

# INTERNAL ORGANIZATION AND ADMINISTRATIVE ACTIVITY OF THE CONSTITUTIONAL COURT OF ROMANIA

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**Abstract:** *As guarantor of the supremacy of the Romanian Constitution, the Constitutional Court is given, by the fundamental law of the State, a set of both jurisdictional and administrative attributes. A proper functioning of the Constitutional Court would not be possible in the lack of an internal structural organization, on the one hand, and the internal regulation of general procedural rules for running activities, on the other hand. Thus, the internal organization of the Court resides in: the President of the Court, having very important role and responsibilities, related both to jurisdictional and administrative aspects, elected out of the Constitutional Judges, the plenary sessions of the Constitutional Court, as current means of developing activities, and a working body formed of the assistant magistrates, run by the President of the Court and the General Secretariat led by a Secretary General. The jurisdictional and administrative activity is performed pursuant to the general structural procedures stipulated by the Romanian Constitution, the Law of organization and functioning of the Constitutional Court no. 47/1992 and by the Organization and Functioning Standing Orders of the Constitutional Court.*

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## **President of the Constitutional Court**

The Constitutional Court is led by a President whose role and competence are stipulated by constitutional<sup>1</sup>, legal<sup>2</sup> and regulatory<sup>3</sup> provisions. The position's regulation by constitutional provisions reveals its importance and juridical status.

Pursuant to the legal provisions (art. 142 paragraph 5 of the Romanian Constitution, revised edition and art.7, paragraph 1 of Law 47/1992 republished), the

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<sup>1</sup> See the Romanian Constitution took effect in 1991 and revised in 2003, republished in the Official Gazette no. 767 of October 31st, 2003.

<sup>2</sup> See Law no. 47/May 18th, 1992 regarding the organization and function of the Constitutional Court, published in the Official Gazette no. 101 of May 22nd, 1992, republished in the Official Gazette No. 643 of July 16th, 2004.

<sup>3</sup> See the, *Standing orders of organization and function of the Constitutional Court* adopted by the Working Body of the Constitutional Court in compliance with art. 76 of Law no. 47/1992 republished, published in the Official Gazette no. 643 of July 16th, 2004.

President of the Constitutional Court is elected through secret vote by the members of the Court, for a period of 3 years, with the majority of the judges' votes (absolute majority), within 5 days from the moment the Court is being renewed. According to art.7, paragraph 2 of Law 47/1992 republished, the President's mandate may be renewed<sup>4</sup>.

The election of the President of the Constitutional Court by its members was a widely accepted option even from the beginning; nevertheless<sup>5</sup>, according to the Comparative Law, the appointing of the President of the Constitutional Court may also be done by the President of the State (for instance the President of the French or Czech Constitutional Council or that of the Polish Constitutional Tribunal), or by the Parliament (Croatia).

The election procedure consists of nominating the candidates first, and then their voting (in two voting ballots, if it is the case). Each group of judges appointed by the Chamber of Deputies and the Senate, as well as by the President of the State, may propose only one candidate. There is no provision to forbid that the same candidate be proposed by two or even by all the groups of constitutional judges. The vote is secret. The President is elected with the absolute majority of the members of the Constitutional Court. In case in the first poll there is no candidate to gather the majority of the votes, there will be a second poll between the first two candidates with most of the votes or between two candidates arbitrarily chosen, in case of equality of number of votes for all candidates. The election proceedings are run by the oldest judge.

The mandate of the President of the Court ends at its term or in case of vacancy of the position. Though none of the Constitution, Law no. 47/1992 republished or the Court's standing orders does clearly stipulate, the vacancy of the position of President occurs if the mandate of judge of the Court comes to an end (art. 67, paragraph 1 of Law 47/1992 republished) and in case of the withdrawal from the capacity of President (with no influence on the mandate as a judge). According to art.8 paragraph 1 of Law 47/1992 republished, in case of vacancy, a new president is elected until the end of the three year term provided by art. 7 paragraph 1. The election takes place within 5 days from the beginning of the vacancy, according to the procedure provided by art. 7, paragraph 2.

Although there is no provision regarding the position of vice president, as in other constitutional jurisdictions, the President may appoint one of the judges of the Court to replace him in his absence.

