

CONSTITUTIONALITY CONTROL OF THE LEGISLATIVE INITIATIVES OF THE CITIZENS IN ROMANIA¹

Daniela Cristina VALEA *

ABSTRACT: *According to the Constitution of Romania, republished, “national sovereignty belongs to the Romanian person who exercises it through their representative authorities ... and through referendum”. The aspect corresponds to the reality of any modern democratic system, being actually a form of indirect democracy. In this context, the right of the citizen to initiate and prepare legislative proposals may be considered as another means of involvement and direct access of the ordinary citizens to exercise state power. The exercise of this fundamental right is subject to constitutional control performed by the Constitutional Court, control procedure presented in this work.*

KEYWORDS: *legislative initiative, Constitutional Court of Romania, fundamental right, previous constitutionality control, territorial dispersion.*

JEL CODE: K 10

1. LEGISLATIVE INITIATIVE OF CITIZENS – FUNDAMENTAL RIGHT

The legislative initiative may be defined as the right to ask the Parliament to examine a law draft or legislative proposal, which corresponds to the correlating obligation of the legislative authority to make a decision related to the law draft or legislative proposal².

According to article 74 paragraph 1 of the Constitution of Romania, republished, the legislative initiative belongs to the Romanian Government, Deputies and Senators (individually or jointly), as well as to the Romanian citizens who have the right to vote (at least 100,000).

¹ *Acknowledgements:* This paper is a result of the project „Trans-national Network for Integrated Management of Postdoctoral Research in Communicating Sciences. Institutional building (postdoctoral school) and fellowships program (CommScie)” - POSDRU/89/1.5/S/63663, financed under the Sectorial Operational Programme Human Resources Development 2007-2013.

* Assistant professor, Ph.D., „Petru Maior” University of Tîrgu-Mureş, Faculty of Economic, Juridical and Administrative Sciences; Lawyer, Mureş Bar, ROMANIA.

² Ioan Vida, *Manual de legistică formală*, Editura Lumina Lex, Bucharest, 2004, p. 150.

The exercising of the right of legislative initiative by citizens represents a fundamental right, a way of their participation in exercising the state power. At the same time, it is a way of exercising national sovereignty³, besides referendum⁴, within indirect democracy.

The Romanian Constitution, republished, establishes two *restrictions* on the right of legislative initiative exercised by citizens. The first restriction concerns the exercising procedure, requiring the adherence to a group of at least 100,000 Romanian citizens having the right to vote, who have to come from at least one quarter of the counties and each county should provide at least 5,000 signatures (article 74 paragraph 1 of the Romanian Constitution). The second restriction concerns the subject of legislative initiative – article 74 paragraph 2 provides that *tax issues, international problems, amnesty or pardon* cannot be the subject of the popular legislative initiative.

The exercise of the right of legislative initiative by citizens is subject to the provisions of Law no. 189/1999⁵.

According to article 1 paragraph (2) of Law no. 189/1999, the legislative initiative of citizens is exercised by a legislative proposal prepared pursuant to article 74 of the Constitution, republished, in the field of organic and ordinary laws, and under pursuant to article 150 of the Constitution, republished, in the field of constitutional law. Specifically, the exercising of the right of legislative initiative of the citizens is ensured by an *initiative committee* made of at least 10 persons having the right to vote. This committee cannot include persons elected to office by popular vote, members of the Government, persons appointed by the Prime Minister or persons who, according to the law, cannot be members of a political party⁶. The initiative committee represents citizens who support the legislative proposal, after they sign the lists of supporters, whose content is expressly determined by Law no. 189/1999. The members of the initiative committee, together with the proposed legislative initiative, which is the object of the initiative, have to be made known to the public, by publication in the Official Gazette of Romania, the publication being exempt from any taxes.

The legislative proposal, written in accordance with the legislative drafting techniques applicable to any draft of a standard document, is sent to the competent Parliamentary Chamber that has to be the first informed (reflection room), the registration – with the Permanent Bureau – being the competence of the initiative committee and this should be made within 6 months after its publication. The proposal is submitted together with the *memorandum* of the initiators. Once the legislation draft has been submitted to the Chamber of reflection, it will be sent for information to the other Chamber (this procedure will not start the debate procedure in the second Chamber, because the legislative process should be conducted separately and successively in both Parliamentary Chambers). The recording of a legislative project has as effect the starting of the

³ Cristian Ionescu, *Unele reflecții pe marginea art. 74 din Constituția României, republicată*, in „Revista de drept public”, no. 2/2010, p. 10

⁴ More information about the referendum in Romania, see Lucian Chiriac, *Des considerations sur l'organisation et le déroulement du referendum en Roumanie*, in “Curentul Juridic” Journal, no. 4/2011, pp. 75-82.

