

THE LEGISLATIVE COUNCIL – AN ADVISORY BODY OF THE PARLIAMENT ENSURING THE QUALITY OF THE LAW, A MAIN CONDITION FOR THE RULE OF LAW

DOI:10.47743/rdc-2021-2-0004

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Abstract

The goal of a quality legislation can be achieved only through the conjugated effort of all parties involved in the legislative procedure. And one of these actors is the Legislative Council – a consultative specialized organ of the Parliament, which has the constitutional mission of giving opinions on bills with the aim to systematize, unify and coordinate the entire legislation, as well as keeping track of the Romanian laws.

Beginning with some brief historical accounts concerning the Legislative Council, the present study approaches the activity of giving opinions on legislative bills, it shows the legal regime of this activity as seen from the standpoint of the case law of the Constitutional Court of Romania and it invites reflection on the necessity to consolidate the role of the Legislative Council within the complex arrangement of the legislative mechanism.

Keywords: *Legislative Council; autonomous administrative authority; legislative technique; opinion; Constitutional Court*

1. Historical milestones regarding the Legislative Council

Within Romania's constitutional framework, the year 2021 marked 95 years since the establishment of the first Legislative Council and 25 years of the third Legislative Council being operational.

However, prior to being laid down at a constitutional level in 1923, the seeds of the Legislative Council institution could be found a very long time ago.

Thus, we are referring to the position of "*pravilist*" (jurisconsult/legal expert), established in 1808 in Muntenia and to the institution of "*jurisconsult of the state*", established by the ruler Scarlat Callimachi who, in a charter, referred to "the need to introduce in the structure of the state a censor of the laws [...] charged with the relentless watch over the collection of the laws and with the research at odds with the intelligence, morals, and nation's advancement ... he will be the first to discover the

shortcomings of the legislation, the first to show the rulers the rectifications that the body of law needs”¹.

In 1864, the State Council, based on the French model, was established, which could be considered an interpretative body of the laws and it also had legislative powers.

The Romanian Constitution of 1866 abolished the State Council and the 12 July 1866 Law transferred to the judiciary the jurisdictional responsibilities of the State Council and empowered the special councils attached to the ministries to prepare draft bills².

The 1923 Constitution³ laid down the *first Legislative Council* – organized as a distinct institution of the state, established by Law no. 20/1925 (Mârzescu Law)⁴.

In his speech, delivered in the Chamber of Deputies, when presenting the (draft) bill, G. Mârzescu stressed the following: “The Legislative Council was established because the work of creating the law is one of the most delicate works and it requires, in addition to knowledge regarding the social, economic and political state of affairs, on which laws are passed, also sound knowledge of a series of issues, matters and principles, which requires special training. Lawmaking, *i.e.* the work of crafting, formulating and drawing up of legislative solutions, in fact requires a legislative policy, a judicial technique, a legislative technology and, in all cases, an understanding of extrajudicial practice and jurisprudence, of comparative legislation, the scientific advances made by the doctrine, of the history of law and institutions, of the psychology of the people, of the political organization and the economic and social structure of the country”⁵.

The 1938 Constitution, in article 72, strengthens the role of the Legislative Council, extending its power/jurisdiction to also examine the amendments to the draft bills examined in the parliamentary committees.

In accordance with this new power, on December 12, 1938, a new law for the organization and functioning of the Legislative Council was adopted.

The Interwar Legislative Council ceased its activity in 1948, being abolished by Decree no. 3 of April 22, 1948⁶.

¹ I. Filitti, *The Origin and Purpose of the Legislative Council*, National Culture Publishing, Bucharest, 1927, pp. 7-8, *apud* V. Dorneanu, *The Legislative Council at 25 years of existence, a living and eloquent proof of its necessity, utility and importance*, in the Legislative Information Bulletin no. 2/2021, p. 16.

² Information taken from the History of the Legislative Council, available on the website: <http://www.clr.ro/consiliul-legislativ/despre/istoric>.

³ Article 76. About the Legislative Council:

“A Legislative Council is established, the purpose of which is to assist in a consultative manner in making and coordinating laws, emanating either from the executive power or from parliamentary initiatives, as well as in the drawing up of general regulations for the implementation of laws.

