

*Decision no. 671  
of 20 October 2021*

*on the request to resolve the legal dispute of a constitutional nature between the Government of Romania and the Prime Minister of Romania, on the one hand, and the Parliament of Romania, on the other, formulated by the President of the Senate*

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## **Summary**

**I. In the arguments of the request to solve the dispute,** the President of the Senate argued that the dispute was born between the Government of Romania and the Prime Minister, on the one hand, and the Parliament of Romania, on the other, by violating the constitutional provisions regarding the obligation to obtain the consent of the Parliament in the case of the governmental reshuffle carried out after the change in the political composition of the Government.

It was shown that, on 2 September 2021, the Minister of Justice, a member of USR PLUS, was dismissed office at the proposal of the Prime Minister of Romania. Later, on 7 September 2021, the deputy prime minister and the other five ministers members of USR PLUS submitted their resignations from the Government. The President of Romania took note of the resignations and noted the vacancies. The Prime Minister refused to propose the new list of ministers to the President of Romania.

It was argued that, by the failure of the Prime Minister of Romania to request the approval of the Parliament regarding the new list of ministers and to submit these proposals to the President of Romania within the legal term, an institutional blockage was reached, preventing the Parliament from exercising its constitutional role that it has in relation to the Government, according to Article 85 (3) of the Constitution.

**II. Examining the request to solve the dispute,** the Court found that the violation by the Prime Minister of the obligations imposed by Article 85 (3) of the Constitution is invoked in that he did not propose to the President of Romania new candidates for the position of minister within 5 days from the vacancy of the respective positions, in accordance with Article 47 (2) of the Administrative Code.

The Court held that its analysis cannot, in principle, refer to compliance with the provisions contained in the infra-constitutional legislation, in this case a term from the Administrative Code. Nor could one apply the provisions of Article 47 (2) of the Administrative Code invoked in the referral and the term regulated there, which refer to the appointment of ministers by the President of Romania. The factual situation presented is that of a governmental reshuffle by changing the political composition of the Government, a situation in which the appointment of ministers can no longer take place only by decree of the President of Romania, at the proposal of the Prime Minister, but, beforehand, it needs the approval of the Parliament with regard to the Prime Minister's proposal to reshuffle the Government. In such cases, the applicable constitutional term is included in Article 107 (4) of the Constitution, a 45-day interim ministerial period.

As long as Article 107 (4) of the Constitution allows the interim period of 45 days, the interpretation could not be accepted that the Prime Minister should, within 5 days, obtain a decision of the Parliament for a new list of ministers to be presented to the President of Romania. No constitutional provision gives the Prime Minister the power to oblige the Parliament to instate the Government within a certain period. On the contrary, the Government

is, according to the Constitution, under parliamentary political control and the Parliament is the one who decides whether or not to grant confidence to the Government, in one political composition or another, if it maintains the confidence granted or withdraws it under the conditions provided by the Constitution.

From the factual situation presented, there is no circumstance and no act or political statement in which the prime minister expressed his intention not to exercise his power to propose to the Parliament a reshuffle along with a change in the structure or political composition of the Government. Therefore, a refusal on the part of the prime minister in the sense shown by the author of the referral cannot be established. Moreover, the developments subsequent to the referral, in the sense of the dismissal of the Government through a motion of censure, only illustrate in a practical way the theses presented on the relations between the Government and the Parliament, namely the political control that the Parliament exercises over the Government. From this perspective, the Court found that the dispute brought before it, under the appearance of a legal conflict of a constitutional nature, turns out to be, in reality, a political conflict that exceeds the jurisdiction of the Constitutional Court to resolve.

**III. For all these reasons,** unanimously, the Court rejected the request made by the President of the Senate and found that there is no legal dispute of a constitutional nature between the Government of Romania and the Prime Minister of Romania, on the one hand, and the Parliament of Romania, on the other.