

***Decision No 508 of 2 November 2022 on the exception of unconstitutionality of the provisions of Article 36 (3) of Law No 335/2007 of the Chambers of Commerce in Romania, published in the Official Gazette of Romania, Part I, No 1106 of 16 November 2022***

**Summary**

**I. As grounds for the exception of unconstitutionality**, it was considered that Article 36 (3) of Law No 335/2007 of the Chambers of Commerce in Romania did not meet the requirements of predictability specific to the law, in the sense that the addressees of the norm cannot predictably determine whether or not the terms of office of the President and Vice-Presidents of the Chamber of Commerce and Industry of Romania [referred to in Law No 335/2007 and hereinafter as “the National Chamber”] are considered served when the 5-year term provided for by law ends or when serving a remainder of a tenure of less than the 5 years provided for by law, in special situations. It was considered that the wording of the impugned legal text was inaccurate, in the sense that it did not stipulate what happened if a person is first elected to continue serving a remainder of a tenure and then is re-elected for a 5-year term. If, as provided for in Article 36 (3) of Law No 335/2007, the duration of the term is 5 years and it can be renewed once, the only interpretation in accordance with the legislator’s rationale is that, after serving a 5-year term of office, this can be renewed for another 5 years, and the initial period served, which was shorter than the 5 years established by law, is devoid of legal consequences in relation to the subsequent serving of two 5-year terms. According to the law, the term of office is 5 years. *Per a contrario*, the period served, in special situations, for less than 5 years does not constitute a “term of office” and does not prevent the subsequent serving of two 5-year terms.

**II. By examining the exception of unconstitutionality**, the Court noted that Parliament, as an expression of the autonomy conferred to it by law, acknowledged the National Chamber’s right to organize and carry out its activity in accordance with the provisions of Law No 335/2007 and with its own Statute, approved by the General Assembly, by a majority vote of its full members (Article 26). The principle of autonomy also governs the procedure for electing the President and Vice-Presidents of the National Chamber; thus, according to the provisions of Article 36 (1) and (3) of Law No 335/2007, the General Assembly elects the President from among the members of the Governing Board (their term of office is of 5 years, according to Article 34 of the same law), according to the provisions of its Statute, and the 4 Vice-Presidents are elected by the Governing Board, after its establishment, from among its members, according to the provisions of its Statute. As per the impugned rule, the term of office of the President and Vice-Presidents is of 5 years and can be renewed once.

The Court concluded, from the systematic interpretation of the provisions of Article 34 (1) and (3) and of Article 36 (1) to (3), that two distinct situations were possible for the election of the President and Vice-Presidents of the National Chamber. In the first case scenario, the President and Vice-Presidents are elected immediately after the election and establishment of the Governing Board, given that the person who is to be President or, as the case may be, Vice-President must also be a member of this body. In this case, the term of office of the President and Vice-Presidents is of 5 years, according to the provisions of the first sentence of Article 36 (3). In the second case scenario, the President or a Vice-President are elected in situations where their term of office ends before the end of the 5-year period for which they were elected (irrespective of the manner of termination thereof, e.g., resignation or death) or where the President or Vice-President are no longer members of the governing body. In this second situation, the election of the President or Vice-President is possible only for the remainder of the respective 5-year term, since an election for a full 5-year term would not be correlated with the term of the Governing Board provided for in Article 34 (3). The election of the President and Vice-President for the remainder of the 5-year term shall not imply the election of the Governing Board as well, except in case of dissolution of the entire Board, under the conditions expressly regulated in Article 43 of the law.

Therefore, the term of office of the President and Vice-Presidents of the National Chamber is subsumed to the 5-year tenure as members of the Governing Board, meaning that, in case of vacancy of the position of President of the National Chamber before the end of the term of office, a new President will be elected, who will continue the initial term [Article 33 (2<sup>1</sup>) of the Statute of the National

Chamber]. It can be noted that the positions of President and Vice-President of the National Chamber have a legal nature and are directly linked to the collegial body (governing board), but do not identify with it. In the absence of express constitutional provisions, it is for the legislator to determine the duration of the term of office and the consequences deriving from its early termination.

The Court found that, in the case of the piece of legislation under review, by virtue of the principle of organisational and operational autonomy, the legislator had enshrined that all the conditions for the election, by the General Assembly, of its President from among the members of the Governing Board be established in the Statute of the National Chamber, approved by the General Assembly, by a majority vote of its full members. The legislator established by law only the duration of a full term of office (5 years), subject to election immediately after the election and establishment of the Governing Board, and there is no provision in the legislation regarding the early termination of the tenure and the legal consequences deriving therefrom, aspects that remain for the General Assembly to regulate in the Statute.