Consulting the Legislative Council is mandatory for all draft bills, except those concerning budget appropriations; however, if the Legislative Council does not give its opinion within the time limit set by law, the Assemblies may proceed to discuss and approve the draft bills.

A special law will determine the organization and functioning of the Legislative Council”.

⁴ The law was promulgated by Royal Decree no. 738 of February 25, 1925 and was published in the Official Gazette no. 45 of February 26, 1925.

⁵ V. Dorneanu, S. Popescu, I. Mrejeru, V. Tândăreanu, T. Prelepceanu, *Legislative Council, Tradition and Modernity 1926-2001*, Ed. Lumina Lex, Bucharest, 2000, p. 70, *apud* V. Dorneanu, *Legislative Council at 25 years of existence, a living and eloquent proof of its necessity, utility and importance*, *supra*, p. 17.

⁶ Published in the Official Gazette of Romania, no. 95 of April 22, 1948.

During communism, we do not find the institution of the Legislative Council regulated at constitutional level.

At the infra-constitutional level, Law no. 15 of October 22, 1971⁷ regulates the establishment of the Legislative Council, with the role of supporting the state bodies in their activity concerning the preparation, coordination and systematization of the legislation.

The *second Legislative Council*, re-established under the leadership of the distinguished professor Ioan Ceterchi, ceased its activity in December 1989, as a consequence of the dissolution of the Great National Assembly.

Law no. 15/1991 was expressly repealed by the Decree-Law no. 149/1990⁸.

The re-establishment of the Legislative Council, as pointed out in the specialized literature⁹, was urgently needed after the 1990s, “given that our young rule of law had to carry out a complete reform of the legislation, practically to build a new legislative body”.

Romania’s 1991 Constitution, in article 79, stipulated the establishment of the Legislative Council, as a specialized consultative body of the Parliament, with the task of approving the draft normative acts in order to systematize, unify and coordinate the entire legislation and to keep the official record of the Romanian legislation.

Law no. 73 of 5 November 1993¹⁰ institutionalized the *third Legislative Council* of Romania, which started its activity on April 1, 1996, after the approval of the Regulation on the organization and functioning of the Legislative Council.

Law no. 73/1993 was amended and supplemented by Law no. 509/2004¹¹, also amending accordingly the Regulation on the organization and functioning of the Legislative Council¹².

In 2007, by Law no. 316¹³, the admission of the Legislative Council to the Association of Councils of State and Supreme Administrative Jurisdictions of the European Union (ACA-Europe, an association of bodies with legislative approval in the Member States) was approved.

2. The legal nature and characteristics of the Legislative Council

According to article 79 of the Romanian Constitution, republished, and article 2 para. 1 letter f) of Law no. 73/1993, *the Legislative Council is a specialized consultative body of the Parliament* which has the mission to approve the draft normative acts in

⁷ Published in the Official Bulletin of Romania, no. 134 of October 22, 1971.

⁸ Published in the Official Gazette of Romania, Part I, no. 66 of May 12, 1990.

⁹ S. Popescu, in I. Muraru, E.S. Tănăsescu (coords.), *The Romanian Constitution. Comments on its articles*, 2nd edition, Ed. C.H. Beck, Bucharest, 2019, p. 691.

¹⁰ Published in the Official Gazette of Romania, no. 260 of November 5, 1993.

¹¹ Published in the Official Gazette of Romania, no. 1122 of November 29, 2004.

¹² Republished in the Official Gazette of Romania, no. 193 of March 8, 2005.

¹³ Published in the Official Gazette of Romania, no. 784 of November 19, 2007.

order to systematize, unify and coordinate the entire legislation and to keep the official record of the Romanian legislation.

The reason for the institutionalization of this constitutional authority lies in the fact that the work of creating an articulated, unitary and coordinated legislative system needs a technical body to approve the draft normative acts, the unification and systematization of the legislation being possible only by keeping an official record of the normative acts.

Although not expressly stated in the Constitution and in its organic law, in the specialized doctrine¹⁴ it has been rightly stated that “in the spirit of these legislative provisions, the Legislative Council is characterized by three essential features:

- it is a specialized technical body;
- it is an autonomous body because the phrase ‘of the Parliament’ does not mean that it belongs to the Parliament, but that it is attached to it, so as to be consulted by it;
- it is a body that, in its activity, has decisional independence”.

