

The Control of the Laws Constitutionality

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Abstract

The present paper tackles, in detail and from various angles, the issue regarding the control over the constitutionality of laws, as a specific legal phenomenon in Romania. The constitutionality control of the laws can be defined as that institution of constitutional law made up of a set of legal norms regulating the activity of verifying the conformity of the laws with the text of the constitution, the authority that performs this verification, the procedure to be followed and the sanctions applicable for non-observance of the constitutional depositions by the laws. The necessity of exercising constitutional control is due to the existence, on the one hand, of the principle of separation of powers in the state and, on the other hand, the constitutional control is based on the principle of the supremacy of the Constitution. Therefore, the principle of the supremacy of the Constitution is characterized as "generator of legality and legal stability in the democratic constitutional organization".

Keywords: constitution, constitutionality, conformity, supremacy, legality, hierarchy.

In Romania, the control of the laws constitutionality of is regulated in the Romanian Constitution, republished, as well as in Law no. 47/1992 regarding the organization and functioning of the Constitutional Court, (with the amendments brought by Law no. 138/1997) republished. The essential task of the Constitutional Court in the contemporary period in Romania is to ensure the balance in exercising the functional powers of the public authorities.

The assertion of the Constitution supremacy implies the existence of mechanisms to control the conformity of laws with the

Constitution, meaning that it is necessary to ensure the control of the constitutionality of laws and subordinate legal norms.

All the branches of law find their starting point in the Constitution, and these must be in accordance with the constitutional ones any deviation from this concordance is considered a violation of the Constitution, leading implicitly to the nullity of the legal provisions in question. In case a constitutional norm is modified, the norms in the branches of law that regulate the same social relations must be modified. This change is required, as the entire system of law must be respected with the constitution.

The control of the constitutionality of the laws, as a legal phenomenon, appeared at a rather short time after the first written constitutions were drafted, quickly becoming a true legal institution of constitutional law. This institution of constitutional control appeared as a guarantee for the authentication of political changes and alternations, representing the result of state and legal realities and the guarantee of constitutional principles.

The control of the constitutionality of the laws is a legal institution, which consists of a set of legal norms that regulate the activity of verifying the conformity of the laws with the text of the constitution. Following this verification, the law as a whole or texts of the law are repealed for non-compliance with the constitution. The control of the constitutionality of the laws, as a legal institution, concerns not only the activity of verifying the conformity of the laws with the constitution, but also the authority that performs this verification and the procedure to be followed.

The constitutionality control of the laws can be defined as that institution of constitutional law made up of a set of legal norms regulating the activity of verifying the conformity of the laws with the text of the constitution, the authority that performs this verification, the procedure to be followed and the sanctions applicable for non-observance of the constitutional depositions by the laws.

Therefore, it can be summarized that the necessity of exercising constitutional control is due to the existence, on the one hand, of the principle of separation of powers in the state and, on the other hand, the constitutional control is based on the principle of the supremacy of the Constitution. Therefore, the principle of the supremacy of the Constitution is characterized as "generator of legality and legal stability in the democratic constitutional organization".

Thus, in an opinion favorable to the existence of this control, it was pointed out that the legislator is also subject to certain mistakes, that the Constitution itself is interpretable, and that it has certain deficiencies, and the lack of constitutional control of the laws leaves the legal instability and confusions in fact.

From another perspective, the absence of this control was argued based on the idea that the hierarchy of norms cannot be admitted, because this implies the idea of hierarchy of organs, which contravenes the separation of powers in the state, that the control of laws cannot be admitted, the law being the expression of the general will, which is sovereign, that another body cannot be allowed to control the parliament, which represents the people and responds only in front of it, that the parliament itself, with the occasion of the adoption of the laws, carries out this control which, therefore, no longer it must be exercised by another body.

Over time, the control of the constitutionality of laws has been achieved mainly through several forms:

- the control carried out by a political body;
- the control carried out by a judicial body;
- control through a political-judicial body.

