

THE ROLE OF THE LEGISLATIVE COUNCIL IN THE CASE-LAW OF THE CONSTITUTIONAL COURT OF ROMANIA

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The Legislative Council – fundamental institution of the Romanian state

According to art. 79 of the Constitution: „(1) *The Legislative Council is an expert advisory body of the Parliament, which shall give opinions on the draft normative acts, for the purpose of the systematization, unification and co-ordination of the whole legislation. It shall keep the official record of the legislation of Romania.*

(2) The setting up, organization and functioning of the Legislative Council shall be regulated by an organic law”.

In this regard was adopted the Law no. 73/1993 on the setting up, organisation and functioning of the Legislative Council. Based on this law, it was subsequently adopted, by the two Chambers of the Parliament, the Regulation on the organisation and functioning of the Legislative Council. Another piece of legislation relevant for the activity of the Legislative Council is the Law no. 24/2000 on the legislative drafting rules. The law was drawn up by a team of experts from the Council, fulfilling this way the task stipulated by Law no. 73/1993.

For the purpose of fulfilling this function, the Legislative Council has, in essence, the following powers: it analyzes and gives opinions on the draft laws submitted by the Government, the legislative proposals of the members of the Parliament, the draft ordinances and the normative decisions of the Government, which are to be adopted or approved, as the case may be; on request of the chairperson of the relevant parliamentary committee, it analyzes and gives opinions on the amendments submitted to the committee as well as on the draft laws or legislative proposals received by the committee after their adoption by one of the Chambers of the Parliament.

The opinion of the Legislative Council is an advisory one and its object shall be as follows: compliance of the proposed legislation with the Constitution, the frame-laws in the area, the EU law and the international treaties Romania is a party to; in case of draft laws and legislative proposals, the Council has to point out the nature of the law (organic or ordinary), as well as which is the first Chamber to be notified; accuracy and clarity of the legal terms, removal of the contradictions or inconsistencies from the draft normative act, making sure that its provisions are complete, observance of the legislative drafting rules as well as of the legal language; showing the implications of the new legislation on the legislation in force, by identifying those legal provisions

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which, having the same scope, are to be repealed, modified or supplemented, as well as avoiding the regulation of identical aspects in different normative acts.

Therefore, the Legislative Council is a fundamental institution of the Romanian state, constitutionally enshrined, being the specialized advisory body of the Parliament, with the role of approving draft normative acts in order to systematize, unify and coordinate all legislation.

The provisions of art. 79 para. (1) of the Constitution are transposed at the legal level by art. 3 para. (1) and art. 4 para. (1) from Law no. 73/1993 for the establishment, organization and functioning of the Legislative Council¹, according to which „*Drafts of laws and legislative proposals are submitted to the debate of the Parliament with the opinion of the Legislative Council*” and „*Drafts of ordinances and decisions of a normative nature are submitted for adoption to the Government only with the opinion of the Council Legislation regarding the legality of the expected measures and the manner in which the requirements provided for in art. 3 paragraph (3), which is applied accordingly*”.

Also, art. 9 para. (2) of Law no. 24/2000 regarding the legislative technical rules for the elaboration of normative acts² establishes that „*After their elaboration and the conclusion of the approval procedure provided for in para. (1), draft laws, legislative proposals, as well as draft ordinances and normative decisions of the Government are subject to mandatory approval by the Legislative Council*”.

The role of the Legislative Council

In its case-law, the Constitutional Court appreciated that the previously mentioned legal provisions underline the **importance of the role** that the Legislative Council has in the legislative process, in that the opinion of this body is issued only after the procedure for drafting the normative act has been completed, including the possible changes proposed by the opinion of other competent authorities in the matter, thus representing a final and global assessment of the normative act before it is submitted for adoption [regarding the constitutional role of the Legislative Council, see the Decision no. 83/2009, published in the Official Gazette of Romania, Part I, no.187 of 25 March 2009, Decision no. 304/2017, published in the Official Gazette of Romania, Part I, no. 520 of 5 July 2017, Decision no. 221/2020, published in the Official Gazette of Romania, Part I, no. 594 of 7 July 2020, Decision no. 229/2020, published in the Official Gazette of Romania, Part I, no. 602 din 9 July 2020, or Decision no. nr.50/2022, published in the Official Gazette of Romania, Part I, no. 291 of 25 March 2022, para. 43].

¹ Law no. 73/1993 for the establishment, organization and functioning of the Legislative Council, republished in the Official Gazette of Romania, Part I, no. 1122 of 29 November 2004.

² Law no. 24/2000 regarding the rules of legislative technique for the elaboration of normative acts, republished in the Official Gazette of Romania, Part I, no. 260 of 21 April 2010.

Issuing the opinion on normative acts has constitutional relevance also from the perspective of the principle of legality, provided by the provisions of art. 1 para. (5) of the Constitution, interpreted in conjunction with the other principles subsumed under the rule of law, regulated by art. 1 para. (3) of the Constitution, and imposes that both procedural and substantive requirements be respected within the legislation. The rules regarding the substance of the regulations, the procedures to be followed, *including requesting the opinions from the institutions provided by the law*, are not ends in themselves, but means, instruments for ensuring the desired quality of the law, a law that serves the citizens, and does not create legal insecurity [Decision no. 139/2019, published in the Official Gazette of Romania, Part I, no. 336 of 3 May 2019, para. 85, or Decision no. 221/2020, published in the Official Gazette of Romania, Part I, no. 594 of 7 July 2020, para. 53].

The obligation to request the opinion of the Legislative Council. Loyal cooperation between authorities.