Although it also approves the draft normative acts of the Government – a power conferred by article 2 para. 1 letter a) of Law no. 73/1993 –, the Legislative Council is, according to the constitutional norm, an advisory body of the Parliament, not of the Government.

From this perspective, the specialized doctrine¹⁵ welcomed the option of the constituent legislator, considering that in the case it would have been a specialized consultative body of the Government, “a real detachment could not have been ensured from the political factor, that could influence, in one way or another, the activity and the role as an objective, scientific filter that the Legislative Council must fulfill”.

The Legislative Council is not part of any of the three powers of the state, being an *autonomous administrative authority*, established by the Constitution itself.

Thus, in the specialized literature¹⁶ the fact that “being the work of the constituent legislator, the abolition of the Legislative Council can only be done through a constitutional law amending the Basic Law/Constitution, in the sense of repealing art. 79” has been emphasized.

3. The activity of approving the draft normative acts – the main responsibility of the Legislative Council

Law no. 73/1993, in article 2 para. 1, develops – in the sense of the application of the provisions of article 79 of the Constitution – the responsibilities of the Legislative Council.

¹⁴ V. Dorneanu, *The Legislative Council – 20 years in the service of the quality of the law*, in Information Bulletin no. 4/2015, p. 7.

¹⁵ S. Popescu, cited work, p. 694.

¹⁶ For further details, see V. Vedinaş, in I. Muraru, E.S. Tănăsescu, *The Constitution of Romania. Comments on its articles*, *supra*, p. 1002.

According to *article 2 para. 1 of Law no. 73/1993*, “The Legislative Council has the following responsibilities:

- a) it analyzes and approves the draft bills, legislative proposals and draft ordinances and normative decisions of the Government, in order to submit them for law-making or adoption, as the case may be;
- b) it analyzes and approves, at the request of the chairman of the parliamentary committee notified on the merits, the amendments submitted for the debate of the committee and the draft bills or legislative proposals received by the committee after their adoption by one of the Chambers of the Parliament;
- c) it directly carries out or coordinates, at the command of the Chamber of Deputies or of the Senate, the drawing up of draft codes or other laws of special complexity;
- d) it draws up, at the command of the Chamber of Deputies or of the Senate or on its own initiative, studies for the systematization, unification and coordination of the legislation and makes, on this basis, proposals to the Parliament and, as the case may be, to the Government;
- e) it examines the degree of conformity of the legislation with the provisions and principles of the Constitution and it notifies the permanent bureaus of the Chambers of the Parliament and, as the case may be, the Government of the cases of unconstitutionality found; it presents, within 12 months from its establishment, proposals for the harmonization of the legislation prior to the Constitution with its provisions and principles;
- f) it keeps the official record of the Romanian legislation and it provides the necessary information for the development of the legislative process; it organizes the informatization of its record keeping system and it makes IT products for keeping a record of the computer-assisted legislation;
- g) it monitors, in order for the legislative system to function in a unitary and coordinated way, the issuance by the competent public authorities of the normative acts in force, established by laws, ordinances and Government decisions, and it notifies the law bodies of the delays in their issuance;
- h) it draws up the Collection of the Romanian legislation – the official record – and it provides its online version; it draws up the official versions of certain collections of normative acts;
- i) it keeps the originals of the laws and their decrees of promulgation. To this end, the public institutions that currently hold them will hand them over to the Legislative Council;
- j) it creates and updates, in a computerized system, the database necessary for the research and legislative documentation activities”.

We agree with the doctrinal opinion¹⁷ which considers erroneous the isolated opinion according to which some responsibilities of the Legislative Council laid down

¹⁷ S. Popescu, cited work, p. 695.

in its organization and functioning law exceed the constitutional text, given that the organic law does nothing but develop in the sense of the implementation of the provisions of article 79 para. 1 of the Constitution, the situation being similar in the case of the regulation of other constitutional institutions (The Court of Accounts, People's Advocate etc.).

The main responsibility of the Legislative Council is to approve the draft normative acts.

It should be noted that some normative acts that are issued on the basis of and in the execution of laws, decisions and ordinances of the Government (administrative orders, instructions and other acts of the heads of ministries, central public administration bodies or autonomous administrative authorities) are not subject to the approval.

