THE REMOVAL FROM OFFICE OF THE PRESIDENT OF ONE OF THE CHAMBERS OF THE ROMANIAN PARLIAMENT BETWEEN OPPORTUNITY AND NECESSITY. REFLECTIONS ON THE CCR DECISION NO. 17 OF JANUARY 26, 2022

Gheorghe STAN[*]

Cristina TITIRIȘCĂ[**]

Abstract

In March 2022, a decision of the Romanian Constitutional Court was published in the Official Gazette of Romania, Part I, which brings to the attention of practitioners, but also of the general public, the issue of the removal from office of one of the Presidents of the two Chambers of Parliament. Such a removal is of particular interest in parliamentary life and beyond, and it has also been addressed in the case-law of the Constitutional Court since 2005. The present paper aims mainly to present the novelties of this decision, and, in the alternative, to show that only the Constitutional Court can draw the limits between which such a removal from office can take place, as it is the guarantor of the supremacy of the Constitution, a value provided by the Fundamental Law.

Keywords: *removal from office, Chamber of Deputies, Senate, President, Constitutional Court.*

1. Introduction

It is already well known that, by virtue of the principle of regulatory autonomy, enshrined in art. 64 (1), first sentence of the Constitution, both Chambers of Parliament have the exclusive competence to interpret the normative content of their own Standing Orders and to decide how to apply them, while the non-observance of some regulatory provisions can be ascertained and fixed by exclusively parliamentary ways and procedures[1]. Moreover, in its case-law[2], the CCR held that, pursuant to the constitutional provisions of art. 61 on the role and structure of the Parliament and of art. 64 on the internal organization of each Chamber of Parliament, each Chamber is entitled to establish, in the limits and with the observance of the constitutional provisions, the rules of organization and functioning, which, in their substance, constitute the Standing Orders of each Chamber. As a result, the organization and functioning of each Chamber of the Parliament are established by its own Standing Orders, passed by its decision of each Chamber, with the vote of the majority of the members of the respective Chamber. Thus, by virtue of the principle of autonomy, any regulation regarding the organization and functioning of the two Chambers, which is not provided by the Constitution, can and must be established by its own Standing Orders. Therefore, the Chamber of Deputies and the Senate, respectively, are sovereign in adopting the measures they deem necessary and appropriate for their proper organization and functioning, including those concerning the establishment and election of leading and working structures.

However, it was the Constitutional Court that also held[3] that regulatory autonomy could not be exercised in a discretionary, abusive manner, in violation of the constitutional powers of Parliament. Thus, there is a mid-way/tool-to-purpose/interest ratio between the constitutional principle regarding the autonomy of the Parliament to establish internal rules of organization and functioning [art. 64 para. (1)] and the constitutional principle regarding the role of the Parliament within all public authorities of the state, where it exercises, according to the Basic law, powers specific to constitutional democracy (legislating, granting the vote of confidence on the basis of which the Government is appointed, withdrawing the trust given to the Government by adopting a motion of censure, declaring a state of war, approving the national defence strategy etc.). As such, the parliamentary Standing Orders constitute a set of legal norms, meant to organize and discipline the parliamentary activity, as well as the rules of organization and functioning of each Chamber.

[*] Judge, Constitutional Court of Romania (e-mail: gheorghe.stan@ccr.ro).

[**] PhD, Assistant-magistrate, CCR (e-mail: cristina_titirisca_r@yahoo.com).

[1] In this regard, see CCR Decision no. 44/1993, published in the Official Gazette of Romania, Part I, no. 190 of 10 August 1993, CCR Decision no. 98/1995, published in the Official Gazette of Romania, Part I, no. 248 of 31 October 1995, CCR Decision no. 17/2000, published in the Official Gazette of Romania, Part I, no. 40 of 31 January 2000, CCR Decision no. 47/2000, published in the Official Gazette of Romania, Part I, no. 153 of 13 April 2000.

[2] CCR Decision no. 667/2011, published in the Official Gazette of Romania, Part I, no. 397 of 7 June 2011.

[3] See CCR Decision no. 209/2012, published in the Official Gazette of Romania, Part I, no. 188 of 22 March 2012.

The regulatory norms represent the legal instruments that allow the development of parliamentary activities in order to fulfil the constitutional powers of the Parliament, a representative authority through which the Romanian people exercise their national sovereignty, in accordance with the provisions of art. 2 para. (1) of the Constitution.

