DECISION NO. 615/2024 OF THE CONSTITUTIONAL COURT OF ROMANIA: MARKING A SHIFT IN JURISPRUDENCE ON LEGISLATIVE REVIEW AND MARKET REGULATION IN THE ROAD TRANSPORT SECTOR

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Abstract

This case note explores the Constitutional Court of Romania's Decision no. 615/2024, which struck down the Law amending Government Ordinance No. 27/2011 on road transport. Taking a comprehensive approach, the analysis delves into the legal and constitutional issues at stake – most notably, the principles of bicameralism, economic freedom, fair competition, and legal certainty. The note investigates the evolution in the Court's jurisprudence, contrasting this decision with earlier rulings, and examines how the Court's reasoning interacts with both domestic legal frameworks and EU law, especially regarding market regulation and public service obligations. Through a critical review of court decisions, legislative texts, and comparative constitutional principles, the paper assesses the broader implications of the judgment for legislative practice and policy development in Romania.

Keywords: *Constitutional review; economic freedom; fair competition; bicameralism; legal certainty; transport regulation.*

1. Introduction

The recent Decision no. 615/2024[1] of the Constitutional Court of Romania addresses significant issues surrounding access to inter-county transport services and the constitutional right to a decent standard of living. Notably, this decision marks a departure from previous jurisprudence, such as Decision no. 785/2019[2], in which the Court found a similar challenge inadmissible. The ruling thus represents a pivotal

[1] Published in the Official Gazette of Romania, Part I, no. 401/06.05.2025.
[2] Published in the Official Gazette of Romania, Part I, no. 114/14.02.2020.

development in the interpretation of fundamental rights and legislative oversight in Romania.

This article seeks to examine the shift in the Constitutional Court's approach to regulated market access and public service obligations, particularly in the context of transport regulation. The analysis is based on a comparative study of relevant constitutional principles, national legal provisions, and EU law. Primary and secondary sources, including court decisions and legislative texts, are critically reviewed to evaluate the Court's reasoning and its broader implications.

The article is organised as follows: it begins with an overview of the factual and legislative background, followed by an analysis of the relevant constitutional and legal provisions. Subsequent sections discuss the reasoning of the Constitutional Court, the ramifications for Romanian legislative practice, and the impact on market regulation. The conclusion offers reflections on the significance of the decision for future legislative drafting and public policy.

By highlighting the Court's evolution in its jurisprudence and drawing connections to broader European legal standards, this note offers a fresh perspective on the intersection of constitutional rights, economic regulation, and legislative process in Romania. The analysis provides valuable insights for scholars, policymakers, and legal practitioners concerned with the balance between regulatory objectives and fundamental rights in a modern constitutional framework.

2. Facts of the case

Inter-county transport services in Romania have historically suffered from inadequate regulation. Previous attempts by the Ministry of Transport to organise unique tenders did not account for the requirements of Regulation (EC) No. 1370/2007[3]. In response to these shortcomings, the Ministry opted to extend existing transport licences without conducting competitive tenders.

Following criticism from the Romanian Competition Council – specifically Decision no. 66/22.09.2021[4], which determined that the Ministry's actions breached national competition law – the Council recommended that regulations be revised to either fully liberalise the market or implement public tenders in line with EU law. Instead, Romanian authorities supported a parliamentary bill that merged elements of both approaches, resulting in *a sui generis* procedure. This hybrid system effectively favoured existing licence holders and restricted new market entrants, constituting a "controlled" liberalisation.

On 24 May 2023, 56 opposition MPs challenged the bill before the Constitutional Court. Their objection argued that the legislation violated competition regulations, as

[3] Published in the Official Journal of the European Union no. L 315/1 of 3.12.2007.

[4] Available on https://www.consiliulconcurentei.ro/wp-content/uploads/2021/12/Decizie-CC-nr.-66-din-22.09.2021.pdf

highlighted by the Competition Council, and undermined the constitutional right to a decent standard of living by precluding the operation of inter-county transport as a public service.

Despite governmental endorsement, the bill faced prolonged judicial scrutiny. After several delays, the Constitutional Court of Romania ruled on 5 November 2024 that the law infringed upon fundamental rights and the state's obligation to guarantee free markets and competition, thus finding it unconstitutional.

3. Relevant constitutional and legal provisions

The Court's analysis draws on several key provisions from the Romanian Constitution, national legislation, and EU law, as submitted in the MPs challenge to the Court:

- Article 1(3) and (5) establish Romania as a democratic and social state governed by the rule of law, where human dignity and fundamental rights are guaranteed. Article 16 prohibits privilege or discrimination, ensuring equality before the law. Article 45 guarantees economic freedom and free market access, while Article 47 requires the state to ensure a decent standard of living. Article 135(1)-(2) commits to a free market economy, fair competition, and improved quality of life. Article 148 confirms the primacy of EU law where applicable.
- Articles 61 and 75 define Parliament's structure and legislative procedures, including the requirements for bicameralism and adoption of legislation.

Regulation (EC) No. 1370/2007 and related CJEU case law require that public passenger transport services adhere to principles of non-discrimination and fair competition. Compensation for operators providing services under public obligations must be transparent and prevent overcompensation.

These provisions frame the Court's assessment of regulatory measures affecting access to transport markets, competition, and citizens' rights.

4. The ruling of the court

The Constitutional Court undertook a comprehensive review of the legislative process to determine compliance with the principle of bicameralism. It found that, although the Chamber of Deputies introduced seventeen amendments that were not previously debated in the Senate, these changes did not fundamentally alter the purpose or core structure of the legislative initiative. Consequently, the Court concluded that the requirement of bicameralism was not violated.