The specialized literature has criticized this restriction of the field of the normative acts which are subject to approval, stating that "Failure to assign such a jurisdiction, by law, to the Legislative Council, is a risk in terms of ensuring the unitary character of the legislation, especially in cases where ministries and other public administration authorities may violate, by their own normative acts, the constitutional order"¹⁸.

Moreover, draft bills approving or rejecting ordinances (simple or emergency) issued by the Government are also excluded from the approval process.

As long as the unconstitutionality of an ordinance or emergency ordinances issued by the Government cannot be covered by its approval by the Parliament, by law – an issue constantly laid down by the jurisprudence of the Constitutional Court¹⁹ –, we fully agree with the doctrinal opinion²⁰ that supports the need to extend the approval of the Legislative Council to also cover this category of normative acts.

Regarding the responsibility written in article 2 para. 1 letter b), the specialized doctrine²¹ has stated that, in practice, the amendments submitted to the debate of the commission and the draft bills or the legislative proposals received by the commission after their adoption by one of the Houses of Parliament are rarely submitted to the Legislative Council for approval. An explanation for this situation lies in the drafting of the legal norm that induces the idea that requesting the approval/opinion would be optional, and not mandatory, since it establishes that the approval takes place "at the request of the chairman of the parliamentary committee notified on the merits".

¹⁸ I. Vida, *Formal legistics. Introduction to the legislative technique and procedure*, 5th ed., pp. 167-168, *apud* S. Popescu, cited work, p. 698.

¹⁹ Decision no. 584/2007, published in the Official Gazette no. 457 of July 6, 2007, Decision no. 1008/2009, published in the Official Gazette no. 507 of July 23, 2009, Decision no. 738/2012, published in the Official Gazette no. 690 of October 8, 2012, Decision no. 55/2014, published in the Official Gazette no. 136 of February 25, 2014.

²⁰ S. Popescu, cited work, p. 698.

²¹ For further details, see S. Popescu, cited work, p. 697.

3.1. *The nature and the object of the Legislative Council's approval/opinion*

Although “the rule of law should not be confused (...) with the principle of legality”²², legality is one of the benchmarks of the rule of law, and *the quality of the regulation is a dimension of legality*.

The Legislative Council analyzes the proposed regulations both in terms of the legality of the envisaged solutions and in terms of the observance of the legislative technique norms. In order to be correctly interpreted and applied, any normative act must be drafted in an accessible form that stands out both in terms of its imperatives and in terms of the adequacy of the language used.

An important role in achieving this desideratum belongs to the Legislative Council, which, prior to its adoption, in the conception phase, must analyze the concordance of the draft normative acts and of the legal norms stipulated in them with the principles of the Constitution and those of the rule of law²³.

The responsibility established in article 2 para. 1 letter a) of Law no. 73/1993, we also find laid down in *Law no. 24/2000 regarding the legislative technique norms for the drawing up of normative acts*²⁴.

Article 9 para. 2 of the law stipulates that “(...) draft bills, legislative proposals, as well as draft ordinances and normative decisions of the Government are *mandatorily* subjected to the approval of the Legislative Council”.

According to para. 3 of the mentioned legal provision, “The approval procedure and the object of the approval of the Legislative Council are provided in its organic law and in its organization and functioning regulation”.

Moreover, Law no. 24/2000, in article 31 para. 3, states that: “*The final form of the instruments which are presenting and motivating the draft normative acts must include references to the opinion of the Legislative Council* and, as the case may be, of the Supreme Council of National Defense, the Court of Accounts or the Economic and Social Council”.

On the occasion of the opinions issued on the draft normative acts, the Legislative Council, through its observations, is a guarantor of the observance of the legislative technique principles, contributing to the improvement of the drafting and of the normative message and its reception²⁵.

The opinion of the Legislative Council is consultative and aims, as expressly stipulated in article 3 para. 3 and article 4 para. 1 of Law no. 73/1993, at:

²² Professors I. Muraru, E.S. Tănăsescu emphasize that “The rule of law should not be confused with the principle of legality, it is more than that”, in I. Muraru, E.S. Tănăsescu, *The Romanian Constitution. Comments on its articles*, *supra*, p. 9.