These regulations also include those provisions relating to the appointment and removal of members of the Standing Bureau of each Chamber of Parliament, of which the President of that Chamber is a full member. A first point of reference regarding the removal from office of the latter was drawn by the Constitutional Court in 1994 when, referring to the Senate's Standing Orders[4], it found that the possibility of any parliamentary group to apply for the revocation of a member of the Standing Bureau and not only of the one whose representative is the respective member is contrary to art. 64 para. (5) of the Constitution, according to which the Standing Bureau is composed according to the political configuration of the respective Chamber, as the removal from office shall be a symmetric procedure with the appointment of the Member to be elected to the Standing Bureau. Therefore, both the designation and the removal from office are subject to the imperatives of art. 64 para. (5) of the Constitution.

2. The background[5]

With regard to the manner in which the conditions for removal from the office of President of the Senate and the procedure for imposing that legal sanction are regulated, the Court held by Decision no. 601/2005[6] that "the status of the President of the Senate, distinct from the status of the other members of the Standing Bureau, implies an additional requirement in the regulation of his removal from office before expiry". The Court noted that regulating, through the provisions of the fourth sentence of art. 64 (2), the possibility of removing from office members of standing bureaus before expiry, "The Constitution leaves the Parliament free to regulate the conditions and procedures in which removal from office may take place, in accordance with the other constitutional and legal principles". However, the Court set a limit to that freedom, noting that "any regulation which would make possible the removal from office of the President of the Senate whenever a sufficient majority of votes are reached in order to adopt such a measure would be liable to create perpetual institutional instability, contrary to the will of the electorate which defined the political configuration of the Chambers of Parliament for the entire electoral cycle and the interests of the citizens whom the Parliament represents".

By Decision no. 601/2005 and Decision no. 602/2005[7], the Court, having regard to the normative content of art. 64 of the Constitution, ruled that "the removal from office of a member of the Standing Bureau before the expiry of his/her term of office may be decided either as a legal penalty for serious breaches of the legal order or for reasons independent of his/her guilt in the performance of his/her duties, such as the loss of political support from the parliamentary group which proposed him/her. The removal from office of members of the Standing Bureau, including the president of the Senate, for violation of the Constitution and of Parliament's regulations, is based, in a substantial sense, on the provisions of the last sentence of art. 64 (2) of the Constitution, in conjunction with the other rules and principles which, by making compliance with the legislative order mandatory, also establish legal liability for breaches of the Constitution and of the parliamentary regulations". The Court also held that "the rules governing the removal from office of the president of the Senate cannot run counter to the principle of political configuration, which, according to art. 64 (5) of the Constitution, underpins the composition of the Standing Bureau. It is unequivocally clear from that constitutional text that the political configuration of each Chamber is to be understood as its composition resulting from elections, on the basis of the proportion of parliamentary groups in terms of total number of members of that Chamber. The president of the Senate and the president of the Chamber of Deputies are designated based on the same political configuration stemming from the will of the electoral body. The vote given to the president of a Chamber is a political vote which may be cancelled only if the group which proposed him/her requests his/her political removal from office or, in the event of a dismissal as a penalty, when that group or other component of the Chamber requests the replacement of the president for acts which give rise to his or her legal liability. He/she can only be replaced by a person belonging to the same parliamentary group, which may not lose the right to the office of president acquired by virtue of the results obtained in the elections, in accordance with the principle of political configuration". That is why the Court held that "removal from office before the expiry

[4] See CCR Decision no. 46/1994, published in the Official Gazette of Romania, Part I, no. 131 of 27 May 1994.
[5] For a presentation of the decisions of the CCR on the removal from office of the President of one of the Houses of Parliament, which we also reproduce below, see the separate opinion on CCR Decision no. 17 of 26 January 2022, published in the Official Gazette of Romania, Part I, no. 248 of 14 March 2022.
[6] Published in the Official Gazette of Romania, Part I, no. 1022 of 17 November 2005.
[7] Published in the Official Gazette of Romania, Part I, no. 1027 of 18 November 2005.

of the term of office always affects only the term of office of the person removed from office and not the right of the parliamentary group which proposed his/her appointment to be represented in the Standing Bureau and, consequently, to propose the election of another Senator to the vacant seat. Failure to observe that principle and the establishment of the possibility of choosing a new president belonging to another parliamentary group would result in a situation where that the penalty imposed on the president of the Senate, which was removed from office, would extend to the parliamentary group which proposed him/her for election to that office. However, the Romanian Constitution does not allow for such a collective penalty to be applied".

