

Decision No 416 of 26 June 2019
on the referral regarding the Senate Resolution No 4/2019 concerning the approval of a
parliamentary inquiry by a standing committee
Published in the Official Gazette of Romania, Part I, No 605 of 23 July 2019

Summary

I. As grounds for the referral of unconstitutionality, it was pointed out that the Senate Resolution No 4/2019 ordered a parliamentary inquiry by the Committee on Economic Policy, Industries and Services into the investigation carried out by the Competition Council, opened by Order No 420/200 of the President of the Competition Council and aimed at the possible violation of the provisions of Article 5 (1) of the Competition Law No 21/1996, republished, as amended and supplemented, and of Article 81 (1¹) of the Treaty establishing the European Community by undertakings active on the market for banking and inter-bank services in Romania.

It was argued that Law No 21/1996 did not established parliamentary oversight of the work of the Competition Council, either through the standing committees monitoring the public authorities, or through the activity reports that the Competition Council publishes annually.

Analysing the powers of the Senate's Committee on Economic Policy, Industries and Services in the field of competition and State aid, it has been shown that they refer expressly to the preparation of the legislative work and the implementation of the function of parliamentary oversight over the Government's activity in implementing competition and State aid policies. In this case, that committee was given the task of conducting a parliamentary inquiry into specific activities of the Competition Council and the President of the Competition Council, even though the Competition Council is a separate authority from the Romanian Government. In the opinion of the authors of the referral, the Senate or the Chamber of Deputies cannot establish, by resolution, parliamentary powers of inquiry for certain standing committees, if the inquiry does not relate to the legal and regulatory powers of those committees. Where appropriate, a committee of inquiry may be set up in this case.

The authors of the referral also took the view that the criticised resolution establishes a parliamentary oversight over an autonomous administrative authority capable of affecting its functional and decision-making independence, thereby violating the limits of parliamentary oversight through committees of inquiry and also the provisions of Article 116 (2) of the Constitution relating to autonomous administrative authorities. At the same time, by its objectives, the committee took the place of the administrative court, which, according to Law No 21/1996, is the sole competent to carry out such a legality review.

The authors of the referral relied upon the decisions of the Constitutional Court No 1231 of 29 September 2009, No 428 of 21 June 2017 and No 430 of 21 June 2017. In their opinion, the committees of inquiry do not have the power to give a verdict or the constitutional or statutory power to rule on the guilt or innocence of a person.

II. Having examined the referral of unconstitutionality, the Court held that, as far as Parliament's oversight function is concerned, it is entitled to use all the legal instruments provided by the Constitution, the law and its own rules of organisation and functioning. Since the standing committees and the inquiry committees are regulated at constitutional level, the law and the parliamentary regulation must expressly regulate them and establish procedures and means to give substance to the constitutional provision.

According to Article 45 of the Senate Regulation, the Senate may entrust the conduct of a parliamentary inquiry to both a standing committee and an inquiry committee. Therefore, the alleged infringement of the provisions of Article 64 (4) and Article 147 (4) of the

Constitution, motivated by the lack of competence of a standing committee in the conduct of the parliamentary inquiry, cannot be accepted. The distinction between the standing committees and the inquiry committees does not have constitutional support. Neither the constitutional provisions nor the case-law of the Constitutional Court support such an interpretation.

In accordance with Article 3 i) of the Regulation on the organisation and functioning of the Committee on Economic Policy, Industries and Services, “the Committee shall prepare the legislative work and perform the parliamentary oversight over the Government’s activity in the implementation of the following policies: (...) i) competition and State aid”. It follows that the conduct of a parliamentary inquiry into the Competition Council falls within the competence of the Senate’s Committee on Economic Policy, Industries and Services.

According to Article 14 (1) of the Competition Law No 21/1996, the Competition Council is an autonomous administrative authority, but this status does not exempt it from a parliamentary inquiry into acts or actions falling within its scope of competence. Of course, parliamentary oversight must be conducted within the limits of the law and with due respect for the role of the Competition Council. Moreover, Article 28 (b) of Law No 21/1996 expressly sets out the obligation for the Competition Council to communicate its point of view “on any aspect of competition policy at the request of: (...) b) parliamentary committees, Senators and Deputies”.

Given that the Parliament is the supreme representative body of the Romanian people, the Court held that the purpose of the parliamentary inquiry is not to verify only matters falling within the competence of the public authorities under parliamentary oversight, but rather to clarify the circumstances and the causes of the events in question. It cannot therefore be argued that an autonomous administrative authority could be exempted from the conduct of the parliamentary inquiry.

The Court has held that the concept of parliamentary oversight must not be isolated from the constitutional principle of loyal cooperation between the institutions and authorities of the State. It is therefore clear that the representatives of the institutions must cooperate in the conduct of parliamentary inquiries.

The Court stressed that the solutions proposed in the reports and opinions of the parliamentary committees are not binding. A contrary interpretation would amount to a diversion of the role of the Parliament, taken as a whole, as the supreme representative body of the Romanian people, which enjoys the original legitimacy, serving as an exponent of the interests of the entire nation.

In line with the relevant constitutional provisions and the case-law of the Constitutional Court relied upon, Article 3 of the Senate Resolution No 4/2019 states that “the conclusions of the parliamentary inquiry carried out by the Committee on Economic Policy, Industries and Services will be contained in a report”. Therefore, there is no question of any measure or decision by the standing committee which would affect the autonomy of the Competition Council or undermine the powers of the courts. The committees investigate facts or circumstances, and not persons. They are intended to establish the existence or non-existence of facts for which the committee of inquiry has been created, by means of parliamentary research and documentation. Therefore, the work of a committee of inquiry (in this case a standing committee conducting the parliamentary inquiry) has nothing to do with a judicial inquiry with a different object and purpose. Therefore, the alleged infringement of Article 1 (4), which enshrines the principle of the separation and balance of powers in the State, and of Article 116 (2) of the Constitution, concerning the structure of the Government, cannot be upheld.

Moreover, the criticisms raised in the reasoning of the complaint are rather concerned about the possible measures that might be taken by Parliament as a result of the inquiry

approved by the Senate Resolution No 4/2019. Such criticism has no bearing in the present case. A clear distinction must be made between the investigative work of a parliamentary committee and the measures that Parliament or its chambers take on the basis of the documents that conclude the parliamentary inquiry. The latter measures are not the subject of the resolution approving the parliamentary inquiry, but of separate acts, which may also be review by the Constitutional Court.

III. For all these reasons, by majority vote, the Court dismissed, as unfounded, the referral of unconstitutionality and found that the Senate Resolution No 4/2019 on the approval of a parliamentary inquiry by a standing committee was constitutional in relation to the criticisms made.