²³ I. Moroianu Zlătescu, *Constitutional Law in Romania*, Ed. Wolters Kluwer, Bucharest, 2012, p. 69, *apud* L.-M. Vîtcă, *Considerations regarding the approvals issued by the Legislative Council*, in the Legislative Information Bulletin no. 4/2020, p. 10.

²⁴ Republished in the Official Gazette of Romania, no. 260 of April 21, 2010.

²⁵ S. Popescu, V. Țândăreanu, *Current issues of the legislative technique*, Ed. Lumina Lex, Bucharest, 2003, pp. 110-111, *apud* L.-M. Vîtcă, *Considerations regarding the approvals issued by the Legislative Council*, *supra*, p. 10.

- a) the harmonization of the proposed regulation with the Constitution, the framework laws in the field, the regulations of the European Union and the international acts to which Romania is a party, and in the case of draft bills and legislative proposals, the nature of the law and which Chamber will be notified first;
- b) ensuring the correctness and clarity of the judicial language, removing the contradictions or non-correlations within the draft normative act, ensuring the comprehensiveness of its provisions, observing the legislative technique norms, as well as the normative language;
- c) presenting the implications of the new regulation on the legislation in force, by identifying the legal provisions that, having the same object of regulation, are to be repealed, modified, or unified, as well as by avoiding the regulation of identical aspects in different normative acts.

The consultative character of the opinion is also stipulated in article 10 para. 3 of Law no. 24/2000.

It should be emphasized that, *in its issued opinion/approval, the Legislative Council cannot rule on the appropriateness of the envisaged legislative solutions and it cannot make political statements.*

3.2. Types of opinions. Deadlines by which opinions must be issued

The types of opinions that the Legislative Council can issue can be found listed in article 10 para. 1 of Law no. 24/2000, respectively: *favorable, favorable with objections or proposals and negative.*

The obligation to motivate the favorable opinions with objections or proposals and the negative opinions is expressly established in para. 2 of the legal provision invoked above.

Starting from the wording of para. 4²⁶ of article 10 of Law no. 24/2000, the specialized doctrine²⁷ rightly stated that “despite its consultative²⁷ character, this law conveys authority to the opinion, establishing, when setting up the final form of the draft normative act, the obligation to comply with the requirements laid down by the legislative technique norms and mentioned in the opinions containing objections and proposals, motivated by the Legislative Council”.

With regard to the legislative technique norms, it should be emphasized that “the constructive role of the Legislative Council in the process of drafting normative acts does not consist only in notifying, in its opinions, the various issues related to harmonious integration, within the entire legislation of the regulatory proposals, their constitutionality or conformity with the European Union provisions etc., but also in

²⁶ Article 10 para. 4 of Law no. 24/2000: “The observations and proposals of the Legislative Council regarding the observance of the legislative technique norms will be taken into account when finalizing the draft of the normative act. Their non-acceptance must be motivated in the content of the project presentation act or in an accompanying note”.

²⁷ A.-I. Ștefan, *Considerations regarding the institution of derogation in the legislative period 2015-2016*, in Legislative Informative Bulletin no. 4/2016, p. 6.

signaling the specific aspects related to the drawing up of normative acts, according to the legislative technique norms²⁸.

Law no. 73/1993 stipulates the deadlines by which the opinions of the Legislative Council must be issued:

- the opinion will be given within the deadline established by the Permanent Bureau or by the Permanent Commission of the Chamber of Parliament that requested it, and if the opinion is not given within the established deadline, this fact does not prevent the legislative procedure from being carried out (article 3 para. 2);
- in the case of ordinances and draft normative decisions, which are submitted for adoption to the Government only with the approval of the Legislative Council, which will be given within the deadline requested by the Government, which may not be less than 10 days in case of the usual procedure drafts and 2 days in case of the emergency procedures. For the ordinances stipulated in article 115 para. 4 of the Constitution, republished, the term is 24 hours (article 4 para. 3).

3.3. Brief statistical references regarding the activity of approving draft normative acts

From the “Report on the activity carried out by the Legislative Council in 2020”²⁹, we notice:

- the number of draft normative acts received for approval by the Legislative Council was 1,368 (an upward trend compared to the previous years³⁰), a number of 1,302 opinions being drawn up, of which:
 - a) 88 – favorable, without comments and proposals;
 - b) 1,098 – favorable, with observations and proposals;
 - c) 116 – negative.

