

## Parliamentary Rules and Judicial Review in Romania

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In May 1994, the Constitutional Court in Bucharest invalidated a substantial number of parliamentary rules. The Court's decisions and Parliament's reaction to them provide a valuable opportunity to examine the Court's exercise of its constitutional authority and the development of judicial-legislative relations in the emerging Romanian democratic order.

### **The jurisdiction of the Constitutional Court**

Established by the 1991 Constitution, Romania's Constitutional Court consists of nine judges who serve for a fixed term of nine years. The right to appoint judges is shared by the Chamber of Deputies, the Senate, and the president, each appointing three judges. The Court is similar to its Eastern European counterparts in that it has jurisdiction only over constitutional questions, and is distinct from the US Supreme Court for the same reason ("The New Courts: An Overview," Herman Schwartz, *EECR*, Vol. 2, No. 2, Spring 1993).

Similar to the French Constitution on which it is modeled in part, the 1991 Romanian Constitution grants the Constitutional Court jurisdiction over both parliamentary standing orders and proposed laws. Indeed, like the French Constitutional Council, the Romanian Court is empowered to review the constitutionality of laws and parliamentary rules before they are implemented. The Romanian Court differs from its French counterpart in several important respects, however. While the French Constitutional Council must rule on the constitutionality of organic laws and parliamentary rules before they take effect, the Romanian Court has jurisdiction to review laws and parliamentary rules only when petitioned to do so. The Court also has jurisdiction

to review the constitutionality of laws after promulgation should a lower court issue an interlocutory decree requesting that the Court resolve a constitutional issue. Finally, the Romanian Constitution provides that Parliament can override the Court's ruling on a law's unconstitutionality by a two-thirds vote in each chamber (Art. 145). Once Parliament overrules the Court's decision, the Court cannot again review the statute in question. Thus, Parliament's power to override the Court's decisions significantly circumscribes the Court's authority, distinguishing it from most other European and American regimes where the constitutional or supreme courts are the final arbiters of constitutionality.

Both the Chamber of Deputies and the Senate are directed by the Constitution to adopt their own standing orders (Art. 61), by an absolute majority (Art. 74). The president of the Chamber or the Senate, a parliamentary party group, at least 50 (of 341) Deputies or 25 (of 143) Senators, have the power to request that the Court decide on the constitutionality of parliamentary rules. The "Law on the Organization and Operation of the Constitutional Court" (May 18, 1992) also requires that either the Chamber or the Senate "re-examine" whatever provisions of their standing orders have been held unconstitutional "in order to bring [the rules into] agreement with the stipulations [provisions] of the Constitution." One of the most important aspects of the Court's 1994 decision was its ruling that Art. 145, allowing legislative override of Court decisions, does not apply in the case of parliamentary rules, thus forcing Parliament to change rules which the Court finds unconstitutional. This decision has enhanced the Court's power but it also increased the risk of judicial-legislative conflicts.

authority when they adopted rules governing Parliament's ability to obtain information. The Senate and the Chamber had provided that, at the request of one-third of its members, either house could establish an investigatory committee (Senate rules, Art. 57; Chamber rules, Art. 70). Both rules also authorized such investigatory committees to require the attendance of "any person" summoned to testify and to require those persons to furnish requested documents or other information. The Court objected that parliamentary committees cannot compel the appearance of either any government official or any private individuals. While the Constitution refers to parliamentary committees—for example, Art. 110 provides that committees may make requests for information through the chambers' presidents—it neither explicitly defines the committees' roles nor circumscribes their authority.

First, the Court asserted that these rules would violate the constitutionally-established "legal relationship between public authorities" if either house of Parliament could enforce subpoenas against judges or the president. With respect to judges, the Court cited not only the general principle of separation of powers, but also the specific constitutional proposition that "judges shall be independent and subject only to the law" (Art. 123). The Court concluded that the constitutional provisions empowering the Chamber and the Senate, acting in joint session, to impeach or suspend the president established the "legal relationship" between president and Parliament. The Court held that a parliamentary committee could not summon the president to appear before it without violating this constitutionally established relationship between the president and Parliament.

Second, the Court's decision also precludes Parliament's investigative committees from requiring private citizens to appear before them and to produce documents. The Court appears to assert that an inquiry committee's only constitutionally legitimate role is to act as "a means to achieve parliamentary control." Under the Court's narrow construction of an inquiry committee's role, the committee has the authority to subpoena only individuals who are directly subject to parliamentary con-

trol. This limitation not only excludes the president and judges, it also excludes private citizens.