Moreover, the Court held that "any legislation which would allow the removal from office of the president of the Senate whenever a sufficient majority of votes were reached for the adoption of such a measure would be such as to create perpetual institutional instability, contrary to the will of the electorate who defined the political configuration of the Chambers of Parliament for the entire electoral cycle, as well as the interests of the citizens whom the Parliament represents". In the light of these arguments, the Court found that the provisions of art. 30 (2) of the Senate's Regulations, which provided that removal from the office of the president of the Senate may be proposed also by half plus one of the total number of Senators, were unconstitutional because, notwithstanding the provisions of art. 64 (5) of the Constitution, establishing the criterion of political configuration for the composition of the Standing Bureau, with the consequence that the same criterion was to be applied to the removal of the members of that body, the removal from office was made subject to the majority criterion, in the quantitative sense, *i.e.* the majority of Senators entitled to make the proposal for removal from office. The introduction of such a criterion, which excludes the political configuration of Parliament, determined by the will of the citizens at the time of the elections for the supreme representative body and replaces it by a circumstantial majority, resulting from the dynamics in the composition and re-composition of political forces in Parliament on the basis of factors which have not been taken into account by the electorate, infringes the letter and spirit of the Constitution and opens the way for instability in the parliamentary activity".

Subsequently, by Decision no. 1630/2011[8], on the assumption that the hypothesis examined by the Court in Decision no. 601/2005 concerned the "removal from office of a member of the Standing Bureau of the Senate (the President of the Senate) as a legal sanction, for breach of the Constitution or of the parliamentary regulations, at the request of a parliamentary group other than the one which has proposed him/her, and not the hypothesis of removal from office following the withdrawal of political support", the Court held that the exclusion from the party "could not remain without legal consequences as regards the position acquired, an eminently political position. These legal consequences are laid down in art. 33 of Law no. 96/2006[9] and consist of the automatic termination of the status of member of the Standing Bureau or of any position obtained through political support." Moreover, by Decision no. 1631/2011[10], the Court made a new statement, namely that "if in the event of removal from office the reasons for the removal - the existence of acts of breach of the provisions of the Constitution or of the Regulation - are objective and must be stated in the proposal for removal, in case of withdrawal of the political support as a result of exclusion from the political party, the reasons for the party's decision relate only to the relations with the concerned party and there is no obligation to be stated".

Next, in the case settled by Decision no. 467/2016[11], the Court was called upon to clarify whether the fourth sentence of art. 64 (2) of the Constitution, which regulates the institution of the removal from office, constitutes the only way of terminating the term of office as a member of the Standing Bureau before expiry.

Having carried out a case-law examination, the Court held that, "if Decisions of the Constitutional Court no. 62 of 1 February 2005, no. 601 and no. 602 of 14 November 2005 indicate the idea that the termination of the term of office of the President of the Chamber of Deputies may be effected before expiry only by removal from office, with the adoption of Decision no. 1630 of 20 December 2011, the Court upheld as ground for termination, distinct from the removal from office, the automatic termination, motivated, in the present case, by the withdrawal of his/her political support". Moreover, "by Decision no. 1631 of 20 December 2011, the Court considered that removal from office only expresses a legal sanction, whereas the withdrawal of the political support is an implicit political sanction. Therefore, if removal from office was ordered in Decisions no. 601 and no. 602 of 14 November 2005 for both legal and political reasons, in Decisions no. 1630 and no. 1631 of 20 December

[8] Published in the Official Gazette of Romania, Part I, no. 84 of 2 February 2012.
[9] Law no. 96/2006 on the statute of deputies and senators, republished in the Official Gazette of Romania, Part I, no. 49 of 22 January 2016, as subsequently amended and supplemented.
[10] Published in the Official Gazette of Romania, Part I, no. 84 of 2 February 2012.
[11] Published in the Official Gazette of Romania, Part I, no. 754 of 28 September 2016.

2011 it was ordered only for legal reasons, whereas for political reasons there is an automatic termination of the term of office, without any decisive vote of the plenary in this regard."

Therefore, the Court concluded that "the institution of removal from office contained in the fourth sentence of art. 64 (2) of the Constitution is applicable only if the request thus formulated is based on a legal ground, it being, by excellence, a legal sanction for violations of the Constitution, parliamentary laws or regulations, whereas the automatic termination - even not expressly covered by the text of the Constitution - has a political component and is a self-evident matter, resulting from the very principle of political configuration". As a justification for this mechanism of control by the political party/parliamentary group over its member(s) in the Standing Bureau, the Court noted that, in its absence, "it could very easily lead to disregarding the political configuration of the Standing Bureau as it resulted from the elections and that, in a more or less transparent way, the President of the Chamber could migrate to a new political party/parliamentary group that would more or less openly support him/her, and the meaning of the political vote taken at his/her election is distorted, the political configuration resulting from the elections being compromised". This is why the Court found that "not expressing a legal sanction", "the loss of membership in the parliamentary group and the withdrawal of the political support are grounds for the automatic termination of the term of office, resulting from the need to respect the principle of political configuration", these reasons falling within the scope of art. 64 (5) of the Constitution and not of the fourth sentence of art. 64 (2) of the Constitution.

