

SUMMARY OF THE JUDICIAL ACTIVITY OF THE CONSTITUTIONAL COURT IN 2019

1. Short statistical references as to the judicial activity of the CCR from its establishment until 31 December 2019

Before analysing the activity of the Constitutional Court in 2019 and in order to have a comparative picture as to its evolution, I will first briefly present the summary of the Court's activity since its establishment (June 1992) until 31 December 2019. During that period, the Court settled a total of 46.685 referrals, in which it pronounced a total of 20.149 judicial acts¹ (following the joinder of files having the same subject matter), divided, according to the powers provided for in Article 146 (a) to (l) of the Constitution, as follows:

- a) 465 referrals settled by 399 decisions in the framework of the constitutional review of laws before promulgation;
- b) 11 reviews of initiatives to revise the Constitution, resulting in 11 decisions;
- c) 54 referrals settled by 49 decisions in the framework of the constitutional review of Parliament's regulations;
- d) 45.499 exceptions of unconstitutionality settled by 19.175 decisions;
- e) 49 requests for the resolution of legal disputes of a constitutional nature between public authorities, resulting in 38 decisions;
- f) 506 challenges concerning compliance with the procedure for the election of the President of Romania, settled by 395 rulings;
- g) 2 requests for a declaration of the existence of circumstances justifying the interim in the exercise of the office of President of Romania, settled by 2 rulings;
- h) 3 proposals to suspend the President of Romania from office, in which 3 advisory opinions were given;
- i) 29 referrals concerning compliance with the procedure for the organisation and holding of a referendum, settled by 17 rulings;
- j) 8 referrals for verification of whether the conditions for the exercise of legislative initiative by citizens are met, resolved by 8 rulings;
- k) 1 referral as to the constitutionality of a political party, settled by a decision;
- l) 58 referrals concerning the review of constitutionality of resolutions of Parliament, the Chamber of Deputies or the Senate (other than regulations), settled by 51 decisions.

2. Activity and dynamics of judicial activity in 2019

• In the course of 2019, the Constitutional Court registered **3463 referrals** divided, according to the **criterion relating to the powers provided for in Article 146 of the Constitution**, as follows:

- a) 39 referrals concerning the constitutional review of laws before promulgation;

¹ As a result of the joinder of files having the same subject-matter, the number of judicial acts is less than the number of cases dealt with

- b) 3 referrals on initiatives to revise the Constitution;
- c) 1 referral concerning the constitutional review of Parliament's regulations;
- d) 3314 exceptions of unconstitutionality;
- e) 8 requests for resolution of legal disputes of a constitutional nature between public authorities;
- f) 86 challenges concerning compliance with the procedure for the election of the President of Romania and confirmation of the ballot returns;
- g) 6 challenges concerning compliance with the procedure for the organisation and holding of a referendum and confirmation of its results;
- h) 1 referral for verification of whether the conditions for the exercise of legislative initiative by citizens are met;
- i) 6 referrals concerning constitutional review of resolutions of Parliament, the Chamber of Deputies or the Senate (other than regulations).

• In the course of 2019, the Constitutional Court delivered **952 judicial acts** (decisions and rulings), by which it settled a number of 1763 cases/referrals. Using simultaneously the *criterion of division according to constitutional powers* and the *criterion of the typology of the pronounced solution*, these judicial acts can be represented synthetically, as follows:

Powers	Total decisions/ rulings	Total admission decisions/ rulings	Total dismissal decisions/ rulings
Constitutional review of laws before promulgation [Article 146 (a) of the Constitution]	48	30 62,5%	18
Legislative initiative to revise the Constitution [Article 146 (a) of the Constitution]	3	2 66,66%	1
Constitutional review of Parliament's regulations [Article 146 (c) of the Constitution]	2	-	2
Exceptions of unconstitutionality [Article 146 (d) of the Constitution]	804	23 2,86 %	781
Legal disputes of a constitutional nature between public authorities [Article 146 (e) of the Constitution]	3	3 100 %	-
Challenges concerning compliance with the procedure for the election of the President of Romania and confirmation of the ballot returns [Article 146 (f) of the Constitution]	84	5 5,95 %	79
Verification as to the compliance with the procedure for the organisation and holding of a referendum [Article 146 (i) of the Constitution]	1	1 100 %	-

Verification as to the compliance with the conditions for the exercise of the legislative initiative by citizens [Article 146 (j) of the Constitution]	1	-	1
Constitutional review of resolutions of Parliament [Article 146 (l) of the Constitution]	6	-	6
Total	952	64 (6,82%)	888 (93,28%)

* (see the website www.ccr.ro , Case-law section)

On 31 December 2019, of the 952 pronounced judicial acts, 688 were published or, as the case may be, sent to the Official Gazette of Romania for publication, while 264 were at the drafting stage. In this connection, it should be mentioned that the deadline for drawing up is of 30 days at most from the date of delivery, as laid down in the final sentence of Article 60 (1) of Law No 47/1992 on the organisation and functioning of the Constitutional Court.

