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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

CONSTITUTIONAL ISSUES

IN ROMANIA

DECISIONS, RULINGS AND OPINIONS OF THE CONSTITUTIONAL COURT

(Translations from Romanian provided by the Romanian Authorities)

Table of Contents

ADVISORY OPINION no. 1 of 6 July 2012 of the Constitutional Court, concerning the proposal to suspend from office the President of Romania, Mr. Traian Băsescu

Published in the Official Journal of Romania no. 456 of 6 July 2012

By means of Letter no. 1/1.023/VZ dated 5 July 2012, the two chambers of the Parliament of Romania requested the Constitutional Court, in accordance with the provisions of Article 95 and Article 146 (h) of the Constitution of Romania, of Articles 42 and 43 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, as well as of Articles 67 and 68 of the Regulation of reunited meetings of the Chamber of Deputies and of the Senate, to issue, no later than 6 July 2012, 12:00 hours, the advisory opinion on the proposal to suspend from office the President of Romania, Mr. Traian Băsescu.

The letter was registered with the Constitutional Court under no. 4.617 dated 5 July 2012, forming the object of File no. 1,200H/2012, together with the following documents:

- the proposal to suspend from office the President of Romania, Mr. Traian Băsescu, initiated by 154 deputies and senators;
- the letter sent to the President of Romania by the chairpersons of the two Chambers of the Parliament on 4 July 2012, informing the latter of the submission of the proposal of suspension from office and advising the date of the joint meeting of the two Chambers of 5 July 2012, 10:00 hours, on the agenda of which the request for suspension was included;
- the shorthand of the reunited meeting of the Chamber of Deputies and of the Senate, from 5 July 2012.

Having analyzed the request for intervention submitted to the file, after deliberations, the Court dismissed the requests submitted.

Having examined the proposal to suspend Mr. Traian Băsescu from the office of the President of Romania, the standpoint delivered by the President of Romania and the other documents indicated herein above, the Constitutional Court ascertains as follows:

1. The provisions of the Constitution of Romania which, in accordance with the proposal to suspend from office, were infringed by grave acts committed by the President of Romania, Mr. Traian Băsescu, are as follows: Article 1 (3), (4) and (5) – the Romanian State; Article 8 – Pluralism and political parties; Article 16 – Equality of rights; Article 21 – Free access to justice; Article 23 (3) – Individual freedom; Article 34 – Right to protection of health; Article 47 (2) – Living standard; Article 77 – Promulgation of laws; Article 80 – the President of Romania; Article 82 (2) – Validation of mandate and oath-taking; Article 84 – Incompatibilities and immunities; Article 102 – Role and structure of the Government; Article 134 (2) – Powers of the Superior Council of Magistracy; Article 142 (2) – Structure of the Constitutional Court; Article 147 – Decisions of the Constitutional Court; Article 150 (1) – Initiative to revise the Constitution.

2. Article 95 (1) of the Fundamental Law stipulates that the President of Romania may be suspended from office "*in case of having committed grave acts infringing upon constitutional provisions*".

Given that the constitutional provision fails to define the notion of "*grave acts*", in order to determine whether the conditions are met to suspend from office the President of Romania, the Constitutional Court, through Advisory Opinion no. 1 dated April 5, 2007

on the proposal to suspend from office the President of Romania, Mr. Traian Băsescu, published in the Official Journal of Romania, Part I, no. 258 of 18 April 2007, stated that "*It is obvious that an act, namely an action or an inaction, infringing upon the constitutional provisions, is grave in relation to the very object of the infringement. However, in regulating the procedure to suspend from office the President of Romania, the Constitution does not stick to this meaning as, in this case, the phrase <<grave acts>> would have no meaning. Analyzing the distinction contained in the provision quoted above and taking into consideration the fact that the Fundamental Law is a normative legal document, the Constitutional Court finds that not any act infringing upon the constitutional provisions may justify the suspension of the President of Romania from office, but only <<grave acts>>, having the complex meaning held by this notion in the science and practice of law. From the legal standpoint, the severity of an act is assessed depending on the value it prejudices, as well as its damaging consequences, occurred or potential, on the means used, on the person of the author of the act and, not last, with the subjective position thereof, on the purpose for which the act was committed. By applying these criteria on the acts infringing upon the constitutional legal order referred to in Article 95 (1) of the Fundamental Law, the Court notes that there may be deemed as grave acts infringing upon the constitutional provisions the acts of decision or circumventing the fulfillment of certain mandatory decision acts, whereby the President of Romania would hamper the functioning of public authorities, would suppress or restrict the rights and freedoms of the citizens, would disturb the constitutional order or would seek to change the constitutional order or other acts of similar nature, which would or could entail similar effects*."