This conclusion was also emphasized by Decision no. 25/2020[12], when the Court held that, according to art. 32 (3) of Law no. 96/2006 on the Status of Deputies and Senators, "the loss of the political support by a Senator automatically entails the termination of the status of holder of any office obtained through political support", including that of President of the Senate. Corroborating this legal provision with the regulatory provision which provides that the right of each parliamentary group to submit a proposal for a candidate for the office of President of the Senate, the Court found that "it follows that a parliamentary group, if it decides to make a proposal, it can only concern a Senator who is a member of that political group, because only a member can be withdrawn from political support at the time of the proposal and vote. An interpretation to the contrary would lead to a situation in which the withdrawal of the political support by the parliamentary group to which he/she belongs could no longer lead to the loss of the office obtained through political support, which would be tantamount to depriving of legal effects the rule contained in art. 32 (3) of Law no. 96/2006, which is inadmissible".

3. Decision no. 17/2022

3.1. The admissibility issue

The examination of the compliance with the requirements for the admissibility of a referral regarding a Parliament's resolution must be carried out in the light of art. 146 (l) of the Constitution and art. 27 (1) of Law no. 47/1992, according to which "the Constitutional Court shall rule on the constitutionality of parliamentary regulations, resolutions of the plenary session of the Chamber of Deputies, resolutions of the plenary of the Senate and resolutions of the plenary of the two joint Chambers of Parliament, upon referral to one of the presidents of the two Chambers, a parliamentary group or at least 50 Deputies or at least 25 Senators".

The Court noted that the legal act under scrutiny is a resolution adopted by the plenary of the Senate and that the matter was referred to the Court by a parliamentary group in the Senate, so that the requirements relating to the subject matter and the holder of the right to refer the matter to the CCR have been met.

The Court then considered whether the conditions for admissibility of a referral, which are not expressly laid down by law, but which are the result of the interpretation of the legislation by the Court in its previous case-law, were satisfied in the case. In that regard, a condition for the admissibility of challenges concerning the unconstitutionality of parliamentary resolutions is the constitutional relevance of the subject-matter of those resolutions. The Court found that only (i) resolutions affecting constitutional values, rules and principles, or (ii) resolutions concerning the organization and functioning of authorities and institutions of constitutional rank can be subject to constitutional review[13]. The Court also found that art. 27 of Law no. 47/1992 does not differentiate between parliamentary resolutions which may be subject to review by the CCR in terms of the area in which they were adopted or their normative/individual nature, which means that all those resolutions are amenable to constitutional review, in accordance with the principle

[12] Published in the Official Gazette of Romania, Part I, no. 122 of 17 February 2020.

[13] See CCR Decisions no. 53 and no. 54 of 25 January 2011, published in the Official Gazette of Romania, Part I, no. 90 of 3 February 2011, CCR Decision no. 307/2012, published in the Official Gazette of Romania, Part I, no. 293 of 4 May 2012, CCR Decision no. 783/2012, published in the Official Gazette of Romania, Part I, no. 684 of 3 October 2012.

of *ubi lex non distinguit, nec nos distinguere debemus*. Consequently, the referrals of unconstitutionality concerning individual resolutions are *de plano* admissible[14].

Also, the CCR has expressly held that, in order for a referral of unconstitutionality to be admissible, the reference rule must have constitutional status so that it can examine whether there is any contradiction between the resolutions mentioned in art. 27 of Law no. 47/1992, on the one hand, and the procedural and substantive requirements imposed by the provisions of the Constitution, on the other. The challenges must therefore be of a relevant constitutional nature and not of a statutory or regulatory nature. Therefore, all decisions of the plenary of the Chamber of Deputies, the plenary of the Senate and the plenary of the two joint Chambers of Parliament may be subject to constitutional review if provisions contained in the Constitution are invoked in support of the challenge of unconstitutionality. Reliance on those provisions must not be formal but effective[15]. In the present case, the Court found that the authors of the referral rely on constitutional provisions, giving express reasons for the infringement of the reference rules.

Referring to the benchmarks established in its case-law, since, in the present case, the Senate's resolution was a measure of individual scope aimed at the removal from office of the president of the Senate, a constitutional authority, and since the challenge of unconstitutionality concerned, immediately, rules laid down by the Basic Law, the Court found that the referral act fulfilled the admissibility requirements.