⁵ Published in the Official Gazette no. 611 of 14 December 1999, republished in the Official Gazette no. 516 of 8 June 2004.

⁶ Mihai Constantinescu, Marius Amzulescu, *Drept contencios constituțional*, the Publishing House of Foundation „România de mâine”, Bucharest, 2007, p. 137.

procedures for the request of the necessary permits and the points of view required by the law.

2. CONSTITUTIONAL CONTROL. COMPETENT AUTHORITY. PROCEDURE AND SOLUTIONS OF THE CONSTITUTIONAL COURT

Article 146 letter j of the revised Constitution of Romania establishes the Constitutional Court's task to verify the achievement of the conditions necessary for the exercise of legislative initiative by citizens. Law no. 47/1992, republished, gives details on the exercise of the powers, completed by the provisions of Law no. 189 of 9 December 1999 on the exercise of legislative initiative by citizens⁷.

A special aspect regarding the exercise of this duty by the Constitutional Court refers to the *notification* of the Court. Although the Constitution expressly provides that the Constitutional Court is notified *ex officio* only as related to the constitutionality control of the initiatives to revise the Constitution (article 146 letter a - the last thesis of the Constitution), Law no. 47/1992 republished states that in order to verify the conditions to exercise the popular legislative initiative, the Court is informed *ex officio* or it is informed by the President of the Chamber of the Parliament where the legislative initiative of the citizens has been registered (article 48 of Law no. 47/1992 republished - provision reiterated by Law no. 189/1999)⁸. Taking into consideration that the persons who have the right to inform the Court are not mentioned in the fundamental law, as well as in article 146 letter l of the Constitution of Romania, revised, ("*... carries out other functions provided by the organic law of the Court*"), corroborated with article 3 paragraph 2 of Law no. 47/1992 republished ("*While exercising its duties, the Constitutional Court has the exclusive right to decide on its jurisdiction*") and article 10 paragraph 1 ("*The Constitutional Court may be notified in cases expressly provided for in article 146 of the Constitution, republished, or its organic law*"), it may be argued that the provision of Law no. 47/1992, republished, also on the notification *ex officio* of the Court is consistent with the fundamental law, so the Constitutional Court may decide *ex officio*.

Procedurally, once the Constitutional Court has been notified, its president appoints the judge - rapporteur and sets the deadline for the meeting of the judges, to verify the initiative (article 49 of Law no. 47/1992 republished).

The Constitutional Court has to determine whether the legislative initiative of citizens is achieved according to the conditions required (some by the Constitution, others by Law no. 189/1999), respectively, the following is taken into consideration: a) the constitutional aspect of the legislative proposal which makes the object of the citizens' initiatives; b) the fulfillment of the conditions for the publication of this proposal and if the lists of supporters are certified by the mayors of the administrative units or by their delegates; c) the meeting of the minimum number of supporters to promote the initiative, referred to in article 74 paragraph 1 or, where appropriate, article 150 paragraph 1 of the

⁷ Published in the Official Gazette no. 611 of 14 December 1999, republished in the Official Gazette no. 516 of 8 June 2004.

⁸ So far, in the constitutional practice, the Constitutional Court has verified six popular legislative initiatives, all upon the notification of the Presidents of the Parliament Chambers.

Constitution, republished, and the observance of territorial dispersion in counties and in Bucharest Municipality, under the same articles.

Instead, the provisions of article 7 paragraph 3 of Law no. 189/1999, according to which the Constitutional Court decides within 30 days from the notification of the legislative proposal and within 60 days after the notification on the proposal for revision of the Constitution are contrary to Law no. 47/1992, republished, (which sets a deadline of 10 days during which the Constitutional Court rules on the proposal to revise the Constitution (article 19), and the Regulation of the Court which establishes the deadlines, if the law or Regulation of the Court does not refer explicitly to the deadlines set by other laws, which is not the case).