3. The proposal to suspend from office the President of Romania, Mr. Traian Băsescu, is divided into the preamble and 7 chapters representing the reasons underlying the suspension proposal, setting forth several infringements or categories of infringements upon the constitutional provisions.

3.1. In the preamble of the proposal to suspend from office, it is stated that, "*starting with 6 December 2009, democracy and the rule of law witnessed an extensive process of erosion, of replacing the institutions of the state subject to the rule of law provided by the Constitution of Romania, reaching the situation where the political will and action are concentrated, in a discretionary and unconstitutional manner, in the hands of a single individual – the President of the country*", who "*came to dictate to the executive power, to the legislative and judicial powers, which equals to a grave departure from the fundamental principles of the Constitution of Romania*".

At the same time, it is emphasized that "*under such circumstances, the institutions of the democratic state, as defined in the Constitution of Romania, in accordance with the principle regarding the separation of State powers, were faced with the practical impossibility to continue their function. Most of the major political decisions in the past 3 years were taken outside the framework of democratic functioning of the State and against the will of the people. It may be stated that the spirit of the Constitution and the principles of the state subject to the rule of law have been infringed concomitantly with the creation of the Government led by Emil Boc. The latter was vested in office based on the votes expressed by Parliament members allured to take the side of the power by practices relating to political corruption. At the same time, the infringement of the spirit of the Constitution continued with every one of the laws having a major impact on the Romanian society, adopted by the Legislative through the procedure engaging the liability of the Government, leading to catastrophic consequences for the Romanian society.*

The consequences of these political acts were not only the deterioration in the functioning of the democratic institutions of the State, to such an extent that the very

existence of the state subject to the rule of law was questioned, but also the grave decline of the people's living standard, the extension of the poverty, the bankruptcy of thousands of business entity, the grave depreciation of Romanian equity and the dissolution of the middle class.

In fact, the Romanian State ceased to fulfill part of its fundamental functions, such as the provision of medical care, education, public order, ensuring a minimum living standard for disfavored social categories. Most of the laws promoted by the Executive through the procedure of engaging its liability in front of the Parliament were misconceived and misapplied, the Boc Government being forced to engage its responsibility for several times for laws regulating the same field precisely because the enactments initially adopted by the Liberal Democratic Party proved to be erroneous (for instance, in the field of the salaries of State employees the Government engaged its liability in December 2009, June 2010, December 2010). From the Cotroceni Palace, the President dictated both the form of and the method for adopting the law, meant to evade the democratic process, namely the legislative debate in the Parliament.

This legislative chaos triggered by the regime mastered by President Băsescu led to the circumstances that allowed the initiation of a great number of litigations before the courts of law, as regards the salaries of State employees, litigations that were generally lost by the Romanian State.

An analysis of the political events occurred in the past 3 years shows that the one who generated, devised and maintained the alteration process of the democratic State was President Traian Băsescu.

Despite the fact that the Constitution stipulates that the President holds the role of a mediator among the powers of the State in order to ensure the appropriate functioning of public authorities, Traian Băsescu, in the name of the political ideology of the <<player president>>, directly took over the management of the State institutions, being directly responsible for most of the decisions that led to the collapse in the functioning of the institutions of the Romanian State, the intensification of the economic crises, the current deadlock of the state subject to the rule of law and jeopardy for the very fundamental functioning principles of the democratic state. The president's actions equaled an infringement upon the principle of separation of State powers, having an attitude of defiance and disparagement against the State institutions, by a publicly displayed excess of authority.

The overt actions of President Traian Băsescu, who assumed in an open and unequivocal manner the role of prime-minister and de facto president of the Liberal Democratic Party and who sought to dominate and subordinate the Legislative and the judicial power, pose grave concerns in the political and judicial fields.

There is no other alternative for the President to be held liable for his actions, except for the referendum of the people, subject to the conditions of Article 95 of the Constitution."