The responsibilities of the President of the Constitutional Court are stipulated in art. 9 of Law no. 47/1992 as follows: a. Coordinates the activity of the Constitutional Court; b. Summons and runs meetings of the Constitutional Court; c. Appoints the rapporteur - judge in cases provided by the law and settles the trial terms in the cases of action; d. Represents the Constitutional Court in front of public authorities and other institutions, both domestic and international; e. Ascertains the cases of expiry of judges' mandates, as provided by the law, and informs the public authorities that have appointed them in order to fill in the vacancies; f. Exercises other powers provided by the law or by the Constitutional Court's standing orders;

In order to exercise the powers provided by Law no. 47/1992, the President has also responsibilities settled by the Constitutional Court's Standing Orders. The most important are: a. Disposes submission of the claims received by the Court to the public authorities so that the latter present, in the cases provided by the law, their points of view,

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<sup>4</sup> Within the *Teze pentru elaborarea proiectului de Constituție a României [Theses for drafting the Romanian Constitution]* the position of President of the Constitutional Court was stipulated in a slightly different way, as far as role is concerned: the President shall be elected by the members of the Council for a 3 year mandate and shall be the one to decide in case of parity of votes; this would have rendered him/her a special superior position, as compared with the rest of the members. The Parliament of Romania has recently rejected a draft law that prohibited, with no solid arguments, the renewal of the mandate of the President of the Court (the draft was passed by the Chamber of Deputies – Pl-x 245 of May 5th, 2008 – but denied by the Senate, decisional department).

<sup>5</sup> It is similarly done in Bulgaria, too.

as well as any other documents requested by the Court, in compliance with the legislation in force, and appoints the rapporteur - judge; b. Informs the President of the State in the cases of action as such provided by the Constitution and by Law no. 47/1992 republished; c. Appoints the assistant magistrates and coordinates their activity; d. Distributes the assistant magistrates attached to the Court's judges; e. Exercises his disciplinary authority as provided by the Court's standing orders; f. Settles measures regarding accomplishment of duties at work by the Court's staff, as they are provided by the law and the Court's standing orders.

Moreover, according to art.9, paragraph 2 of Law no. 47/1992 republished, the President supervises the activity of the Secretary General of the Court as credit release authority. The initial text of Law no. 47/1992 provided that the President had the capacity of main credit release authority, which was considered by the doctrine as being not only too burdensome, but also a hindrance of the independence of the President of the Court<sup>6</sup>.

Analysing the responsibilities of the President, it results that they are of two types: jurisdictional (he/she is, after all, a judge of the Court) and administrative, related to the organization of the Constitutional Court.

Within the administrative field the President issues orders; as far as the juridical nature of these orders is concerned, it has been acknowledged that they belong to the Administrative Law<sup>7</sup>, point of view which we assent to, with the mention that the recognized name of the concept is that of 'administrative acts' (used both in the Constitution and in special legislation, such as the Administrative Contentious Law<sup>8</sup>).

### ***The working body of the Constitutional Court***

The Constitutional Court is composed of the body of assistant-magistrates, led by the President of the Court, and of the personnel of the General Secretariat department, led by the Secretary General.

The body of the *assistant magistrates* consists of the first assistant magistrate, the chief assistant magistrates and the assistant magistrates.

The main responsibilities of *the first assistant magistrate* refer to: a. Supervision of the activity of the assistant magistrates; b. Information of the President over the intimations submitted to the Court; c. Draws out and signs, on the basis of the resolution of the President of the Constitutional Court, replies to the requests submitted by the parties in the case of actions lodged with the Court.

The *chief assistant magistrates* exercise the followings in the departments that they coordinate: a. Coordinate and control the activity of the assistant magistrates in the respective departments; b. Exercise the attributions of assistant magistrates in the cases of actions where they are appointed in this capacity; c. Check the projects of the Courts' proceedings, which have been drawn out by the assistant magistrates of the respective departments, before they are presented to the rapporteur-judges appointed in the case or to the President of the Court.

The *assistant magistrates* have the following main attributions related to the preparing of works and drawing out of acts issued by the Constitutional Court: a. Take over the jurisdictional files in which the judges they are distributed with are appointed; draw out the summoning act and the correspondence related to the reconciliation of the cause of action; b. Prepare the necessary documentation for the rapporteur-judge

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<sup>6</sup> See Ioan Muraru, Mihai Constantinescu, *Curtea Constituțională a României [Constitutional Court of Romania]*, Albatros' Publishing House, Bucharest, 1997, pages 74-75.

<sup>7</sup> See Ioan Muraru, Mihai Constantinescu, *Curtea Constituțională a României [Constitutional Court of Romania]*, Albatros' Publishing House, Bucharest, 1997, page 75.