3. Some comparative statistics

The dynamics of the judicial activity of the Constitutional Court in 2019 will be analysed, first of all, by reference to the general average of all previous years, then by comparison with the figures corresponding to 2018. Thus, in relation to the **total of 46.685 cases** registered with the Court and of the 20.149 judicial acts issued by the latter as of its establishment until the end of 2019 (**June 1992 to December 2019**), **the general average is of about 1800 cases/year and about 780 decisions/year.**

It should be pointed out that, following the revision of the Constitution in October 2003, the Court's powers were increased, with the result that, after that date, the number of referrals to the Court and, accordingly, the number of judicial acts issued for settlement thereof were obviously in the ascending line. The dynamics of the activity of the Constitutional Court must therefore follow two major periods, the first (A) — from establishment to revision of the Constitution, and the second (B) — 2004-2019, following the revision of the Basic Law.

Separately, I will then set out a comparative situation with the previous year, i.e.2018, in terms of both the number of referrals registered (C) and the weight of the admission decisions pronounced (D).

➤ **A. Comparison with the period from June 1992 to 2019**(approximately the first 10 years as of the establishment of the Court)

During the first period (June 1992 — 2003), roughly corresponding to the first 10 years as of the Court's establishment, a total of 3962 cases were registered, which were settled by 3297 judicial acts. During those 10 years, the Court resolved on average 400 cases/year and delivered 300 judicial acts/year, figures which are well below the general average in relation to the entire period from establishment until December 2019, i.e. around 1800 cases/year and around 780 decisions/year. These figures represent less than 8.5 % of all registered cases and less than 15 % of all judicial acts handed down since its establishment until December 2019.

➤ **B. Comparison with the period from June 2004 to 2019**(last 16 years of activity, under the regime of the Constitution revised in 2003)

The second period (from 2004 to 2019) adds a total of **42.723 referrals** registered and settled by **16.852 judicial acts**, i.e. an **average of 2671 referrals per year** and **1054 judicial acts per year**. As compared with the first period (10 years from the establishment), it is noted that, over the last 16 years, the Court resolved 7 times more cases each year and delivered almost 4 times more decisions, rulings or advisory opinions than in each of its first 10 years of activity (these figures represent around 91.5 % of all registered files and about 85 % of all judicial acts issued since its establishment until December 2019).

In order to reflect this dynamic of the Court's activity concerning only some of its powers, suffice it to note that, **during the first period**, the total number of referrals concerning the **review of constitutionality of laws before promulgation** was **113 — about 11 referrals/year**, whereas **during the second period** it was **363 — about 22 referrals/year**. While the record number in the first reference period was of 19 such referrals in 1995, there was a quite exceptional increase in the second period, with a record of 95 such referrals in 2018.

With regard to the resolution of the **exceptions of unconstitutionality**, which generally employ **around 97 % of the total volume of judicial activity of the Constitutional Court**, it is noted that, **during the first period**, **3577** exceptions of unconstitutionality were registered — **approximately 350/year**, representing around 90 % of the Court's volume of activity in that period, and, **during the second period**, more than 10 times that number, i.e. **41.922** exceptions of unconstitutionality — **approximately 2620/year**, representing around 98 % of the volume of activity of the Court of last 16 years. While during the first period the highest number of exceptions of unconstitutionality registered was 573 in 2003, during the second period it was reached the record of 8823 exceptions of unconstitutionality registered before the Constitutional Court in 2009. It should be noted that, with the 2003 revision of the Constitution, the Advocate of the People obtained the right to raise exceptions of unconstitutionality directly before the Constitutional Court, and it raised a total of 87 such exceptions.

In addition, following the revision of the Constitution in 2003, the public authorities provided for in Article 146 (e) of the Constitution began to effectively exercise the right to submit **requests for the resolution of legal disputes of a constitutional nature between public authorities**, **49** such requests being registered since 2005 (when the first referral was registered) until the end of 2019, which represents an average of around **3 requests per year**. The record in this area was reached in 2019 when **8** such requests were made.

The new powers of the Court introduced following the constitutional revision of 2003 also include the review of **constitutionality of resolutions of Parliament other than regulations**, in respect of which the Constitutional Court registered a total of 58 referrals from 2010 to the end of 2019, representing an average of about 6 referrals per year, which was however exceeded in 2012 (12 referrals), 2017 (8 referrals) and 2018 (11 referrals).

➤ **C. Comparison with 2018**

The judicial activity in figures in 2019 is more clearly reflected in its analysis as compared with that carried out in 2018.

- With regard to the *review of constitutionality of laws prior to promulgation*, there is a decrease in the number of referrals. While the record number of 95 referrals was reached in

2018, 39 were recorded in 2019, a figure which, even so, exceeds both the general average of 17 referrals per year in relation to the entire period of activity of the Court since its establishment and the average of 22 referrals per year in relation to the period from 2004 to 2019.