Political control involves the control exercised by the legislative bodies, as well as that exercised by other state bodies, other than the legislative ones.

This type of control was first imposed in France within the Constituency vested with the power to adopt the Constitution of the Third Year (1795 Constitution) and was reiterated also on the occasion of the Constitution adopted in 1799, when the Conservative Senate was established, which could decide annulment of unconstitutional acts.

It was appreciated that this kind of control is a genuine control and, at the same time, a self-control, the parliament being the most able to appreciate the conformity of the law and constitution.

The following arguments were raised against political control:

- the principle of separation of powers would not allow outside the three powers the creation of a fourth, situated "above" the parliament and the government and vested with the right to censure the legislative activity, respectively the executive power;
- the political body exercising control could be discretionary, being able to censor the sovereign will of the people's representatives;
- the control of the constitutionality of the laws must be a specialized control, located above any political arguments.

As regards judicial control, it can be exercised by judicial bodies or by other bodies, but which use a procedure similar to the judicial one.

The control exercised by the courts can be of two types: diffuse - it can be exercised by all the courts, regardless of their degree - and concentrated or centralized - which can be achieved only by certain courts, usually those located at the top of the court system hierarchy.

The centralized judicial control is carried out by a supreme court, and the decisions that they adopt even if they do not produce *erga omnes* effects, by positioning the court it can be considered that the law or the provisions of the law declared unconstitutional no longer apply.

The control exercised by a political-judicial authority is carried out by a special body, which has both a political and a legal character. The political character resides, in particular, from the way of appointing the members of the respective body, and the jurisdictional character from the procedure used to verify the constitutionality of the laws.

This form of control has the following features:

- it is a concentrated control, because it is the exclusive competence of a single authority;
- it is an abstract control, that is to say it is exercised by direct action, without having a previous litigation deduced from the judgment;
- it can be both anterior and posterior.

As an institution of constitutional law, the control of the constitutionality of laws includes rules regarding:

- the competent authority to carry out this verification;
- the procedure to be followed;
- the measures to be applied after the procedure.

In Romania, the control of the constitutionality of the laws regards both the law as a legal act of the parliament and the normative acts with the legal force equal to the law and is carried out by the Constitutional Court (CC) which:

- it is the only constitutional jurisdiction authority in Romania;
- it is independent from any other public authority and is subject only to the Constitution and the law of its organization and functioning;
- it is the only one able to decide on its competence, and its competence cannot be challenged by any other public authority;

- it ensures control of the constitutionality of laws, parliamentary regulations and government ordinances, ruling only on legal issues, without being able to improve or modify the legal provision subject to control;

- it cannot be pronounced on the way of application or interpretation of the law but only on the meaning or contrary to the law.

Duties of the Constitutional Court:

- it decides on the constitutionality of the laws, before promulgating them;

- it rules on the constitutionality of treaties or other international agreements;

- it rules on the constitutionality of Parliament's regulations;

- it decides on the exceptions of unconstitutionality regarding the laws and ordinances, raised before the courts or commercial arbitration;

- it resolves legal conflicts of a constitutional nature between public authorities;

- it ensures compliance with the procedure for the election of the President of Romania and confirms the results of the vote;

- it notes the existence of the circumstances that justify the interim in the exercise of the role of President of Romania and communicates those found to the Parliament and the Government;

- it gives advisory opinion on the proposal to suspend the President of Romania;

- it ensures compliance with the procedure for organizing and conducting the referendum and confirms its results;

- verifies the fulfillment of the conditions for exercising the legislative initiative by the citizens;

- decides on the objections that have as object the constitutionality of a political party;

- fulfills other duties provided by the organic law of the Constitutional Court.

Consequences of controlling the constitutionality of laws:

- ensuring the principle of legality;

- ensuring the supremacy of the constitution;

- removal of legal norms contrary to the provisions of the Constitution.

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