<sup>8</sup> Law no.1/1967 regarding judging by the tribunals of the claims of individuals whose rights were violated by illegal administrative acts, Law no.29/ November 7th, 1990 of the administrative contentious (published in the Official Gazette no. 122 of November 8th, 1990, Law no. 544 of December 2nd, 2004 of the administrative contentious (published in the Official Gazette no. 1154 of December 7th, 2004).

regarding the solutions in jurisprudence and the Romanian and international legislation in the files that have been distributed and take part in the writing of the report; c. Check whether the legislation in force was observed in the summoning and notification procedures with the files in whose reconciliation they are part of; d. Draw out the drafts of the decisions, decrees and approvals under the supervision of the rapporteur - judge.

The *General Secretariat of the Constitutional Court* is responsible with the organization and functioning of the Court; it is composed of several services and departments. It is run by a Secretary General that has the following main attributions: a. Applies, in compliance with the legislation in force, the decrees of the Court and the orders of the President related to its attributions; b. Draws out the minutes with the solutions adopted by the working body of the Court in the administrative field, with reference to its attributions; the minutes is used then in order to issue an order; e. Gives solutions to the claims lodged by citizens and organizations, in compliance with the resolution of the President of the Court; f. Directly monitors the activity of answering the requests to have access to public information, pursuant to the law; g. Prepares a draft of the budget of income and expenses of the Court and submits it to the working body in order to be approved, then to the Government, under the signature of the President of the Court, in compliance with the legislation in force; h. Countersigns the orders signed by the President of the Court; j. It is the main credit release authority.

### ***Plenary sessions of the Constitutional Court***

The Constitutional Court runs its activity in plenary sessions. According to art. 50 of Law no. 47/1992 republished, the plenum of the Constitutional Court is formed of all its judges<sup>9</sup> and exercises the latter's powers as they are provided by the Constitution and the law. Moreover, the plenum of the Court may initiate any measure that would be necessary for the good functioning of the Court. It has a set of attributions settled through the Court's Standing Orders (art.4).

Although Law no. 47/1992 republished provides for a *quorum* condition that is necessary for the legal running of the Court's activity, namely the presence of at least 2 thirds of the total number of judges (art. 51 of Law no. 47/1992 republished) (minimum 6 judges), this should not be mistaken for the plenum of the Court. The quorum, in other words the attendance of the minimum number of the Court's members (at least 2 thirds) at the session, ensures the legality of the activity. The plenum of the Constitutional Court represents the total number of the members of the Court and is the only means in which the latter may exercise its attributions; it is not possible to constitute only panels of judges consisting of a certain number of judges for exercising different attributions.

The plenum of the Court make decisions with the vote of the majority of the Court's judges (absolute majority) in case the law does not provide otherwise.

The plenum of the Constitutional Court may be summoned / convoked also for exertion of other attributions than the jurisdictional ones by the President of the Court, at own initiative or as a result of written demand of one of the judges. The summoning is done with notification on the agenda, which is approved in plenary session, at the beginning.

### ***General procedural rules characteristic to the Constitutional Court***

The Constitutional Court of Romania performs its activity through *working sessions*. These are intervals when the members of the Court meet in order to exercise their attributions.

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<sup>9</sup> According to the *Explicative Dictionary of the Romanian Language (DEX)*, Romanian Academy, „Iorgu Iordan” Linguistic Institute, Univers Enciclopedic Publishing House, Bucharest, 1998, p. 806 – ‚plenary’ refers to the total number of members of an organization or association.

The plenary meetings of the Constitutional Court meet the legal requirements if the quorum (two thirds of the total number of the constitutional judges) is observed, but the judges' attendance is compulsory, absenteeism being permitted only on solid grounds.

The sessions are sat by the President of the Constitutional Court or, in his/her absence, by a judge appointed to step in.

It is compulsory that the assistant magistrate attached to the rapporteur-judge attend the sessions; moreover, in cases provided by the law, the representative of the Public Ministry, as well as other individuals or authorities notified in this respect, shall be present too.

The sessions are public in case it is not decided otherwise out of well justified reasons, according to art. 12, paragraph 1 of Law no. 47/1992 republished.

*Hearings*<sup>10</sup> are attended only by the judges of the Constitutional Court, on the basis of the intimation and other documents enclosed in the file and, except for the instances provided by art.146 paragraph d (settlement of exceptions of non constitutionality), paragraph e (settlement of juridical constitutional conflicts) and paragraph k (settlement of appeals against the constitutionality of political parties) of the Constitution republished, without notification of the parties. Yet, the President of the Court may invite the individuals he/she considers necessary to provide for information.

The audience is limited to the number of seats in the meeting room. The Secretary General shall ensure that the audience is accommodated by the meeting room.