- The year 2019 stands out by the 3 referrals concerning *initiatives to revise the Constitution*, a significant number given that, since the Court's establishment, a total of 11 such cases were registered (1 in 1996, 1 in 2000, 3 in 2003, 1 in 2011, 1 in 2014 and 1 in 2016).

- A significant increase in the number of *exceptions of unconstitutionality* to 3314 referrals in 2019 compared to 2260 in 2018 is noted. Thus, the year 2019 exceeded by about 50 % the number of exceptions of unconstitutionality recorded the previous year, accounting for around 95 % of the volume of judicial activity and well above the general average of 1685 exceptions of unconstitutionality per year, relative to the entire period of activity, and to the average of 2620 exceptions of unconstitutionality per year, relative to the period 2004-2019. In practice, only the number of referrals for the settlement of exceptions of unconstitutionality registered in 2019 is close to the total number of referrals covering all the powers of the Court, registered during the first decade of activity, namely June 1992 to 2003.

- Furthermore, a particular feature of that year was the *increased number of exceptions of unconstitutionality raised directly by the Advocate of the People* under the second sentence of Article 146 (d) of the Constitution. Compared with the total of 87 referrals, with an average of about 6 referrals per year, in 2019 there were 12 referrals from the Advocate of the People, which exceeded 2 times the overall average, while in 2018 only 5 such referrals were submitted.

- A record increase was in the number of requests for the resolution of *legal disputes of a constitutional nature between public authorities*. While 5 such requests were registered in 2018, in 2019 their frequency exceeded by 50 % the previous year's figure, with 8 requests registered — an absolute record in relation to all previous years. Having regard to the total number of 49 registered requests from 2005 to the end of 2019, thus an average of about 3 requests per year, it is noted that it was only in 2019 alone that around 16 % of this total were made.

- The year 2019 also stands out by the resolution of *challenges concerning compliance with the procedure for the election of the President of Romania and confirmation of the ballot returns*. By its very nature, this power is exercised only in the years in which the elections to the office of President of Romania take place, with the result that, since the establishment of the Court until the end of 2019, challenges were registered as follows: 43 in 1992, 132 in 1996, 70 in 2000, 50 in 2004, 41 in 2009, 84 in 2014 and 86 in 2019. The total of 506 challenges gives an overall average of 72 challenges per year, an average slightly exceeded in 2019.

- In 2019, a record number of 6 referrals concerning *the observance the procedure for the organisation and holding of a referendum* were resolved, having regard to the fact that a total of 29 such referrals have been registered since 2003, of which 3 in 2003, 6 in 2007, 2 in 2009, 7 in 2012 and 5 in 2018.

- Furthermore, in 2019, the court received a request the verification of the compliance with the conditions for the *exercise of legislative initiative by citizens*, a power which the Constitutional Court has rarely exercised, given that a total of 8 such referrals have been

made since its establishment, out of which 2 in 1994, 1 in 1996, 1 in 2004, 1 in 2007, 1 in 2009 and 1 in 2014.

- Compared to 2018, there has been a decrease in the number of referrals concerning *other powers* provided for, pursuant to Article 146 (I) of the Constitution, by the organic law of the Court, namely that provided for in Article 27 of Law No 47/1992, on the review of constitutionality of the resolutions of the plenum of the Chamber of Deputies, the plenum of the Senate and the joint plenum of the two Chambers of the Parliament. Thus, while, during that year, 11 such referrals were registered, only 6 such referrals were registered in 2019, a figure reaching, however, the general average of the 58 referrals made in total from 2010 to the end of 2019.

➤ **D. 2018 versus 2019 weight of admission decisions**

Of the 877 judicial acts handed down by the Court in 2018, 78 were admission decisions, representing 8.8 %. In 2019, the Court handed down a total of 952 judicial acts, of which 66 were admission decisions, representing 6.9 %.

As regards the distribution of those decisions of admission issued in 2018 and 2019 respectively according to the powers of the Constitutional Court, the following variations can be noted:

- *Constitutional review of laws before promulgation:*
 - 2018 : 43 admission decisions, i.e. 58 % of the total of 74 decisions delivered;
 - 2019 : 30 admission decisions, i.e. 62.5 % of the total of 48 decisions delivered;
- *Exceptions of unconstitutionality*
 - 2018 : 27 admission decisions, i.e. 2.92 % of the total of 788 decisions delivered;
 - 2019 : 23 admission decisions, i.e. 3.49 % of the total of 804 decisions delivered;
- *Resolution of legal disputes of a constitutional nature:*
 - 2018 : 3 admission decisions, i.e. 75 % of the total of 4 decisions delivered;
 - 2019 : 3 admission decisions, i.e. 100 % of the decisions delivered.
- *Other powers provided for by the organic law of the Constitutional Court:*
 - 2018 : 4 admission decisions, i.e. 57 % of the total of 7 decisions delivered;
 - 2019 : 0 admission decisions of the total of 6 decisions delivered;

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