Having addressed extrinsic procedural arguments, the Court then proceeded to assess intrinsic aspects. It recognised the existence of a complex regulatory framework governing public transport, including local public transport as a public service under

Regulation (EC) No. 1370/2007, and county public transport similarly classified. In contrast, inter-county transport is regulated by Government Ordinance No. 27/2011. The Court noted the prior determination by the Competition Council, which found that regulations promulgated by the Ministry of Transport contravened competition law.

The Court determined that the provisions of the contested bill entrenched the dominant market position of existing operators, thereby violating competition legislation. It further observed that the bill was drafted with insufficient clarity, leaving it open to multiple interpretations and thus contravening Article 1(5) of the Romanian Constitution, which mandates legislative quality.

Moreover, the Court emphasised that the bill incorporated provisions from the Ministry of Transport previously found to breach competition law, as established by the Competition Council. In this context, the Court reaffirmed that Parliament does not possess boundless discretion and must select a legislative approach in compliance with competition principles, as advocated by the Competition Council.

In the absence of clear criteria regarding passengers' fees and regulations governing exclusive rights, the Court found that the bill violated Article 135(1) of the Constitution, which enshrines fair competition. It was further noted that the bill failed to protect passengers' interests, as the restriction of competition discouraged new operators who might otherwise provide superior services.

Additionally, the Court found that the bill violated Article 16 of the Constitution, given that its provisions were more advantageous to incumbent operators and thus contravened the principle of equality before the law.

Regarding the right to a decent standard of living, the Court acknowledged that Parliament retains a degree of discretion, as the Constitution does not explicitly define the substantive content of this right. Nevertheless, the Court observed that the bill failed to guarantee adequate public transport services in isolated localities and did not establish technical criteria for transport vehicles, such as mandatory air conditioning and accessible features for individuals with disabilities.

5. Commentary and assessment

The Constitutional Court's Decision no. 615/2024 marks a significant step forward in upholding the right to a decent standard of living. Unlike Decision no. 785/2019 – where the Court dismissed a constitutional challenge to Emergency Government Ordinance no. 51/2019 due to insufficient argumentation – in this instance the Court engaged thoroughly with the legal deficiencies and constitutional breaches inherent in the bill. The Court's reasoning is notable for highlighting that, by removing vital country transport provisions, Parliament had failed to protect both fair competition and passengers' interests. The Court underscored Parliament's duty to legislate within the bounds of competition law and to uphold equality before the law, as required by the Constitution.

The evolution from Decision no. 785/2019 to Decision no. 615/2024 illustrates a growing readiness of the Romanian Constitutional Court to intervene decisively where legislative acts undermine constitutional rights.

In response to the Court's ruling, the Romanian Government adopted a new Emergency Government Ordinance reforming national road passenger transport[5]. Noteworthy changes include the introduction of a national digital mobility platform, non-discriminatory access to bus stations, transparent route licensing, and technical standards for vehicles. However, the revised legislation continues to fall short in some respects: it does not ensure inter-county transport as a public service, nor does it guarantee facilities for vulnerable categories of passengers. This raises questions about the adequacy of emergency ordinances as a tool for comprehensive regulatory reform and the effectiveness of legislative responses to constitutional review.

The decisions discussed underscore the vital role of constitutional courts in maintaining the integrity of market competition. By scrutinizing legislative discretion and insisting on non-discriminatory frameworks, the Court acts as a bulwark against both arbitrary state intervention and undue market privilege. The Court's willingness to address the specifics of technical criteria and passenger rights demonstrates an evolving judicial awareness of the complexities inherent in modern regulatory policy.

The ongoing tension between state regulation and market freedom remains at the heart of public transport policy. While the revised ordinance introduces greater market transparency and attempts to facilitate open competition, its failure to mandate public service obligations risks leaving isolated localities underserved and vulnerable groups without adequate access. Until a new constitutional challenge is adjudicated – or local authorities initiate intercommunity associations to deliver public transport under Law no. 92/2007 – the balance arguably tips away from social protection, highlighting the need for clearer legislative commitments to both competition and social responsibility.

6. Conclusions

The Constitutional Court's Decision no. 615/2024 marks a pivotal shift in the protection of constitutional rights, especially concerning the right to a decent standard of living and the regulation of market competition within public transport legislation. This decision reflects a marked evolution from prior jurisprudence, notably Decision no. 785/2019, by providing more rigorous scrutiny of legislative acts and holding Parliament accountable for deficiencies in upholding competition law and equality before the law. The government's subsequent reforms, while introducing greater transparency and technical standards, continue to present notable gaps, particularly in ensuring inter-county public service obligations and support for vulnerable groups.

[5] Emergency Government Ordinance no. 141/2024, published in the Official Gazette of Romania, Part I, no. 1227/ 05.12.2024.

The Court's intervention underscores the essential role of constitutional review in safeguarding non-discriminatory access and fair competition, acting as a counterbalance to both arbitrary state intervention and unchecked market privilege. The Court's willingness to engage with technical and social dimensions of regulatory policy signals a more nuanced judicial approach in contemporary governance.

It is recommended that future legislative measures address the identified shortcomings by explicitly mandating public service obligations for inter-county transport and ensuring accessible facilities for vulnerable passenger groups. Lawmakers should favour comprehensive, deliberative statutory reforms – rather than repeated emergency ordinances – to provide clarity, stability, and social equity within the regulatory framework. Ongoing judicial oversight should continue to guide legislative development, ensuring that both competition and social protection are balanced in accordance with constitutional requirements.