The constitutional control consisting in checking the conditions to exercise the legislative initiative by citizens is a previous control.

The result of the verifications carried out by the Constitutional Court is part of a *decision* adopted by all the members of the Court, by the vote of the majority of the judges, which is communicated to the President of the Parliamentary Chamber who has informed the Court and it is published in the Official Gazette of Romania. There may be only two solutions the Court: either it finds that the exercise of the right of legislative initiative was made in compliance with the conditions established, or not⁹. We believe that if the Constitutional Court finds that the exercise of the right of legislative initiative was made in compliance with all the conditions set out, once with the publication of the decision in the Official Gazette and after it is sent to the Parliament, it has the obligation to start the parliamentary legislative procedure on the citizens' proposal. If the Constitutional Court finds that the exercise of the right was made in the violation of any conditions established, the Parliament is not required to start the legislative procedure.

3. SUMMARY OF THE PRACTICE OF THE CONSTITUTIONAL COURT

The Constitutional Court has been informed six times, so far, to check the fulfillment of the conditions to exercise the legislative initiative by citizens.

In three cases, the Court found that it cannot make the verification because "*as there is no law regulating the exercise of the legislative initiative by citizens, it is not possible to verify the authenticity of the list of signatures of the supporters, if the signatories are citizens with the right to vote and if they reside in the counties where they have signed*"¹⁰.

We believe that in these situations, the Constitutional Court should have started the constitutional control of the popular legislative initiatives, being unable to deny this, even in the absence of an express law; as the authenticity of the signatures on the lists of supporters, the right to vote of the citizens or the territorial dispersion may be verified by legal means. We may ask if, by these rulings the Constitutional Court has cleared the content of a constitutional provision, that on the fundamental right of citizens. As long as such a task is set explicitly as the competence of the Constitutional Court, no reason to

⁹ Ioan Vida, *Curtea Constituțională a României. Justiția politicului sau politica justiției?*, Editura Monitorul Oficial, Bucharest, 2011, p. 131.

¹⁰ The decisions no. 1 and 2 of the Constitutional Court, of 27 July 1995, published in the Official Gazette no. 172 of 3 August 1995; decision no. 1 of 16 April 1997 on the popular legislative initiative for the amendment of article 9 paragraph 1 of the Education Law no. 84/1995, published in the Official Gazette no. 82 of 6 May 1997

deny the exercise of a task may be invoked (at present, the possible solution not having relevance).

By the fourth judgment, the court found that "*the legislative proposal which is the subject of the legislative initiative of the citizens ... fulfills the provisions of the Constitution, republished, and those of Law 189/1999 on the exercise of the legislative initiative by citizens, republished*"¹¹.

In the following two occasions, when the Constitutional Court was notified to carry out this task, it found that the condition of territorial dispersion provided for in the Constitution, for the lawful exercise of this right.

4. CONCLUSIONS

The analysis of the theoretical and practical aspects regarding the exercise of the constitutional control over the legislative initiatives of the citizens, offers us the opportunity to believe that such a task given to the Constitutional Court seems inappropriate, even excessive for several reasons.

Such verification procedure is not provided in any of the other cases for the exercise of the right of legislative initiative.

All verifications made by the Constitutional Court – related to the proposal content, the compliance procedure (number of supporters, the validity and accuracy of the information – surname and given name, the quality of citizen, address, with or without the right to vote, etc.) are issues that may be verified through legislative procedure in Parliament, especially as these are aspects of extrinsic compliance.

The inherent compliance of a legislative proposal made by citizens may be the subject of the constitutional control previously exercised on the law before its promulgation.

A possible popular legislative initiative for the revision of the Constitution – which, by its object would require a special procedure – may fall under article 146 letter a - the last thesis of the Constitution of Romania, republished.

Last but not least, a very small number of reports show the unsuitability of such tasks.

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¹¹ See decision no. 1 of 30 June 2004 of the Constitutional Court on the citizens' legislative initiative for the amendment and completion of art. 170 of the Education Law no. 84/1995, republished, with its further amendments and completions, published in the Official Gazette no. 660 of 22 July 2004; Decision no. 38 of 3 December 2009 on the citizens' legislative initiative regarding the legislative proposal, called "Law on the level of minimal compulsory annual funds for the financing of health" (published in the Of. No. 880 of 16.12.2009)

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