The Constitutional Court held that the obligation to request the opinion of the Legislative Council has a constitutional nature and its field of application is not limited only to normative acts aimed at a specific regulation area, but concerns the normative act as a whole [see, in this regard, for example, Decision no. 221 of 2 June 2020, para. 68].

The term for requesting the Legislative Council's opinion

Regarding the term for requesting the opinion of the Legislative Council, the Constitutional Court held that the request must be made prior to the normative act in question, showing, with regard to the Government's ordinances, that both the request for the opinion and the registration of this request at the Legislative Council must take place before of the issuance of the Government's emergency ordinance [see Decision no. 221/2020, para. 62, or Decision no.50/2022, para. 48 and 49].

The term for issuing the opinion of the Legislative Council

The term in which the opinion of the Legislative Council must be given runs from the date of registration at the Legislative Council of the request for its opinion on the draft of the normative act. It is not enough that the request for an opinion on the draft emergency ordinance be registered at the General Secretariat of the Government on the day of issuing the emergency ordinance and considered that the term for issuing the opinion runs from this date, but it must be doubled by registration of the request for opinion at the Legislative Council before the emergency ordinance is issued, because otherwise the very role of the Legislative Council would be compromised, since the situation could arise that at the time of receiving the request for an opinion,

the normative act had already been adopted [see Decision no.50/2022, para. 49], a situation that would assign a formal role both to the Legislative Council and to the legality of the procedure for adopting emergency ordinances.

Taking into account the provisions of art. 4 para. (3) last sentence of Law no. 73/1993 according to which „*The approval will be given within the term requested by the Government, which cannot be less than 10 days in the case of drafts with the usual procedure and of 2 days in the case of those with an emergency procedure. For the ordinances provided by art. 115 para. (4) of the Constitution, republished, the deadline is 24 hours*”, the Court held that in the case of emergency ordinances of the Government „the Legislative Council must issue its opinion within 24 hours, but if the opinion is not given within this deadline, this does not prevent the legislative procedure from taking place” [Decision no. 50/2022, para. 47].

For example, regarding the fact that the Legislative Council's opinion was issued after the term established by law, namely 24 hours, the Constitutional Court, in an analyzed case, found that the draft of the Government's Emergency Ordinance regarding the budget rectification on 2009 and the regulation of some financial-fiscal measures was sent to the Legislative Council, for its opinion, by the General Secretariat of the Government on April 10, 2009. The Legislative Council issued, on April 13, 2009, a favorable opinion on the draft emergency ordinance. Therefore, based on these data and taking into account the provisions of art. 4 para. (3) of Law no. 73/1993, the Court found that the Government fulfilled its constitutional task of requesting the opinion of the Legislative Council, the latter being at fault by not complying with the legal term for issuing the opinion [Decision no. 354/2013, published in the Official Gazette of Romania, Part I, no. 764 of 9 December 2013].

Regarding the compliance with the legal and constitutional provisions that establish the competence of the authorities, the Court held that the rule of law implies the implementation of the explicit and formal provisions of the law and the Constitution. In other words, „under the aspect of loyal collaboration between state institutions/authorities, a first meaning of the concept is the observance of positive law norms, in force in a certain time period, which expressly or implicitly regulate competences, prerogatives, attributions, obligations or duties of state institutions/authorities”. Therefore, „loyal collaboration presupposes, beyond respect for the law, the mutual respect of state authorities/institutions, as an expression of assimilated, assumed and promoted constitutional values, in order to ensure the balance between state powers. Constitutional loyalty can be characterized, therefore, as a value-principle inherent to the Fundamental Law, while the loyal collaboration between state authorities/institutions has a defining role in the implementation of the Constitution” [see, in this regard, Decision no. 229/2020, published in the Official Gazette of Romania, Part I, no. 602 of 9 July 2020, para. 54].

The function of the opinion of the Legislative Council

Regarding the function of the opinion of the Legislative Council, the Constitutional Court ruled in its case-law that this is a particularly important one because the formulated observations have as their purpose the systematization, unification and coordination of the entire legislation, so it must be requested prior to the adoption of the normative act. Follow-up and implementation of the requirements imposed by Law no. 24/2000 ensures the coherence of the entire legal system, and the Legislative Council is the one that primarily carries out this activity. The opinion of the Legislative Council contributes to the unity and coherence of the text of the normative act to be adopted [Decision nr. 221/2020, para. 62]. Although the opinion of the Legislative Council is advisory, art. 10 para. (4) from Law no. 24/2000 provides that the observations and proposals regarding compliance with legislative technical norms will be taken into account when finalizing the draft normative act, and their non-acceptance must be justified in the content of the act presenting the project or in an accompanying note [Decision no. 50 of 15 February 2022, para. 49].

Approval of amendments

The Constitutional Court also analyzed in its case-law the possibility of approving amendments submitted in the process of adopting a normative act, noting that in the procedure for adopting laws the Legislative Council has the power to give an opinion, at the request of the president of the parliamentary committee which received the referral on the merits, over amendments subject to debate by the committee and the draft laws or legislative proposals received by the commission after their adoption by one of the Chambers of the Parliament. But it depends on the option of the president of the parliamentary committee which received the referral on the merits to formulate such a request. The obligation to request the opinion of the Legislative Council exists in the case of draft normative acts, not in the case of amendments [see, in this regard, Decision no. 521/2020, published in the Official Gazette of Romania, Part I, no. 946 of 15 October 2020, para. 41, Decision no. 731/2019, published in the Official Gazette of Romania, Part I, no. 59 of 29 January 2020, para. 38, or Decision no. 299/2015, published in the Official Gazette of Romania, Part I, no. 533 of 24 June 2015].