As the President/Vice-President are members of the Governing Board, early termination of their term of office can only require the election of another person for the remainder of their term of office. Even if the duties and status of the person thus elected are identical to those of a person elected for a full term of 5 years, the Court considered that this (remainder) term does not fully identify, from the point of view of its legal nature, with the complete one. It has a complementing/transitional/provisional/transient nature so as to ensure the exercise of the position of president for the duration of the term of office of the governing body. The programme to be implemented by the person elected for the remainder of the term is provisionally linked to the previously served term, either departing from it or continuing it. It is a solution that responds to the practical situation of the fragmentation of the initially obtained term. It represents a stronger solution than the interim, as all the duties related to the office of President/Vice-President are exercised, but it does not identify with a full 5-year term, lacking both the temporal consistency and substance, the individuality and completeness of the programme under which it is granted.

The limitation of the temporal dimension of the term of office is given by a requirement related to the functioning of the governing body – which, in its turn, operates for a period of 5 years –, and the duration of the term of office is a defining aspect of its legal regime. The Court held that it could not be said that the impugned text referred to the situation of the remainder of the term or of a fragmented term of office, since the duration of a term of office is a defining element of its legal regime. If the remainder of a term of office is a consequence of its early termination, a full term is determined by a fundamentally different and new legal situation, being associated, in this case, with a new term of the collegial body (governing board). Therefore, the full term of office of the President/Vice-President takes into account the legal situation generated by the election of a new governing board, also for a full term. Moreover, the legitimacy of a full term with regard to the substance, individuality and completeness of the programme undertaken by the President/Vice-President cannot be compared to that of a partial/remainder of a term of office. Therefore, the differences are not only terminological but also substantive, which obviously leads to different legal solutions depending on the type of term of office served (full term – partial term). The general rule in the law-making process is that of a full term and the exception is that of the partial one, so, if the legislator regulates the exception, it must do so *expressis verbis*, as a derogation from the general rule, i.e., of a full term.

Thus, since the impugned text generically regulates aspects related to the term of office of the President/Vice-Presidents, it follows that it refers only to the election to the position of President/Vice-President for a full term of 5 years, so the renewal of the term only once is premised on a previous election for a full term as well.

In application of the provisions of Article 26, read in conjunction with Article 49 of the law, the General Assembly introduced in the adopted Statute the provision according to which, in case of vacancy of the office of President of the National Chamber before the expiry of the term, a new President shall be elected, who shall continue the initial term, and this remaining period of the term of her/his predecessor shall not be considered a full or renewed term, within the meaning of Article 28 (7) [Article 33 (2<sup>1</sup>) of the Statute]. Therefore, the text of the Statute enshrines the same interpretative solution. Similarly, in case of vacancy of a position of Vice-President of the National Chamber before the end of the term, the Statute provides that a new Vice-President shall be elected, who shall continue

the initial mandate and this remaining period of the term of her/his predecessor shall not be considered a full or renewed term within the meaning of Article 28 (7) [Article 28 (7<sup>1</sup>) of the Statute].

The Court considered that, if this incomplete way of regulation may affect the predictability of the law and its scope, it implied a violation of Article 1 (5) of the Constitution. With regard to the exercise of the functions of President/Vice-President of the National Chamber, the Court considered that legal certainty was required, given that the acts issued and the duties performed by them could affect/disrupt the certainty of the civil legal relations entered into by the National Chamber itself.

Therefore, the Court found that the impugned provisions contained an incomplete legislative solution, depriving the rule under review of predictability and being likely to affect the certainty of the civil legal relations. The requirements related to the quality of the law do not allow the addressee of the law to arrive at a subjective or discretionary interpretation of the legal norm. The latter must rely on a good-quality legal norm that guides her/his social conduct. While ascertaining the absence of such a norm, in conjunction with the constitutional relevance of the legislative omission identified, the impugned provisions can be constitutional only to the extent that the renewal of the term of office of the President and Vice-President of the National Chamber envisages: (a) a previous election for a full term of 5 years; (b) a new election for a full term of 5 years.

The Court considered that, in order to meet the requirements of predictability of the law, the impugned text must be placed within the exclusive scope of the notion of a full 5-year term. Any other meaning attributed to it is contrary to Article 1 (5) of the Constitution.

**III. For all these reasons,** by a majority vote, the Court upheld the exception of unconstitutionality and found that the provisions of Article 36 (3) of Law No 335/2007 of the Chambers of Commerce in Romania were constitutional to the extent that the renewal of the term of office of President and Vice-President of the National Chamber for a period of 5 years is premised only on a previous full 5-year term.