 88 ind. 8 (1) a)-c) and e) and par. (2), as well as of Article 88 ind. 9 of Law No 304/2004 on judicial organization are constitutional in relation to the criticisms formulated.

2. It upheld the exception of unconstitutionality and found that the provisions of Article 88 ind. 1 (6) and Article 88 ind. 8 (1) d) of Law No 304/2004 on judicial organization are unconstitutional.

By unanimous vote,

3. It rejected, as inadmissible, the exception of unconstitutionality of the provisions of the Government Emergency Ordinance No 90/2018 on measures for the operationalisation of the Department for the investigation of offences committed within the judiciary.

The provisions of Article 88 ind. 1 (6) and Article 88 (1) d) of Law No 304/2004 on judicial organization, for which the admission solution was delivered, read as follow:

- *“(6) Whenever the Criminal Procedure Code or other special laws refer to the « hierarchically superior prosecutor » in the case of offenses under the jurisdiction of the Department for the investigation of offences committed within the judiciary, this means the chief prosecutor of the department, including in the case of solutions ordered prior to its operationalisation.”*

- *“(1) The Department’s powers for the investigation of offences committed within the judiciary are as follows: [...] d) the exercise and withdrawal of appeals in cases under the jurisdiction of the Department, including in cases pending before the courts or definitively settled prior to its operationalisation under the Government Emergency Ordinance No 90/2018 on measures for the operationalisation of the Department for the Investigation of offences committed within the judiciary”.*

In order to deliver the solution for the admission of the exception of unconstitutionality referring to the above-mentioned texts, the Court held the violation of the constitutional provisions contained in Article 1 (5) regarding the clarity and predictability of the law, as well as in Article 131 (1) and in Article 132 (1) with reference to the principle of legality and hierarchical control by virtue of which the Public Ministry operates.

With regard to the provisions of Article 88 ind. 1 (6) of Law No 304/2004, the Court held that the definition of the chief prosecution of the Department for the investigation of offences within the judiciary as “hierarchically superior prosecutor” in all cases and regarding all the procedural

aspects involved in the criminal prosecution of the offences under the jurisdiction of the Department removes the legal regime corresponding to the statute of hierarchically superior prosecutor of the prosecutors in leading positions within the Department for the investigation of offences within the judiciary, depriving of legal effects the capacity of deputy chief prosecutor or of chief prosecutor of a structure within the department (office/service).

As regards establishing the capacity of hierarchically superior prosecutor “including in the case of solutions ordered before its operationalization”, *the Court found that the notion of “hierarchically superior prosecutor” always refers at the position in a hierarchy, determined by reference to a certain organisational structure and not at all by reference to the “solutions ordered” in cases brought before a certain prosecutor’s office.* The poor way in which the legislator regulates a transitional situation violates the principle of hierarchical control, as it establishes in the competence of the chief prosecutor of the Department for the investigation of offences committed within the judiciary the control over the activity of prosecutors outside this department with regard to the acts ordered by them in cases which were subsequently transferred to the jurisdiction of the Department for the investigation of offences committed within the judiciary.

With regard to the provisions of Article 88 ind. 8 (1) d) of Law No 304/2004, by the way of regulating the jurisdiction of the Department for the investigation of offences committed within the judiciary referring to the promotion and withdrawal of legal remedies, it follows that this department, assessing the legality and substance of the delivered court decision, implicitly exercises a control over the activity of the court meeting prosecutor. The criticized legal provisions confer to the Department for the investigation of offences committed within the judiciary a special status, preeminent over the other prosecutorial structures within the Prosecutor’s Office attached to the High Court of Cassation and Justice (National Anti-Corruption Directorate, Directorate for Investigating Organized Crime and Terrorism, Judicial Department) and, at the same time, a superior position in the hierarchy of the Public Ministry, in violation of Article 132 of the Constitution, which enshrines

the principle of hierarchical control within this public authority.

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The decision is final and generally binding and shall be notified to the two Chambers of the Parliament, to the Government and the law court which brought the matter before the Constitutional Court, respectively the High Court of Cassation and Justice.

The arguments retained as grounds for the solutions delivered by the Plenum of the Constitutional Court shall be presented in the decision, to be published in the Official Gazette of Romania, Part I.

**External Relations, Press and Protocol Department
of the Constitutional Court**