

*Decision no. 469  
of 7 July 2021*

*regarding the referral of unconstitutionality of Senate Decision no. 56/2021 regarding the appointment of the president of the Council for Monitoring the Implementation of the Convention on the Rights of Persons with Disabilities*

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## **Summary**

**I. As grounds for the unconstitutionality referral**, the criticisms regarding Senate Decision no. 56/2021 regarding the appointment of the president of the Council for Monitoring the Implementation of the Convention on the Rights of Persons with Disabilities concerned two main aspects: (i) criticisms regarding the procedure for adopting Senate Decision no. 56/2021 in violation of the provisions Article 1 (5) of the Constitution, related to Article 11 (1) of Law no. 96/2006 on the status of deputies and senators, because, on the one hand, the procedure for issuing the opinion of the Commission of human rights, equality of chances, cults and minorities of the Senate was flawed, and, on the other hand, the report of the Legal, appointments, discipline, immunities and validations Commission, which would have been mandatory, was missing; (ii) criticism regarding the damage to the perception of the independence of the Monitoring Council, in violation of Article 1 (5), Article 16 (1) and Article 20 of the Constitution, by referring to Article 16 point 3, Article 33 point 2 and 3 of Convention on the rights of persons with disabilities, and Article 4, Article 5 (3) and Article 6 (c) of Law no. 8/2016 on the establishment of the mechanisms provided for by the Convention on the rights of persons with disabilities, because the appointment of E.G.B. as president of the Monitoring Council she was privileged because he was politically involved.

**II. Examining the criticisms of unconstitutionality** regarding the procedure for adopting Senate Decision no. 56/2021 and the provisions of Article 5 (1)-(5) of Law no. 8/2016 and of Article 146 of the Senate Regulation, the Court found that the two issues invoked by the author of the referral - the flaw in the procedure for issuing the opinion of the Commission for Human Rights, Equal Opportunities, Religions and Minorities and the lack of the report of the Legal, Appointments, Discipline, Immunities and Validations Commission - they relate to the way the activity of the parliamentary committees is conducted, and not to violation of the provisions of Law no. 8/2016.

In its case-law regarding the activity carried out in the parliamentary committees, the Court held that, by virtue of the parliamentary autonomy enjoyed by the two Chambers of the Parliament, they can organize their work in an appropriate way and adapt to the requirements of the parliamentary procedures. That's why, in the hypothesis where the joint specialized commissions consider that they are clear on the conditions for appointing the candidates, they can proceed to draw up the joint opinion, even without the hearing having taken place. The hearing is aimed at verifying the subjective conditions (in this case, the recognized activity in the field of human rights defense and combating discrimination) and can be omitted if the submitted documents clearly show that this condition is fulfilled. It is a condition of the parliamentary procedure regarding which the Parliament has a margin of appreciation for reasons of flexibility and streamlining the procedure. In its case-law, the Court found that the situation where a parliamentary committee, for various reasons, cannot carry out its activity, namely the preparation of a report or an opinion, is not likely to prevent the plenary session of each Chamber from debating and deciding directly on the issues that fall within its powers. In

essence, the specific activity of a Chamber of Parliament is to adopt a collective decision, taken with the majority of votes, after a public debate. Any other conclusion would be equivalent, on the one hand, to an over-sizing of the role of the working committees of the Parliament, by attributing greatly increased effects to the acts that these working bodies adopt, a circumstance that exceeds the constitutional and regulatory framework in which they operate, and, on the other hand, it would amount to a hijacking of the role of the Parliament, as a whole, as the supreme representative body of the Romanian people, which benefits from a fundamental legitimacy, being the exponent of the interests of the entire nation. However, these assumptions are completely unacceptable from the perspective of the constitutional principles that the Court is called to guarantee. At the same time, nothing prevents that, during the plenary session, the lack of fulfillment of the procedural documents to be invoked, and the Chamber thus referred, based on its full power of decision regarding these aspects, to decide in the sense of continuing the debates in the plenary session or resuming the proceedings in the committee.

Given that the arguments of the author of the referral regarding the procedure for adopting Senate Decision no. 56/2021 concerned the activity carried out within the parliamentary committees, their analysis could not form the subject of the constitutionality review.

Regarding the criticism related the damage done to the perception of the independence of the Monitoring Council by the criticized decision of the Senate, by appointing E.G.B. as president of the Monitoring Council, in its case-law regarding the legal conditions that the person appointed by the Parliament in public office must fulfill, by Decision no. 847 of 18 November 2020, the Court stated the following: the consecration of the dichotomous nature of the legal requirements that the appointed person must fulfill, namely objective conditions and subjective conditions, has as a consequence only the admissibility of a review carried out by the constitutional court exclusively with regard to the objective conditions. The Constitutional Court cannot analyze and censor the option of the Chamber of Deputies by investigating the reasons why it has the power to appoint a person to a public office. By Decision no. 847 of 18 November 2020, the Court ruled that it does not have the powers to verify the fulfillment of the subjective condition related to good professional reputation, this exclusive and discretionary competence falling to the Parliament, and the same considerations are also valid regarding the subjective condition related to good moral reputation.

Applying to the case the general considerations resulting from the case-law of the Constitutional Court regarding the analysis of the conditions provided by the law for the appointment by the Parliament of some persons in public offices, the Court found that the analysis of the aspects invoked by the author of the referral involves an evaluation and appreciation that is under the exclusive power of the Senate and which falls within its margin of appreciation, as the authority that appoints the president of the Monitoring Council. Thus, all the aspects invoked by the author of the referral, which, in his opinion, would affect the perception of independence of the Monitoring Council, constitute subjective assessments regarding the person appointed by the criticized Senate decision, to the position of president of the Monitoring Council, without constituting a violation of any of the objective conditions provided by Law no. 8/2016 for a person to be able to occupy this office. The criticisms invoked by the author of the referral regarding the person appointed as president of the Monitoring Council are at most aspects related to the analysis of the fulfillment of the condition provided in Article 6 (c) of Law no. 8/2016, namely that of expertise in the field of human rights, especially in the matter of the rights of persons with disabilities or those circumscribed by a general requirement, not expressly provided by Law no. 8/2016, regarding good professional and moral reputation for appointment to any public office. However, according to the constant case-law of the Constitutional Court, the analysis of the subjective conditions necessary for the

appointment to an office by the Parliament does not fall within its power of review, but within the exclusive powers of the Parliament.

**III. For all these reasons**, unanimously, the Court dismissed, as inadmissible, the referral of unconstitutionality of Senate Decision no. 56/2021 regarding the appointment of the President of the Council for Monitoring the Implementation of the Convention on the Rights of Persons with Disabilities.