The annual decrease in the number of favorable opinions without observations and proposals (117 in 2017, 106 in 2018 and 90 in 2019) and the visible increase in the number of negative opinions was due not only to the proposed legislative solutions, which were not drawn up accordingly to the constitutional or legislative technique requirements, but also to the fact that, on the same date on which a series of draft emergency ordinances was received for approval, namely 5 February 2020, in the joint meeting of the Chamber of Deputies and the Senate the trust granted to the Government was withdrawn, by adopting a motion of no confidence, under the conditions of

²⁸ Report on the activity carried out by the Legislative Council in 2020, in Informative Bulletin no. 3/2021, p. 36, available on the website: http://www.clr.ro/download/buletine/buletin_informativ_2021/Buletin-leg-3-cu-anexe-din-2021.pdf.

²⁹ *Ibidem*.

³⁰ The Legislative Council was notified, as follows: in 2017 with 1,312 normative acts drafts and requests for republishing/rectification; in 2018 with 1,326 normative acts drafts and requests for republishing/rectification; in 2019 with 1,108 normative acts drafts, requests for republishing/rectification.

article 67, article 110 para. 2 and article 113 para. 1 of the Romanian Constitution, republished.

The number and complexity of the observations and proposals made in the 1,098 favorable opinions, with observations and proposals issued in 2020, show that these have grown exponentially, and many proposals have been taken over and are found in the adopted form of the normative acts approved by the Legislative Council.

From the perspective of observing legislative technique norms, in the activity of approving the draft normative acts in 2020 some aspects of non-correlation and even contradiction were noticed, either between normative acts of the same kind or within the same project, parallelisms in regulation, the promotion of some legislative solutions already provided in the normative acts in force, the non-systematization of the provisions from a certain field of activity or even the abrogation of some already abrogated provisions.

3.4. The jurisprudence of CCR (The Constitutional Court of Romania) regarding the legal regime of the opinion and its importance for the quality of law

3.4.1. The importance of the role of the Legislative Council in the complex process of creating the legislation has been emphasized in CCR's constant jurisprudence.

Analyzing the legal regime of the activity of approving draft normative acts, by *Decision no. 304 of May 4, 2017*³¹, The Court ruled that “the opinion of the Legislative Council is particularly important because the purpose of the formulated observations is to systematize, unify and coordinate the entire legislation, therefore it must be requested before the adoption of the normative act. The follow-up and the implementation of the requirements imposed by Law no. 24/2000 ensure the coherence of the entire legal system, and the Legislative Council is the one that, primarily, carries out this activity (...)”.

By a rich jurisprudence³², the Court established that *the lack of a request for the opinion of the Legislative Council leads to the unconstitutionality of the law or ordinance – simple or emergency* – from the perspective of article 79 of the Constitution.

3.4.2. Our attention was drawn to *two relatively recent decisions* by which the Court – examining the manner in which the delegated legislator intended to use the procedure for approving draft normative acts – ascertained their extrinsic unconstitutionality, as a whole.

By *Decision no. 221 of June 2, 2020*³³, the Court – notified with the resolution of the exception of unconstitutionality of the provisions of Government Emergency

³¹ Published in the Official Gazette of Romania, no. 520 of July 5, 2017.

³² See: Decision no. 83 of January 15, 2009, published in the Official Gazette no. 187 of March 25, 2009; Decision no. 354 of September 24, 2013, published in the Official Gazette no. 764 of December 9, 2013; Decision no. 140 of March 13, 2019, published in the Official Gazette no. 377 of May 14, 2019.

³³ Published in the Official Gazette of Romania, no. 594 of 7 July, 2020.

Ordinance no. 23 of February 4, 2020 for the amendment and completion of some normative acts with impact on the public procurement system³⁴, an exception raised directly by People's Advocate –, noted that there are two matters of principle with regard to the Government's way of working: (i) the date when the opinion of the Legislative Council was sought, (ii) whether the emergency ordinance was adopted without seeking the opinion of the Legislative Council.

The Court noted that the criticized emergency ordinance was adopted on February 4, 2020, that initially the Legislative Council issued Negative Opinion no. 91 of February 10, 2020 on the draft Government Emergency Ordinance amending and supplementing some normative acts in the field of public/sectorial procurement (a draft submitted by the Government on February 4, 2020 and received and registered by the Legislative Council on February 5, 2020). Subsequently, the Legislative Council issued Negative Opinion no. 95 of February 10, 2020 on the draft Government Emergency Ordinance amending and supplementing some normative acts with an impact on the public procurement system (a draft submitted by the Government on February 6, 2020 and received and registered by the Legislative Council on February 6, 2020).