3.2. The substantive argument

As regards the challenge that any application of the constitutional rules aimed at the removal of members of Standing Bureaux and, by analogy, at the removal of the presidents of the Chambers is contrary to the letter and spirit of art. 64 (2) of the Constitution, the Court analysed the content of the rule relied on in order to determine its meaning and scope.

The constitutional rule requires each Chamber of Parliament to choose a Standing Bureau (first sentence) and a president (second sentence). At infra-constitutional level, art. 22 (1) of the Senate's Regulations provides that "*following the statutory setting up of the Senate, the President of the Senate and the other members of the Standing Bureau shall be elected*"". From a literal-grammatical reading of the legal rule, the Court noted that the explicit and exhaustive list of "the president of the Senate and the other members of the Standing Bureau" demonstrates, on the one hand, that the president of the Senate is a member of the Standing Bureau and, on the other, that the president of the Senate has a distinct legal status within the Standing Bureau. The same conclusion follows from the interpretation of art. 22 (2) of the Regulations, which, after establishing the composition of Standing Bureau of the Senate (the president of the Senate, 4 vice-presidents, 4 secretaries and 4 quaestors) states that *"the president of the Senate shall also act as president of the Standing Bureau*". With regard to the duration of the term of office in the management positions of the legislative forum, the constitutional rule states that "*the president of the Chamber of Deputies and the president of the Senate shall be elected for the duration of the term of office of the Chambers*" (second sentence) and "*the other members of the Standing Bureaux shall be elected at the beginning of each session*" (third sentence of the rule). Finally, the fourth sentence of art. 64 (2) of the Constitution states that "*members of the Standing Bureaux may be removed from office before their term of office expires*".

Moreover, as regards the interpretation of the constitutional rule, by Decision no. 601/2005 and Decision no. 602/2005, the Court held that it follows from the constitutional provisions of art. 64 "that the president of the Senate is a member of the Standing Bureau of the Senate and that, upon the setting up of the Standing Bureau, that is to say, upon the election of its members, including the president of the Senate, and their removal from office before the expiry of the term of office, account is taken of the criterion of political configuration of that Chamber. It follows from the constitutional texts that the president of the Senate has a legal status distinct from that of the other members of the Standing Bureau. The president of the Senate is a member as of right of the Standing Bureau of the Senate, which is clearly apparent from the text of the Constitution, and one of the consequences is his/her election before the setting up of the Standing Bureau by electing the other members. Unlike the other members of the Standing Bureau, who are elected at the beginning of each session, the president of the Senate is elected at the beginning of the parliamentary term for the duration of the term of office of that Chamber".

In view of the status of the president of the Senate as a rightful member of the Standing Bureau, the Court implicitly found that he/she may be removed from office, since the rule laid down in the fourth sentence of art. 64 (2) applies indistinctly to all members of the Standing Bureaux, regardless of how they have acquired that status: by direct elections, or indirectly,

[14] Also see CCR Decision no. 307/2012, published in the Official Gazette of Romania, Part I, no. 293 of 4 May 2012.

[15] CCR Decision no. 307/2012, published in the Official Gazette of Romania, Part I, no. 293 of 4 May 2012, CCR Decision no. 783/2012, published in the Official Gazette of Romania, Part I, no. 684 of 3 October 2012 and CCR Decision no. 628/2014, published in the Official Gazette of Romania, Part I, no. 52 of 22 January 2015.

after having obtained the status of president of the Chamber. It is clear that, in interpreting the constitutional rule, in the case of the president of the Chamber, the removal from office operates in terms of the status of member of the Standing Bureau, a situation expressly provided for in the legislative text, and, implicitly, from the position of president of the Chamber, a situation arising from the president of the Chamber's status of member as of right. In other words, although the constitutional rule does not expressly provide for the possibility of the presidents of the two Chambers of Parliament being removed from office, it follows from a logical and systematic interpretation of the four sentences of art. 64 (2) that, as members as of right of the Standing Bureaux, they may be removed from their offices of presidents of the Chambers. In their case, since the status of member of the standing bureau is derived from that of president of the Chamber, both of which statues are interdependent, the removal from office can only operate simultaneously from both management positions.

Thus, the Court found that the provisions of the fourth sentence of art. 64 (2), which govern the removal from office of members of the Standing Bureaux, also cover the removal from office of the presidents of the two Chambers, since the rule constitutes the constitutional basis for the application of such a penalty to the elected members of the Standing Bureaux and to the members as of right of those governing bodies alike.

The Court therefore found that the allegations made by the authors of the challenge of unconstitutionality that the possibility of removing from office members of The Standing Bureaux applies only to members who are elected to that office and cannot concern the two presidents of the Chambers of Parliament found no substantiation in the provisions of art. 64 (2) of the Constitution, with the result that such a challenge will be dismissed as unfounded.