The result of these decisions is hard to measure. On the one hand, the Court's rulings protect individual citizens against parliamentary subpoenas that create the possibility of government coercion and invasion of privacy—an admirable result in a post-totalitarian state. On the other hand, the Court's decision may constrain Parliament's ability to oversee government activities and to conduct investigations. Indeed, in the United States and Western Europe, the authority of legislative committees to summon private individuals and compel their testimony can be central to the committees' ability to investigate the conduct of government officials. In Romania, where virtually no tradition of government accountability exists, the Court's ruling that parliamentary committees may invite but not summon individuals as witnesses also may hamstring Parliament's ability to serve as a counter-weight to an already powerful government.

In another ruling, the Court directly protected the government's prerogative in relation to Parliament. Article 110 of the Constitution provides that "members of the government are entitled to attend the proceedings of Parliament. If they are requested to be present, participation shall be compulsory." The relevant Chamber rule (Art. 48) provided that a "committee may decide that certain of its proceedings be conducted with no government member being present." The Court invalidated this rule, noting that deputies also may be ministers in the government. Under the Chamber's rule, therefore, deputies serving as ministers could be excluded from committee meetings but not, of course, from plenary sessions. Rejecting this, the Court interpreted the constitutional provision as referring not only to the plenary sessions of Parliament, but to "all its structures."

Finally, the Court invalidated some rules exclusively pertaining to Parliament's internal organization. For example, Art. 22 of the Senate rules provided that a member of its powerful Standing Bureau could be removed from that position at the request of his or her parliamentary group and with the approval of a majority vote of the Senate. The

idating the Chamber's rule (Art. 118) outlining the procedure for responding to the Court's constitutional objections to laws and standing orders. Article 118 and the corresponding Senate rule (Art. 113) provided for the Chamber or Senate to overrule, by a two-thirds vote, the Court's objection to either a law or a rule. The Court held that Parliament's authority to overturn Court decisions applies only to laws, not to parliamentary standing orders. By a vote of nine to two, the Judiciary Committee disagreed, asserting that the Chamber's authority to set aside Court decisions extends to both laws and rules. Furthermore, the Committee proposed that the Chamber exercise this authority with respect to several rules, in particular its controversial rule prohibiting party-switching and requiring any deputy leaving his or her party group to remain an independent.

When the Chamber acted on the amendments to its rules in June, however, it evidently changed them to satisfy all of the Court's objections. In the process, the Chamber rejected its Committee's position that the Chamber could overturn a Court decision invalidating the Chamber's standing orders. Instead, it adopted a new procedure to reconsider and revise rules that the Court holds unconstitutional, and preserved only the provision of the rule prohibiting deputies from forming parliamentary groups on behalf of parties that had not won seats in the elections. In its 1993 decision, the Court stated that the formation of such groups as a result of party switching "would obviously be contrary to the Constitution." Therefore, this narrower rule is likely to survive the Court's scrutiny.

### Conclusion

The political history of post-Ceausescu Romania is still too brief to allow for a definitive analysis of the import of the Court's rulings on Parliament and on legislative-judicial relations. Nonetheless, the

Court has clearly taken its role seriously, issuing decisions that reflect its understanding of the Constitution and that were not inspired by any obvious political motive. Moreover, the Chamber has amended its rules in ways that should satisfy all of the Court's concerns. The Chamber deliberately avoided the prospect of a constitutional confrontation with the Court over which institution makes the final decisions about the constitutionality of Parliament's rules. By accepting the Court's ruling that it is the final arbiter of such questions, the Chamber accepted a significant limitation on its discretion and autonomy.

Like the other new institutions of Romania's government, both Parliament and the Constitutional Court are in the process of establishing the parameters of their own authority. The Court's rulings on Parliament's standing orders provide some evidence of its desire to fulfill its mandate to interpret and apply the Constitution. The Chamber's response to the Court's rulings may demonstrate its commitment to the constitutional order, even at some immediate cost to its own institutional preferences and prerogatives. The resolve of both institutions to accept and enforce the constraints of the Constitution may also be an encouraging sign for the supremacy of the rule of law in Romania. As the Romanian system evolves, all three branches of government may ultimately recognize that mutual respect among them will prove essential to the stability and success of Romania's new, and still developing, constitutional order.

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