In light of the presented state of affairs, the Court finds that, without a doubt, the approval procedure, which is part of the procedure for the adoption of the criticized emergency ordinance, is contradictory, because it is noted that the opinion of the Legislative Council was requested twice for the same act, regardless of whether after requesting the first opinion, the Government adopted the emergency ordinance and subsequently requested another opinion, or whether there are two different emergency ordinances drafts and for each of them an opinion was requested on two different dates (para. 65).

The Court notes that the Government, after adopting the emergency ordinance and being at the same time dismissed by motion of no confidence on February 5, 2020, could not seek the opinion of the Legislative Council on February 6, 2020, as it is clear that an opinion is required before the adoption of the primary regulatory normative act by a Government which is fully exercising its powers (...) (para. 66).

With regard to the time limit for expressing the opinion of the Legislative Council, the Court emphasizes that it runs from the date of registration with the Legislative Council of the request for approval of the draft normative act, and it is not enough for the request for an opinion on the draft emergency ordinance to be registered with the General Secretariat of the Government on the day of the issuance of the emergency ordinance (...), because otherwise the very role of the Legislative Council would be compromised, as the situation could arise when at the time of receiving the request for an opinion, the normative act has already been adopted, as in the present case (para. 67).

The Court concludes that, at the date of issuing the emergency ordinance, the Government did not request the opinion of the Legislative Council and thus violated article 1 para. 3 and 5, as well as article 79 para. 1 of the Constitution.

³⁴ Published in the Official Gazette of Romania, no. 106 of February 12, 2020.

By *Decision no. 229 of June 2, 2020*³⁵, the Court admitted the exception of unconstitutionality raised directly by People's Advocate – who invoked the unconstitutionality of Government Emergency Ordinance no. 25 of February 4, 2020³⁶ in view of the violation of the principle of legality in relation to the non-observance of the constitutional and legal provisions regarding the competence to approve the draft normative acts that belong to the Legislative Council.

Examining the file of the legislative process for the issuance of Government Emergency Ordinance no. 25/2020, the Court found that the Government sent for approval to the Legislative Council the draft emergency ordinance for the amendment and completion of Law no. 95/2006 on February 4, 2020, and on the same date – a day before this request reached the consultative body –, the Government issued the emergency ordinance which is subject to the constitutional analysis.

From the way in which the Government understood to fulfill its obligation to request the approval of the Legislative Council on the occasion of the issuance of Government Emergency Ordinance no. 25/2020, the Court considered that the delegated legislator was not interested and did not allow this advisory body to fulfill its constitutional role, ignoring the provisions of Law no. 24/2000 and those of article 1 para. 5 of the Constitution, which aim to ensure the quality of normative acts (para. 55).

Although the legislative technique norms have no constitutional value, by regulating them, the legislator imposed a series of mandatory criteria for the adoption of any normative act, the observance of which is necessary in order to ensure the systematization, unification and coordination of legislation, as well as the appropriate content and judicial form for each normative act.

Compliance with the provisions of Law no. 24/2000, regarding the legislative technique norms for the drawing up of normative acts, constitutes a true criterion of constitutionality via the application of article 1 para. 5 of the Constitution.

Through a practice that has become constant³⁷, the Constitutional Court ruled that one of the requirements of the compliance with the law principle concerns the quality of normative acts and that, in principle, any normative act must meet certain qualitative conditions, including the clarity, precision and predictability that a legal text must fulfill.

It should also be noted that, by *Decision no. 78/2021*³⁸, the Court ruled that although its jurisprudence targeted only the procedure for the adoption of normative

³⁵ Published in the Official Gazette of Romania, no. 602 of July 9, 2020.

³⁶ Government Emergency Ordinance no. 25/2020 for the amendment and completion of Law no. 95/2006 on health care reform, as well as Government Emergency Ordinance no. 158/2005 on vacations and social health insurance benefits, published in the Official Gazette no. 109 of February 12, 2020.