Next, having examined the referral of unconstitutionality, the Court found that, in accordance with art. 64 (5) of the Constitution, the Standing Bureaux are elected and made up so as to reflect the political spectrum of each Chamber. As a rule, the president of the Chamber of Deputies/Senate is elected first, for the duration of the Chambers' term of office, and subsequently, on the basis of proposals from the parliamentary groups, the other members of the Standing Bureau (vice-presidents, secretaries, quaestors) are elected for the duration of a session. Appointment is of an exclusively political nature and reflects the proportion of parliamentary groups in that Chamber. Termination of the status of member of the Standing Bureau, regardless of the position held, take places on expiry of the term of office entrusted or before such expiry. In the latter case, the term of office may be terminated before expiry by removal from office or automatically.

According to the case-law of the CCR, termination of the term of office of the President of the Chamber occurs as a result of the removal from office, which is ordered solely for legal reasons and is regarded as an expression of a penalty of the same kind, or automatically in respect of acts/deeds which, by their nature, are not capable of constituting grounds for removal from office and cannot be the subject of a decision-making vote, being either matters of fact (death) or an express unilateral manifestation of the intention of the person concerned (resignation), or are related to the delivery of a court ruling (*e.g.* loss of electoral rights) or loss of membership of the parliamentary group or of the political support enjoyed by the person concerned[16].

In the given context, the Court noted that Senate's Resolution no. 131/2021 is a decision of individual scope whereby it was ordered the early termination of the term of office of the president of the Senate. Thus, it was for the Court to verify whether that resolution falls within the situations identified in the case-law of the Court and, depending on the outcome of that review, to decide whether it complies with the constitutional requirements relating to the ways and means of terminating the term of office before the expiry of the term.

The Court noted that the resolution under examination concerns the removal from the office of president of the Senate, which might lead to the conclusion that the measure ordered constitutes a legal penalty imposed on her for infringing the Constitution, the law or the parliamentary regulations. However, having examined the verbatim report[17] of the Senate's sitting of 23 November 2021, the Court found that the removal from office was based on the premise that the president of the Senate no longer enjoys neither the support of the alliance which proposed the president in December 2020 nor the one of the current parliamentary majority, a reason why "the principle of the majority decision, resulting from the pluralistic and democratic nature of the Romanian State, enshrined in art. 1 (3) of the Constitution, and from the elective and representative nature of the parliamentary mandate, becomes applicable (...). On the basis of that principle, both in the organisation and in the work of Parliament, the rule that «the majority decides, and the minority speaks» is the one that operates". Thus, having regard to the reason underlying the issuance of the resolution, the Court found that the removal from office was not

[16] CCR Decision no. 467/2016, published in the Official Gazette of Romania, Part I, no. 1029 of 4 December 2018, para. 50 and 58.
[17] Published in the Official Gazette of Romania, Part II, no. 182 of 13 December 2021.

the result of a penalty giving rise to the legal liability of the holder of the office. Since, by its content, the resolution does not penalise deviations from the requirements of legality necessary for the performance of the office, it means that the removal ordered is not subsumed to the concept of removal from office as a legal penalty.

The Court also noted that the reason underlying the adopted resolution does not fall within the scope of reasons which may lead to the automatic termination of the term of office. The Court found that the reason for the automatic termination of the term of office consisting of the loss of membership of the parliamentary group or of the political support enjoyed by the person concerned does not apply in the present case, because the parliamentary group did not order such political measures. On the contrary, the president enjoys, even after her removal from office, the political support of that parliamentary group.

The Court noted, however, that the constitutional dispute concerns whether the withdrawal of political support to the person holding the office of president of the Senate can be carried out by a parliamentary majority composed of several parliamentary groups formalized in a government coalition the formation of which has also led to the investiture of a new government. The Court noted that there is no precedent in its case-law on the review of constitutionality of a resolution for removal from office issued on account of such a particular situation, which makes use of political elements of legal significance in the relationship between Parliament and the Government. Naturally and inevitably, the specific circumstances justifying such a decision differ from case to case, so that the resolution contains a specific and particular substrate, which is why the Court can only carry out a case-by-case analysis.

The particularity of the case under consideration lied in the fact that the office of president of the Senate was obtained through the political support of a parliamentary majority composed of political parties/formations which at some point constituted a government coalition. The parliamentary group to which the president of the Senate belonged withdrew on its own initiative from the governing coalition, so a new coalition was formed on the basis of a new parliamentary majority with the votes of which a new government was invested.