Furthermore, the preamble of the proposal to suspend the President of Romania from office sets forth that, "*in accordance with the Constitution of Romania, the Government, under the control of the Parliament – the supreme representative body of the Romanian people -, ensures the implementation of the domestic and foreign policy of the country and achieves the general management of public administration (Article 102).*

The Government falls under the control of the Parliament through democratic instruments such as motions, enquiries, questionings, investigation commissions,

parliamentary debates. On the other hand, the Constitution bestows an important role upon the President, and the latter may only be dismissed by the direct vote of the people, given that he does not hold a direct executive role.

This is the reason why the President taking over the role of the prime-minister and the powers of the Government has to be regarded as a grave infringement upon the Constitution, because the president, unlike the prime-minister, is not held liable for his acts before the Parliament, but only by means of the suspension/dismissal procedure, in other words he eludes the customary, mutual, democratic control of the powers in State. For this reason, this document will particularly insist on this type of infringement upon the Constitution by Traian Băsescu."

Thus, "*considering that the acts of the President of Romania are extremely grave and likely to endanger the functioning of the State institutions, the signatories of the proposal to suspend the President of Romania from office, senators and deputies, believe that it is mandatory to convene a referendum of the people as soon as possible, whereby the Romanians are given the possibility to say directly, by vote, whether they agree with Traian Băsescu's acts and with the policies initiated and imposed by him, infringing the constitutional provisions referring to the role of institutions in a democratic state.*

The referendum of the people is necessary because there is a significant list of infringements upon the Constitution. Concurrently, it should also be regarded in relation to the extremely grave consequences of these infringements by the President of Romania. The entire economic and administrative disaster triggered by the Emil Boc Government may be attributable, in fact, to Traian Băsescu's actions, performed outside the constitutional framework.

This is all the more important as the repeated departures from the letter and spirit of the Constitution, committed in the exercise of his office, which, by their content and consequences may be classified as grave infringements of the fundamental law, provide sufficient reasons to persuade us of the necessity to suspend from office the President of Romania, Traian Băsescu, within the meaning of the provisions of Article 95 (1) of the Constitution of Romania."

As regards these allegations contained in the preamble of the proposal to suspend the President of Romania from office, the Court finds that they fail to specify the items required to identify and characterize the acts of infringement upon the Constitution, or the proofs underlying the accusations, so the Court shall analyze the reasons contained in the 7 chapters of the suspension proposal.

In this respect, the Court shall have regard to the following provisions of the Fundamental Law, concerning the role, duties and powers of the President of Romania in his relations with the public authorities: Article 63 (3) – Term of office for members of the Parliament; Article 65 (2) (a) and (h) – Sittings of the Chambers; Article 66 (2) - Sessions; Article 77 – Promulgation of laws; Article 85 – Appointment of the Government; Article 87 – Participation in meetings of the Government; Article 89 (1) – Dissolution of Parliament; Article 90 - Referendum; Article 91 – Powers in matters of foreign policy; Article 92 - Powers in matters of defense; Article 94 – Other powers; Article 103 (1) - Investiture; Article 104 (1) – Oath of allegiance; Article 107 (3) – Prime Minister; Article 109 (2) – Responsibility of members of the Government; Article 125 (1) – Statute of judges; Article 133 (6) – Role and Structure of the Superior Council of Magistracy; Article 134 (1) – Powers of the Superior Council of Magistracy; Article 146 (a) and (e) – Powers of the Constitutional Court; Article 148 (4) – Integration into the European Union; Article 150 (1) – Initiative to revise the Constitution.

As stated by the Constitutional Court in its Advisory Opinion no. 1 of 5 April 2007, it derives, from these constitutional provisions, that the President of Romania "*holds significant powers in the process for the formation of the Government and other public authorities, in the legislative process, in the field of foreign policy, in the field of national defense, in securing the independence of justice. At the same time, in accordance with Article 80 (1) of the Constitution, the President of Romania is the safeguard of the national independence, unity and territorial integrity of the country, while, in accordance with paragraph (2) of the same Article, the President of Romania shall guard the observance of the Constitution and the proper functioning of the public authorities and shall act as a mediator between the powers in the State, as well as between the State and society. The constitutional powers, as well as the democratic legitimacy granted by his having been elected by the electorate of the entire country require the President of Romania to play an active role, and his presence in the political life cannot be narrowed down to a symbolic and protocol exercise. The guarantee and supervision functions, decided by Article 80 (1) of the Constitution involve by definition the careful observance of the existence and functioning of the State, the vigilant supervision of the manner in which the actors of the public life – public authorities, organizations acknowledged by the Constitution, the civil society – act and of compliance with the principles and rules set forth by the Constitution, protecting the values contemplated by the Fundamental Law.*"

