

Decision No 847 of 18 November 2020 on the referral of unconstitutionality of Decision No 29/2020 of the Romanian Parliament on the appointment of Mr Florin Iordache as President of the Legislative Council, published in the Official Gazette of Romania, Part I, No1302 of 29 December 2020

Summary

I. As grounds for referral of unconstitutionality in respect of Decision No 29/2020 of the Romanian Parliament concerning the appointment of Mr Florin Iordache as President of the Legislative Council, it was argued that the appointment to that office is made, in accordance with Article 9 (2) of Law No 73/1993 for the establishment, organisation and functioning of the Legislative Council, by a majority vote of all Deputies and Senators, not just those present, which means that the minimum number of votes required is 230. However, Mr Florin Iordache's candidature received only 185 votes 'in favour'.

It has also been stated that Mr Florin Iordache does not fulfil the legal condition of good professional and moral good repute laid down in Article 18 (1) of Law No 73/1993. In that regard, it was noted that, in 2017, Mr Florin Iordache had had a conduct giving raise to a public uprising. Good moral repute is not apparent from any document in his application file and Parliament has ignored the procedure for hearing the candidates. Failure to comply with the procedure for verifying moral and professional good repute constitutes a breach of the principle of legality enshrined in Article 1 (5) of the Constitution.

Similarly, there is no document in Mr Florin Iordache's application to show that he is not a member of a political party. Since the staff of the Legislative Council cannot belong to political parties, it follows that that condition had to be fulfilled before appointment.

II. Having examined the referral of unconstitutionality, the Court held that, as a rule, decisions of the Parliament are adopted by a simple majority of votes, unless otherwise provided for in the Basic Law. In addition to the provisions of Article 76 (1) of the Constitution relating to the adoption or amendment of parliamentary regulations by an absolute majority of votes, decisions of Parliament shall be adopted by a majority of the members present from each Chamber, provided that the number of members present is at least half plus one of the members of each Chamber.

As exceptions are to be interpreted strictly, unconstitutional legislative acts cannot provide for voting majorities other than those governed by the text of the Constitution. On the contrary, they must respect the existing constitutional framework and their issuer cannot take the view that, on a case-by-case basis, depending on the importance which it itself attaches to the area in question, the adoption of decisions should be carried out by using voting majorities other than those laid down in the Constitution.

In the present case, the Court found that there was a clear contradiction between Article 9 (2) of Law No 73/1993 (absolute majority) and Article 76 (2) of the Constitution (simple majority) as regards the majority required for the adoption of the decision for appointment to the office of President of the Legislative Council. Taking into account the principle of the hierarchy of legal norms and the obligation to respect the supremacy of the Constitution laid down in Article 1 (5) of the Basic Law, the decision in question must follow the rule laid down in Article 76 (2) of the Constitution, i.e. be adopted by a majority of the parliamentarians present, which has been the case. The Court found that Parliament, in choosing to comply with Article 76 (2) of the Constitution and to disapply Article 9 (2) of Law No 73/1993, which, although enjoying the presumption of constitutionality, is in fact unconstitutional, has done nothing other than to comply with Article 1 (5) of the Constitution.

As regards non-compliance with the condition of good professional reputation, the Court has held that it is solely for the Parliament, not the Constitutional Court, to assess it, while the Court can only verify that the objective conditions have been met. The appointment decision to the position as high official involves a subjective assessment, based on information that is assessed personally, by each Deputy or Senator. This decision cannot be overturned by the Constitutional Court on the basis of an equally subjective assessment. Otherwise, this constitutional task of the Parliament would be shared with the Constitutional Court, contrary to Article 1 (4) of the Constitution on the principle of separation of State powers. In conclusion, it is not for the Court to verify that the subjective condition relating to good professional and moral reputation is satisfied, since that exclusive and discretionary power lies with the Parliament.

As regards the incompatibility of the person appointed as President of the Legislative Council, the legal conditions for filling the post must be satisfied on the date on which the oath is taken, and not on the date of the decision to appoint him. Any incompatibility of the person appointed must cease at the time when the oath is taken, which means taking up his office and duties. Any other interpretation leads to an unacceptable situation, i.e. that on the day of voting on the appointment decision (i.e. at a time when the outcome of the vote is not known), the candidate has renounced all qualities potentially incompatible with the new quality which has not yet been acquired.

III. For all these reasons, the Court unanimously dismissed as unfounded the referral of unconstitutionality and found that the Romanian Parliament's Decision No 29/2020 on the appointment of Mr Florin Iordache as President of the Legislative Council was constitutional in the light of the criticisms made.