

Decision No 312 of 20 May 2019
regarding the complaint of unconstitutionality of the provisions of Article 35 (1)-(3) of the
Regulation of the Chamber of Deputies
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Summary

I. As grounds for the referral of unconstitutionality, it was pointed out that the president of the Chamber of Deputies is elected for the duration of the term of the Chamber, and the other members of the Standing Bureaus are elected at the beginning of each session. This distinction underlines the need to ensure the permanent office of president of the Chamber. He is elected by the majority of the Deputies present, while the election of the vice-presidents, secretaries and quaestors composing the Standing Bureau is made on a proposal from the parliamentary groups. Therefore, the president of the Chamber, given the majority required for his election, represents the Chamber of Deputies as a whole, both in relation with other authorities, liaising with the executive power, and at international level, with the parliaments of other States. This is what distinguishes the president of the Chamber from the other members thereof.

According to Article 35 (1) and (2) of the Regulation of the Chamber of Deputies, the President of the Chamber may entrust his responsibilities to one of the vice-presidents, without the text distinguishing between the duties related to the functioning of the Chamber and those reserved by the Constitution, in a limited and express manner, for its president. Thus, in the event that the president of the Chamber delegates all his powers, including the constitutional powers, it appears that the substitute vice-president acquires constitutional powers. Furthermore, the vice-president has also the right to invalidate the decisions of the president of the Chamber or to act contrary to his wishes. It is not permissible to delegate all the powers of the president of the Chamber except where he is acting as President of Romania on an interim basis, but, even in that case, the vice-president should be appointed on the basis of a vote by the plenum of the Chamber and not on the basis of a subjective decision taken by its president.

It was argued that the constitutional powers of the president of the Chamber of Deputies can only be exercised *intuitu personae*, without being able to entrust them to another person, as he is elected by the majority vote of the present Deputies and not through political negotiation. A delegation of these powers should be carried out only with the consent of those who elected him, namely the plenum of the Chamber of Deputies.

Furthermore, the text criticised is not sufficiently clear with regard to the decision to nominate one of the four vice-presidents to perform the duties of the president of the Chamber, at his request or in his absence. In the absence of objective criteria for appointing the substitute vice-president, Article 35 (1)-(3) of the Regulation leaves room for arbitrariness and interpretations, which comes against Article 1 (5) of the Constitution.

II. Having examined the referral of unconstitutionality, the Court held that the president of the Chamber of Deputies has a legal status distinct from the status of the other members of the Standing Bureau. In exercising the office, he is politically neutral, as he does not represent the political position and interests of a political party, but represents the Chamber of Deputies in its entirety.

The Court held that Article 35 (1) of the Regulation of the Chamber of Deputies uses two distinct notions, namely powers “established” by the Standing Bureau and powers “entrusted” by the president of the Chamber of Deputies. The powers entrusted cannot be delegated on a permanent basis because this would mean a transfer of competence, which is

inadmissible. Therefore, the meaning of the text under consideration can only be that the delegation of powers to the vice-president of the Chamber of Deputies can only be temporary, owing to the unipersonal nature of the authority entrusting them. In those circumstances, the vice-president acts for and on behalf of the president of the Chamber, and therefore represents him, and the acts carried out are deemed to have been carried out by the president of the Chamber himself. It is therefore natural that the text under consideration does not distinguish between the constitutional powers and regulatory powers of the president of the Chamber of Deputies, in the sense that only regulatory powers could be delegated.

The Court has held that the meaning of the concept of “foreseeability” depends to a considerable degree on the content of the legal rule in question, the field it covers and the number and status of those to whom it is addressed. Since the legal norm concerned the parliamentary law, the relationship between the president and the vice-president of the Chamber of Deputies, and the addressees of the analysed norm have the status of MPs, who can easily determine the meaning of the normative provision, the Court found that Article 35 (1) of the Regulation of the Chamber of Deputies did not violate the requirements of Article 1 (5) of the Constitution in its component relating to the quality of legal norms.

By Decision No 538 of 12 September 2018, published in the Official Gazette of Romania, Part I, No 1076 of 19 December 2018, the Court qualified the competence of the Prime Minister to refer the Constitutional Court pursuant to Article 146 (e) of the Constitution as a constitutional power which directly, exclusively and personally concerns the Prime Minister and which cannot be delegated to another member of the Government. Those held by the Court cannot be applied to the presidents of the two Chambers of Parliament. According to Article 107 (1) first sentence of the Constitution, the Prime Minister directs Government actions and co-ordinates activities of its members, which implies both a functional impossibility of the members of the Government to replace the Prime Minister, as well as a marked personalisation of the office of Prime Minister. The President of the Chamber of Deputies plays a much more limited role in the functioning of the Chamber of Deputies, so that the holder of the office does not direct the Chamber. Article 34 of the Regulation of the Chamber of Deputies provides that he shall conduct the proceedings in plenary session of the Chamber or those of the Standing Bureau. Thus, a Government meeting cannot take place without the participation of the Prime Minister, as no member of the Government can be delegated his powers, while a session of the plenary of the Chamber of Deputies may take place in the absence of its president, because his duties can be delegated.

In view of their nature, only the constitutional powers provided for in Article 66 (3) concerning the prerogative of the presidents of the two Chambers of Parliament to convene extraordinary sessions, in Article 89 (1) on the consultation of the presidents of the two Chambers in the framework of the dissolution of the Parliament and in Article 146 (a), (b), (c) and (e) on the task of the presidents of the two Chambers to notify the Constitutional Court, may be temporarily delegated. The Court could not find any violation by Article 35 (1) of the Regulation of the Chamber of Deputies of any requirement resulting from the aforementioned constitutional texts.

Regarding the criticism of unconstitutionality according to which Article 35 (1)-(3) of the Regulation of the Chamber of Deputies does not contain objective criteria for the designation of the substitute vice-president, the Court found that it is unfounded. What the author of the referral has requested is that conditions for establishing the substitute vice-president be laid down. Such a request concerns an amendment to the text of the Regulation, which does not fall within the competence of the Constitutional Court. Even if it were accepted that the possible legislative omission would be constitutionally relevant, it would imply a limitation on the discretionary discretion of the president of the Chamber of Deputies, which also does not fall within the competence of the Court. The establishment of possible criteria for

designating the substitute vice-president is the exclusive option of the Chamber of Deputies' Plenum, which may increase or decrease this discretion. Since the Plenum of the Chamber of Deputies, by adopting the Regulation, did not wish to limit that discretion, no other public authority can limit it.

III. For all these reasons, by a majority vote, the Court dismissed, as unfounded, the referral of unconstitutionality and found that the provisions of Article 35 (1)-(3) of the Regulation of the Chamber of Deputies were constitutional in relation to the criticisms formulated.