Furthermore, through the same document, the Court ascertained that "*the President of Romania may, in light of his powers and legitimacy, express political opinions and options, raise observations and challenges in relation to the functioning of public authorities and the representatives thereof, proposing the reforms or measures which he deems advisable for the national interest. However, the President's opinions, observations, preferences or requests do not have a decisional character and do not entail legal effects, the public authorities continuing to be exclusively liable for agreeing or disregarding them. At any rate, the President's exercise of an active role in the country's political and social life cannot be deemed to represent a behavior contrary to the Constitution.*"

3.2. Chapter I of the suspension proposal emphasizes that "*the President usurped the Prime Minister's role and stepped into the constitutional powers of the Government*."

Thus, "*through his political behavior, the President promotes a continuous condition of infringement of the constitutional framework, took over the role of the Government in adopting economic and social decisions and exercised the powers specific to the position of Prime Minister, in grave breach of the Constitution.*

The President's actions triggered economic and social measures envisaging vulnerable social categories, such as retired persons and children. Traian Băsescu contributed to worsening the difficulties of these categories when he firmly supported the cutting or taxation of pensions or when he wanted to be "tougher", as he himself assessed in the announcement referring to the non-payment of allowances for children, on 8 December 2010: <<At any rate, I have noticed that lately Romania no longer has women, but mammies. This entire country became a country of mammies and little babies.>>"

Furthermore, the authors of the suspension proposal insist that "*the President becoming a prime minister was openly assumed by Traian Băsescu. Thus, although many of the public documents bore the signature of Emil Boc or of the representatives of other institutions, they are the result of Traian Băsescu's personal will: <<And as regards the main axes to be further discussed by the Government and the delegation of the Fund, I can present them and I also assume them, as solutions, together with the*

Government. First of all, we are dealing with the reduction by 25% of the salary fund for all employees of the Romanian State, and, until the end of the year, the heads of institutions have the obligation to make their selections, to choose the best individuals, and not the political clientele, in such a manner that, in 2011, maintaining the salary frame and hoping for an economic increase, the salaries may come back to their present level. This measure needs to be adopted starting with 1 June. At the same time, in respect of the pensions, the Government shall maintain the transfer of EUR 1.7 billion to the pension fund, but in order to cover the pensions at their present level – in numbers and as level of payment – we need another approximately EUR 500 million, which does not exist, this money does not exist. As such, a reduction of the pensions by 15% is predictable.>>

6 May 2010

<<The solution that I and the Government proposed to the Romanians is a solution reflecting what Romania can bear, at this time, and an alternative to the rapid increase of the country's indebtedness degree.>>

11 May 2010

<<I am well aware that neither I, nor the Government, or most of the Members of the Parliament adopted these measures with pleasure, on the contrary, they were adopted thinking of the ones affected by the revenues reduction measures.>>

6 February 2011

<<Consequently, I decided, together with the governor, the Prime Minister, the Minister of Finance that this amount, if kept available to Romania for an unpredictable crisis situation, suffices to cover and avoid an imbalance generated by what could happen in other countries, in the European Union or in the region.>>

6 February 2011

<<The law needs to be adopted now, because the first generation beginning school under this new legislation needs to have books adapted to the new education system, appropriate premises, trained and reoriented teachers. However, my option, and also the option expressed by the Alliance was that this law needs to be adopted before the end of this year.>>

14 December 2010

<<The fact that the diagnosis of the Presidential Commission corresponds to the assessments that we have received, conducted by UN bodies, means that my option to change the education law was a correct choice.>>

14 December 2010

<<My option is in favor of a precautionary agreement. That precautionary agreement concluded with the Fund, the European Union, the World Bank, but which, this time, no longer targets the safety belt.>>

14 December 2010"

The authors of the proposal to suspend from office the President of Romania also emphasize that "*there are endless situations when the President acted as Prime*

Minister, assuming measures such as the preparation of a new education law or reducing the salaries and pensions. In other instances, the President gave specific orders to the Boc Government (the arrears on medicines need to be no longer paid etc.). Each and every time, the President's <<standpoints>> became the law in Romania.