Therefore, as a matter of principle, the withdrawal of a party from a governing coalition results in either a government reshuffle or the termination of the mandate of that government. Moreover, such a withdrawal, followed by the initiation, voting and adoption of a motion of censure, as was the case here, automatically results in the termination of the mandate of the Government. Consequently, under the given circumstances, by establishing a new parliamentary majority, the political offices held are entering into a process of natural reassessment. However, having regard to the importance of the offices of president of the two Chambers, the constitutional requirement is to avoid the instability of those offices solely in the light of a purely political/circumstantial assessment and to make removal from office subject to the existence of a substantial change at governmental level. Thus, the penalty cannot be purely political or purely legal, but it has a dual (mixt) nature, namely a politico-legal one, since the strictly political act of the formation of a new coalition, by a new parliamentary majority, has led to substantial changes of public law, of constitutional law, by the formation of a new government based on the political support of the new majority.

Therefore, the new parliamentary majority is not one established based on circumstantial grounds simply to remove the president of the Chamber from office, but, on the contrary, its aim was to bring about a new configuration of the constitutional relations between Parliament and the Government. The new majority expressed by vote the political will of investiture of a new government and, as a consequence of the formation of the new government coalition, the political support to the president of the Senate belonging to a parliamentary group that is no longer part of that coalition was withdrawn.

The Court noted that the investiture of the Government by the new parliamentary majority is a politico-legal act determined by changes in the parliamentary majority. The legal nature is expressed precisely by the constitutional legal relationship between Parliament and the Government, the latter being under parliamentary scrutiny. The office of president of a Chamber not only ensures the institutional liaison with the Government, but also has a symbolic value in terms of Parliament's power, so that the change of parliamentary majority and the investiture of a new government are, logically, sufficient grounds to justify the change of the office holder.

Next, the Court found that the use of the term "removal from office" in such a situation is more appropriate than the use of the term "automatic termination", since the removal from office takes place by a decision expressed, that is to say, a decision-making act, involving a vote of the same nature, whereas the automatic termination is the result of a finding of fact and is expressed by a vote establishing the facts. In addition, the removal from office expresses the idea of a penalty which, as has been stated, may be legal or politico-legal, depending on the circumstances of the case. In the present case, it expresses a politico-legal penalty which may be imposed by the plenary of the Senate only in the mentioned circumstances.

In the light of the foregoing, the Court found that the change of political majority can give rise to a politico-legal penalty at the level of the office of president of the Chambers of Parliament only in so far as, beforehand, it has had legal consequences, such as the investiture of a new Government. That penalty constitutes a natural effect of the new existing factual and legal situation and its meaning must be confined within a broader context which takes account of the political and legal changes brought about by the change of parliamentary majority.

The Court also stressed that the provisions contained in the regulations of the Chambers of Parliament must be consistent with the constitutional provisions and with the decisions of the Constitutional Court. In this context, the Court noted that art. 29 of the Senate's Regulations, *i.e.* the legal ground at the statutory level for the removal from office of the president of the Senate, was not brought into line with Decision no. 601/2005, whereby the Court found that the legislative solution contained in the Regulations was unconstitutional, so that the dismissal of the president of the Senate is now carried out through the direct application of art. 64 (2) of the Constitution. Thus, more than 16 years after the date on which the Regulations' provisions were declared unconstitutional, the Senate failed to fulfil its constitutional duty to bring those provisions into line with the provisions of the Constitution. However, it falls within its constitutional duty to create the appropriate procedural conditions for the removal of the president of the Senate from office. In addition to those obligations, in matters relating to the organization and functioning of the Chambers, for which there are no express or implicit constitutional requirements, the Chambers are free to decide autonomously, in accordance with the principle of regulatory autonomy, which is exercised by the majority of the members of the Chambers and is manifested by vote.

4. Conclusions

So, given all of the above, is the removal from office of the President of the Senate or the Chamber of Deputies just an element of political opportunity? Obviously, the answer is in the negative, considering that a factual situation is examined in terms of compliance with the Basic Law, in applying the role of the CCR as the authority of constitutional jurisdiction in Romania.

Of course, both the Standing Orders of the Chamber of Deputies and the ones of the Senate provided for the possibility of removing from office the members of the Standing Bureau, including the Presidents of the Chambers, but, as the Constitutional Court found in its case-law[18], those provisions did not accurately transpose the constitutional provisions of art. 64 para. (2) final sentence, according to which "members of the permanent bureaus may be revoked before the expiration of the term". As such, in the absence of an intervention of the primary legislator or of the delegated one, it was the Constitutional Court that outlined the constitutional dimensions in which the particular case of the removal from office of the Presidents of the Chambers should have been regulated.