The Constitutional Court that is legally convoked proceeds to the exertion of its attributes with no applicability of the rules of the Civil Procedure Code related to suspension, adjourning, end of the trial or challenge of judges. The Court may remain in reconsidering for rendering a decision and the President informs on the day this will happen. The postponement of the final decision shall not usually exceed 30 days. When the final decision has been taken, also the moment hearings took place will be written down in the hearings' agenda.

During the public meeting, the assistant magistrate shall take notes in the minutes' register that is numbered and sealed: the number of the file, the oral allegations of the parties and of the prosecutor, the measures disposed by the Constitutional Court, as well as all other aspects resulting from the debates. He/she shall then prepare, on the basis of all this information, the debates' settlement.

*The consultation of judges* is secret and attended only by the judges that had previously taken part at the hearings. The consultation<sup>11</sup> of judges is the complex activity in which the judges of the Court establish a solution to the cause of action. The assistant magistrate that has prepared and attended the hearings may be consulted. Eventually, the first to vote is the rapporteur-judge, the second is the youngest judge, and then the other judges, for the President of the Constitutional Court to vote in the end (art. 58 paragraphs 1 and 2 of Law no. 47/1992 republished).

There are other procedural rules stating that the parties may access the file's workings. The acts and workings of the Constitutional Court on which the latter makes decisions and issues settlements or approvals are not public. The specialized literature considers that there is an inconsistency between the two provisions, due to the fact that there is no clear difference of meaning between the concepts of "acts", respectively "workings"; consequently it is not known if the report of the rapporteur-judge and the

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<sup>10</sup> The hearing of the cause of action represents one of the stages of the (civil) trial, in which „the judicial fight takes place on the basis of evidence presented or the defence related to the main issue or to the procedure invoked by the parties”. The hearing is meant to establish the facts of the cause of action, as well as the applicable juridical norms – see Ioan Ies, *Codul de procedură civilă. Comentariu pe articole [the Civil Procedure Code. Comments on articles]*, 3rd edition, C.H. Beck Publishing House, Bucharest, 2007, p. 394.

<sup>11</sup> The consultation of judges represents the complex activity in which the judges reach the solution that is to be settled regarding the litigation between parties – see Ioan Ies, *Codul de procedură civilă. Comentariu pe articole [the Civil Procedure Code. Comments on articles]*, 3rd edition, C.H. Beck Publishing House, Bucharest, 2007, p. 518.

minutes or the hearing's settlements<sup>12</sup> were taken into account. If they were, the second provision would apply to these documents, which is impossible, as in fact the minutes of the hearing is read in public meeting by the President of the Constitutional Court.

We are of opinion that this provision refers to the fact that the acts and workings on which the Court's decisions, settlements or approvals are based shall not be published in the Romanian Official Monitor, as it is the case with settlements, orders and decrees of the Court.

According to art.58 of Law no. 47/1992 republished, the hearings may be interrupted at the request of a judge, if the President of the Court and at least one third of the judges consider that the request has solid grounds; in this case the settlement of the case shall be adjourned. On the other hand, if, during the hearings, additional information is needed in order to clarify different aspects, the President of the Court may dispose reopening of the hearings after taking all procedural measures involved.

The result of the hearing is recorded in the minutes of the hearing by the judges that attended the hearing and by the assistant magistrate. After this is written down in the hearing's register by the assistant magistrate, the President shall read it in the public meeting, in case the meeting was not declared secret ( according to art. 12 paragraph 1 of Law no. 47/1992 republished).<sup>13</sup>

The judges that have voted 'against' may submit a *separate opinion*. As far as the argumentation of the cause is concerned, a *concurrent opinion* may be filed in. Both the separate and the concurrent opinions are published in the Romanian Official Monitor, part I, together with the settlement of the case.

According to art. 14 of Law no. 47/1992 republished, the jurisdictional procedure provided by the organic law of organization and function of the Constitutional Court is completed by the Civil Procedure Code as far as the latter is compatible with the nature of the procedure before the Constitutional Court. This compatibility is decided on exclusively by the Court, which means that it is exclusively the task of the Working Body of the Court to establish it.

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<sup>12</sup> See Lucian Chiriac, *Controlul constituționalității ordonanțelor Guvernului* [Control of the constitutionality of the Government orders], Accent Publishing House, Cluj Napoca, 2004, p. 173.

<sup>13</sup> See Lucian Chiriac, *Controlul constituționalității ordonanțelor Guvernului* [Control of the constitutionality of the Government orders], Accent Publishing House, Cluj Napoca, 2004, p. 178.