³⁷ Decision no. 30/2016, published in the Official Gazette no. 117 of February 16, 2016; Decision no. 61/2017, published in the Official Gazette no. 219 of March 30, 2017; Decision no. 420/2019, published in the Official Gazette no. 883 of November 1, 2019.

³⁸ Decision no. 78 of February 10, 2021 regarding the exception of unconstitutionality of the Law for amending and supplementing Law no. 24/2000 on the legislative technique norms for drawing up normative acts and amending Law no. 202/1998 on the organization of the Official Gazette of Romania, published in the Official Gazette of Romania, no. 186 of February 24, 2021.

acts, respectively the responsibility of the Legislative Council stipulated in article 3 and article 4 of Law no. 73/1993, “the arguments retained regarding the character of the opinion issued by the Legislative Council in this procedure are applicable *mutatis mutandis* regarding the opinion issued in the procedure of republishing the normative act, a responsibility stipulated in article 5 of Law no. 73/1993, given that the republishing of the normative act is carried out simultaneously with the publication of the normative act of modification and/or completion, thus having a direct effect on a legislative act” (para. 70).

Instead of conclusions

The reception in the social environment of the legislation adopted by the primary legislator (the Parliament) or by the delegated legislator (the Government) is influenced by the quality of the regulations, by the language and style of the normative act, by the systematization of the ideas expressed in the text.

In summary, it can be stated that the main object of the Legislative Council’s opinion is the quality of the law and its compliance with the constitutional provisions and those of the international treaties ratified by Romania.

“The language of the laws must be simple... When the law is written in a pompous style, it is only considered to be a showpiece. ... Laws do not have to be subtle; they are designed for people with modest means of understanding. When exceptions, limitations, amendments to a law are not necessary, it is better that they do not exist. Such details always send us to new details. No changes should be made to a law without just cause. In designing the laws, care must be taken not to disturb the nature of things (...)”³⁹.

The opinions issued by the Legislative Council aim to ensure the principle of legal certainty, with the clarity and predictability related to their implementation.

Therefore, the Legislative Council is and must continue to be an important part in the complex apparatus of the legislative mechanism, and *its role needs to be strengthened*, because the desideratum of a quality legislation can only be achieved through the combined effort of all the actors involved in the legislative procedure.

In order to strengthen the role of the Legislative Council, we believe that the following are necessary:

- a) *increasing the quality of the opinions* issued in relation to the elements of unconstitutionality established by the CCR decisions and the observance of the conditions stipulated in Law no. 24/2000;
- b) *interventions on the current legislative framework* that lay down its responsibilities.

³⁹ Montesquieu, *The Spirit of Laws*, in Ph. Mauraie, *Anthology of Legal Thought*, Ed. Humanitas, p. 120, *apud* I. Predescu, M. Safta, *The principle of legal certainty, a foundation of the rule of law. Jurisprudential landmarks*, article available on the website: <https://www.ccr.ro/wp-content/uploads/2021/01/predescu.pdf>.

Compared to the shortcomings of the current regulation of the responsibilities of the Legislative Council, captured in the content of the material, we are formulating *lex ferenda* the proposal that article 2 para. 1 of Law no. 73/1993 be completed and modified.

The completion aims at extending the responsibilities of the Legislative Council with:

- analyzing and approving the normative acts issued on the basis and in the execution of laws, decisions and ordinances of the Government, respectively: administrative orders, instructions and other acts of the heads of ministries, central public administration bodies or autonomous administrative authorities;
- the analysis and approval of draft laws approving or rejecting ordinances (simple or emergency ordinances) issued by the Government.

Necessarily, the completion of article 2 para. 1 of Law no. 73/1993 also requires the legislative intervention on article 9 para. 2 of Law no. 24/2000.

The amendment concerns the text of article 2 para. 1 letter b) of Law no. 73/1993, from the wording of which the statement that the approval is made “at the request of the chairman of the parliamentary committee notified on the merits” must be deleted.

In the hope that the holders of the legislative initiative share our opinion on the importance of the Legislative Council’s opinion and embrace the formulated *lex ferenda* proposals, we conclude by reaffirming that it is absolutely necessary to raise awareness of the role of “scientific filter” played by the Legislative Council in the drawing up of normative acts and recognition of the importance of this institution in ensuring the coherence of the legislative system.