

Decision No 645 of 24 September 2020 on the objection of unconstitutionality of the Law rejecting Government Emergency Ordinance No 91/2019 on the abolition of the Romanian Revolution Institute of December 1989, published in the Official Gazette of Romania, Part I, No 902 of 5 October 2020

Summary

I. As grounds for the objection of unconstitutionality, it was argued that the Law rejecting Government Emergency Ordinance No 91/2019 on the abolition of the Romanian Revolution Institute of December 1989 infringes Article 61 (2) of the Constitution, which enshrines the principle of bicameralism. It was thus indicated that the draft law for approval of Government Emergency Ordinance No 91/2019 on the abolition of the Romanian Revolution Institute of December 1989 had been registered with the Chamber of Deputies and tacitly adopted on 11 March 2020. The form tacitly adopted by the reflection Chamber provided for the approval of Government Emergency Ordinance No 91/2019. Subsequently, however, in the decision-making Chamber, the form of the law was changed altogether, being ordered the rejection of the emergency ordinance submitted for approval. The author of the referral argued that since the Senate's interventions had completely changed the form of the law adopted by the Chamber of Deputies, with major, substantial differences in the legal content of the forms adopted by the two Chambers of Parliament, and the text adopted by the decision-making Chamber had not been debated in the reflection Chamber, the law adopted infringed the principle of bicameralism.

II. Having examined the challenges of unconstitutionality, the Court found that, in its case-law, it set two essential criteria for determining where, by parliamentary procedure, the principle of bicameralism is violated: there are major differences in legal content between the forms adopted by the two Chambers of Parliament and the existence of a significantly different configuration between the forms adopted by the two Chambers of Parliament. The fulfilment of those criteria is such as to affect the principle governing the legislative activity of the Parliament, placing the decision-making Chamber in a privileged position, in fact removing the first notified Chamber from the legislative process. As regards the particular situation in which the reflection Chamber rejected the legislative proposal and the decision-making Chamber adopted it, the Court held that the respective act of political will, in the form of a vote of rejection by the first notified Chamber, does not give the decision-making Chamber the possibility of disregarding the original purpose of the law, the conception and philosophy of the legislative proposal, as reflected in the regulatory purpose of the law. In other words, the fact that the decision-making Chamber adopted a solution diametrically opposed to that of the reflection Chamber (i.e. adopting/rejecting the draft/legislative proposal) is not, in itself, liable to undermine the principle of bicameralism, since such a possibility is governed by Article 75 (3) of the Constitution, according to which "after the first notified Chamber adopts or repeals it, the bill or legislative proposal shall be sent to the other Chamber, which will make a final decision. In that regard, the Court has held that it is only if the decision-making Chamber disregards the original purpose of the law, the conception and philosophy of the legislative proposal, within the meaning of the criteria set out above, that such an infringement would occur.

Applying these considerations to the present case, the Court observed that the draft law approving Government Emergency Ordinance No 91/2019 on the abolition of the Romanian Revolution Institute of December 1989, containing a single article, had been registered with the Chamber of Deputies and tacitly adopted, following the 30-day deadline laid down in Article 115 (5) of the Constitution. It was sent to the Senate, which, as the decision-making

Chamber, decided to reject the Government Emergency Ordinance, adopting Law rejecting Government Emergency Ordinance No 91/2019 on the abolition of the Romanian Revolution Institute of December 1989, also containing a single article. It is in this context that the Government considered that, since the interventions made by the Senate had completely changed the form of the law adopted by the Chamber of Deputies, with major, substantial differences in legal content between the forms adopted by the two Chambers of Parliament and the text adopted by the decision-making Chamber had not been debated in the reflection Chamber, the law adopted infringed the principle of bicameralism.

Contrary to these claims, the Court found, however, that both Chambers referred to the same subject matter and form of the legislation envisaged by the initiator, namely the Government Emergency Ordinance submitted for approval by law on the basis of Article 115 (5) of the Constitution. In the light of that constitutional text, it appears that the two Chambers of the Parliament rule on the ordinance, so that the subject-matter and form of the legislation envisaged by the initiator are those laid down in the Government Emergency Ordinance which is subject to approval by law.

The fact that, in the present case, the decision-making Chamber decided by a final decision to reject Government Emergency Ordinance No 91/2019 on the abolition of the Romanian Revolution Institute of December 1989, and not to approve it, merely gives expression — in the particular situation of the laws approving/rejecting Government Emergency Ordinances — to the constitutional provisions of Article 75 (3) of the Constitution, according to which “after the first notified Chamber adopts or repeals it, the bill or legislative proposal shall be sent to the other Chamber, which will make a final decision”. This legislative solution is also found in Article 115 (5) of the Constitution, which in turn does not distinguish with regard to the solution that may be adopted in the decision-making Chamber in respect of the Government Emergency Ordinance submitted for approval, merely stating that “it shall also make a decision in an emergency procedure”.

Thus, accepting the argument on which the referral is based, in the sense that the approval of an emergency ordinance in the reflection Chamber requires the decision-making chamber to adopt the same solution, approving that Government Emergency Ordinance, would have the effect of diverting the role of the reflection Chamber of the first notified Chamber, in that it would be the Chamber which definitively fixes the content of the draft or legislative proposal. As the Constitutional Court has held in settled case-law, to deny the decision-making Chamber the possibility of departing from the form voted in the reflection Chamber would be to limit its constitutional role and the decision-making nature attached to it becomes illusory. This would lead to a real mimetism, in the sense that the second Chamber would be identified with the first Chamber in terms of its legislative activity and could not in any way depart from the legislative solutions chosen by the first Chamber, which is ultimately contrary to the very idea of bicameralism.

In conclusion, the Court found that the criticisms of Article 61 (2) relating to the principle of bicameralism were unfounded.

III. For all these reasons, the Court unanimously dismissed as unfounded the referral of unconstitutionality and found that the Law rejecting Government Emergency Ordinance No 91/2019 on the abolition of the Romanian Revolution Institute of December 1989 was constitutional in the light of the criticisms made.