As we can see, with regard to the removal from office of the Presidents of the two Houses of Parliament, the Court is called upon to "arbitrate", by way of constitutional review, situations arising in parliamentary practice which have a pronounced political nature, such as the political configuration of the Chamber of Deputies and of the Senate, the loss of political support, the investment of the Government etc. This does not mean, however, that the court discards from its jurisdictional feature, even if the doctrine[19] has shown that it is "a public politico-jurisdictional authority".

On the other hand, we emphasize that the Romanian legislation does not provide specific sanctions for non-execution of the decisions of the CCR, and the latter cannot replace the Parliament or the Government in the sense of amending or supplementing the piece of legislation subject to constitutional review, respectively to become a positive legislator. This is a direct consequence of the fact that a review exercised by the Court is exclusively one of constitutionality, in all cases in which it rules on the normative acts subject of the notifications addressed to it.

As practice has shown, the prompt reaction of the primary or delegated legislator to amend the law [respectively the act deemed as unconstitutional] and to agree it with the Basic Law, according to the decision of the CCR, depends on the loyal constitutional behaviour of these authorities. The importance of this principle has been emphasized by the CCR, which has ruled that it is primarily the responsibility of public authorities to apply this principle in relation to the values and principles of the Constitution, including in relation to art. 147 (4) of the Constitution on the general binding nature of the decisions of the CCR[20]. The Court thus emphasized the importance of cooperation

[18] See, for example, CCR Decision no. 62/2005, published in the Official Gazette of Romania, Part I, no. 153 of 21 February 2005.
[19] See I. Muraru, E.S. Tănăsescu (coord.), *Constituția României. Comentariu pe articole [The Romanian Constitution. Comment on articles]*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2019, p. 1283.
[20] CCR Decision no. 795/2016, published in the Official Gazette of Romania, Part I, no. 122 of 14 February 2017.

between the powers of the state, for the proper functioning of the rule of law, which should be showed in the spirit of constitutional loyalty. The loyal behaviour is an extension of the principle of separation and balance of power provided for and guaranteed by art. 1 para. (4) and (5) of the Constitution, all the more so when fundamental principles of democracy are at stake.

As such, it is undeniable that the analysis of the rules on the removal from office of the President of one of the Houses of Parliament relates exclusively to constitutional rules and principles.

References

- I. Muraru, E.S. Tănăsescu (coord.), *Constituția României. Comentariu pe articole [The Romanian Constitution. Comment on articles]*, 2nd ed., C.H. Beck Publishing House, Bucharest, 2019;
- CCR Decision no. 44/1993, published in the Official Gazette of Romania, Part I, no. 190 of 10 August 1993;
- CCR Decision no. 46/1994, published in the Official Gazette of Romania, Part I, no. 131 of 27 May 1994;
- CCR Decision no. 98/1995, published in the Official Gazette of Romania, Part I, no. 248 of 31 October 1995;
- CCR Decision no. 17/2000, published in the Official Gazette of Romania, Part I, no. 40 of 31 January 2000;
- CCR Decision no. 47/2000, published in the Official Gazette of Romania, Part I, no. 153 of 13 April 2000;
- CCR Decisions no. 53 and no. 54 of 25 January 2011, published in the Official Gazette of Romania, Part I, no. 90 of 3 February 2011;
- CCR Decision no. 667/2011, published in the Official Gazette of Romania, Part I, no. 397 of 7 June 2011;
- CCR Decision no. 1630/2011, published in the Official Gazette of Romania, Part I, no. 84 of 2 February 2012;
- CCR Decision no. 1631/2011, published in the Official Gazette of Romania, Part I, no. 84 of 2 February 2012;
- CCR Decision no. 209/2012, published in the Official Gazette of Romania, Part I, no. 188 of 22 March 2012**;**
- CCR Decision no. 307/2012, published in the Official Gazette of Romania, Part I, no. 293 of 4 May 2012;
- CCR Decision no. 783/2012, published in the Official Gazette of Romania, Part I, no. 684 of 3 October 2012;
- CCR Decision no. 628/2014, published in the Official Gazette of Romania, Part I, no. 52 of 22 January 2015;
- CCR Decision no. 467/2016, published in the Official Gazette of Romania, Part I, no. 754 of 28 September 2016;
- CCR Decision no. 25/2020, published in the Official Gazette of Romania, Part I, no. 122 of 17 February 2020;
- Law no. 96/2006 on the statute of deputies and senators, republished in the Official Gazette of Romania, Part I, no. 49 of 22 January 2016, as subsequently amended and supplemented.