

Decision No 156 of 6 May 2020 on the referral of unconstitutionality of the provisions of Article I of Senate's Resolution No 16/2020 supplementing the Senate's Regulation and of the resolution as a whole, published in Official Gazette of Romania, Part I, No 478 of 5 June 2020

Summary

I. As grounds for the referral of unconstitutionality, the authors argued that, at the meeting of 26 March 2020, the Senate's Regulation were amended by the Standing Bureau of the Chamber, the amendments made being contrary to Article 64 of the Constitution. It was noted that Article 133¹ of the Senate's Regulation, introduced by Resolution No 16/2020, gave the Standing Bureau the power to determine by its own decision the procedure for the holding by electronic means of meetings of the Standing Bureau of the Senate, meetings of the Parliamentary Group Leaders' Committee, meetings of the standing committees and meetings of the plenary of the Senate. Thus, a constitutional task of the Senate was transferred to an internal governing body of the Senate, namely the Standing Bureau. In accordance with Article 64 (1) of the Constitution, the Chambers of Parliament decide on their own organisation and procedures for the conduct of parliamentary works by means of their own regulations. None of the Chambers of Parliament can reserve to the Standing Bureau an own and exclusive power of the Chambers, as that would be in breach of the principle of parliamentary autonomy.

In addition, the new regulatory text enshrines a procedure unknown to Senators, which is not foreseeable and which is to be subject to the discretionary resolution of the Standing Bureau, which will adopt it by its own decisions whenever the political majority so wishes. Such a procedure for the conduct of Senate sessions is unclear and arbitrary, being contrary to Article 1 of the Constitution relating to the rule of law.

The new procedure described in the Senate Resolution No 16/2020 does not offer any of the democratic safeguards provided for by the Constitution concerning the functioning of the Chambers of Parliament. In addition to regulatory loopholes, the wording of the contested text is unclear, as it refers both to "exceptional situations, established by the competent authorities" and to the power of the Standing Bureau to declare, by resolution, the exceptional situation. However, the Standing Bureau cannot find, establish or declare exceptional situations.

Furthermore, by prohibiting the right to table amendments or to discuss the normative content of the law, the Parliament's deliberative function provided for in Article 61 (1) of the Constitution is infringed. As the procedure for the final vote can be modified by the Committee of the leaders of the parliamentary groups, a transfer of constitutional competences is carried out from the Parliament to a political body of a Chamber. The delegation of a decision-making power which the Constitution has reserved to the Chamber as a whole to a political body with no managerial role and without any power to work in that Chamber infringes Article 64 (1) of the Constitution and the principle of legality.

II. Having examined the referral of unconstitutionality, the Court held that it did not have jurisdiction to rule on the application of the regulations, since it would infringe the principle of the regulatory autonomy of the two Chambers established by the first sentence of Article 64 (1) of the Constitution. Members of Parliament's complaints concerning specific acts implementing the provisions of the Regulation fall within the exclusive competence of the Chamber of Deputies or the Senate, as the case may be.

The provisions contained in parliamentary regulations are not reference rules in the exercise of constitutional review, unless they have constitutional relevance and are expressly or implicitly laid down in a constitutional rule. In principle, the Chamber of Deputies/the Senate,

through its vote on the draft resolution, covers its procedural flaws. The Court cannot be called upon to examine the specific conduct of the plenary sitting of the Senate and to conclude whether it was conducted in accordance with the Regulation or other rules, and therefore to infer therefrom the constitutionality or unconstitutionality of the legislative acts adopted. The Court reviews the constitutionality of the rule contained in the regulation and not the conduct of the sitting at which it was adopted or the constitutionality of a resolution or procedure adopted by the Standing Bureau.

The Court pointed out that public authorities must carry out their activities in accordance with the provisions of the Constitution, even under the decreed state of emergency, since the principle of legality is not limited or suspended during that period. As regards the criticisms of unconstitutionality concerning the delegation to the Standing Bureau of the power of the plenary of the Senate to determine the procedure for the conduct of sittings by electronic means, the Court noted that the contested text contained flexible rules to allow the Standing Bureau to draw up the procedures necessary to carry out the work of the Senate in situations which make it impossible for Senators to be present at the Senate's headquarters. The procedure referred to is therefore a technical one, representing secondary and detailed issues of how sittings are held by electronic means.

The text of the Constitution lays down neither the procedure for holding the sittings of the Chambers of Parliament nor the level of detail of the statutory rules, so that these aspects fall within the choice of the respective parliamentary Chamber. It is not for the Constitutional Court to determine the optimal level of detail of the Regulation itself. However, it is easy to understand that for exceptional circumstances it is desirable that the procedure is as flexible as possible so that it can respond to the various exceptional situations that have arisen. A procedure laid down by regulation may be amended only by a resolution of the plenary sitting of the Chamber, which implies that a quorum is met and a majority vote is reached in that Chamber. Such a procedure for amending the Regulation gives it a certain degree of stability and formal rigidity. Instead, the acts of the Standing Bureau are more adaptable to the various situations, since they are adopted by a quorum and a majority vote at the level of the Standing Bureau.

As regards the complaint that neither the exceptional circumstances in which the procedure for discussion by electronic means applies nor the public authorities which may ascertain them are expressly specified in the contested text, the Court observed that, even though the wording of the text is rather atypical by making reference to too vague and generic notions, the contested text is not unpredictable, since, from its entirety, it can be concluded that it can only cover situations with a high degree of deviation from usual in relation to which the State authorities have put in place appropriate measures. These situations may only be those established by Articles 92 and 93 of the Constitution, i.e. partial and general mobilisation, state of war, state of siege and state of emergency. The fact that the regulatory provision could be drafted more precisely does not automatically amount to a breach of the quality requirements of legislative acts, but must be examined whether the wording chosen is sufficiently foreseeable to understand the hypothesis of the rule. A drafting deficiency relating to the accuracy of the wording does not necessarily render the legislative act unpredictable if the persons to whom it is addressed, having regard to their (parliamentary) status, can easily determine the meaning of that provision.

With regard to the complaint relating to the breach of Parliament's deliberative function provided for in Article 61 (1) of the Constitution, the Court found that the procedure for holding the sitting by electronic means consists of a set of measures of an organisational nature, which do not concern the Senators' right to table amendments. There is nothing to prevent amendments from being tabled to the committee dealing with the substance.

As regards the fact that the procedure for the final vote can be changed by the Committee of the leaders of the parliamentary groups, which is a political body without a leading role, the Court has held that this committee may legitimately choose between a procedure involving a single vote on the report and the legislative proposal, which is the rule in the case of Article 133¹, and the general one involving two separate votes. Therefore, this text does not refer to the fact that the regulation itself can be amended by decision of the Committee of the leaders of the parliamentary groups, but to its right of choice between the two existing procedures. The Court also held that all the bodies of the Chambers of the Parliament are of a political nature, so that the conferral of such competence on the Committee of the leaders of the parliamentary groups does not raise any question of constitutionality. On the contrary, only if that power had been granted to a non-political body, for example the Secretariat-General of that Chamber, there would indeed have been a question of constitutionality, namely an interference in the conduct of the Chamber's activity. The principle of the rule of law was therefore observed in the present case.

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 I of Senate's Resolution No 16/2020 supplementing the Senate's Regulation, as well as the resolution as a whole, are constitutional in the light of the criticisms made.