Another situation occurred when the President reunited ad-hoc groups in order to discuss certain concerns which, in accordance with the Constitution, fall under the competence of governmental structures, as it happened in January 2011, in relation to the pensions of militaries. A reunion of a task force of the President took place at that time, directly deciding the actions to be followed by the Government in order to get out of a certain administrative choke (to issue an ordinance, a Government decision etc.).

However, the most grave was the situation triggered by the announcement made by the President in May 2010 referring to cuts in salaries and pensions. In that case, the President did not only replace the Executive, but the measures he announced proved to be unconstitutional, at least in respect of the pension cuts. Thus, at least in this specific case quoted above, the President acted directly, requesting the Government to enforce certain measures, Emil Boc obeyed, but the measures turned out to be unconstitutional. It is obvious that we dealt with an extremely grave situation, and the President can no longer evade direct liability: he ordered the Government to act outside the constitutional framework. Moreover, the measures imposed by the President entailed extremely grave economic and social consequences: countless Romanian citizens faced poverty."

As regards these allegations, the Court notes that, in accordance with Article 102 (1) of the Constitution, the Government "*shall ensure the implementation of the domestic and foreign policy of the country, and exercise the general management of public administration*", while, in accordance with Article 80 of the Constitution, *"(1) The President of Romania shall represent the Romanian State and is the safeguard of the national independence, unity and territorial integrity of the country.*

(2) The President of Romania shall guard the observance of the Constitution and the proper functioning of the public authorities. To this effect, he shall act as a mediator between the Powers in the State, as well as between the State and society."

The fact that the President of Romania, through his political behavior, publicly assumed the initiative of taking economic and social measures, before they have been adopted by the Government, by assuming the responsibility, may be held as an attempt to diminish the role and powers of the Prime Minister.

That is why this attitude, of which Mr. Traian Băsescu is accused, may not be classified within the concept of "*political opinions and options*", as determined by the Constitutional Court, through Advisory Opinion no. 1 of 5 April 2007, according to which the President of Romania may, in light of his powers and legitimacy, express, submit observations and challenges in respect of the functioning of the public authorities and the representatives thereof.

3.3. In chapter II of the suspension proposal, it is stated that the "*President repeatedly infringed the fundamental rights and freedoms of the citizens, as provided in the Constitution*."

In this respect, it is stated that "*By the statements made in the public space, contravening to the role and conduct of a president, Traian Băsescu intentionally infringed the fundamental rights and freedoms of the citizens, as provided in the*

Constitution in Article 23 (3) [...]. Nevertheless, the President of Romania announced on all media channels that in 2012 the State will not increase the salaries up to the level before the 25% cut thereof, despite the fact that the judges of the Constitutional Court decided that, starting with 1 January 2011, the amount of salaries needs to be reinstated to the level prior to the adoption of such diminishing measures. Both the fact that he announced the austerity measures in 2010, and the fact that they shall also be maintained during 2012, is a gesture of extreme irresponsibility and an open excess of his role and powers, as established by the Constitution.

Moreover, Traian Băsescu emphasized, on 19 September 2011 that 4.2 million employees cannot support 4.9 million retired persons.

<<4.2 million employees cannot pay for the pensions of 4.9 million of retired persons >>, said the President, during the oath-taking ceremony by the new Minister of Labor, Sulfina Barbu.

Thus, it is proven once more that the President is a pressure factor of a potential social conflict between active manpower and retired persons.

The retired persons are the ones who paid contributions and who should benefit now from the public pension system.

The right to pension and the amount thereof is guaranteed by the Constitution of Romania, expressly stipulating in Article 47 (2) the right to pension, as a fundamental right [...].

The Constitutional Court ascertained in June 2010, when notified in relation to the inconsistency with the Constitution of the "attempt" to diminish pensions by 15%, that the right to pension is a pre-created right, which has its origin in the period of the individual's active life, so that the President, instead of pointing fingers to a false culprit for the disastrous situation of Romania, in the person of the retired individual who worked and fairly gained the right to benefit from a pension, which is very low, as it is, should be a mediator between the State and the society, as stipulated in Article 80 (2) of the Constitution.

The President should recommend the identification of solutions for creating new jobs instead of lamenting over the number of retired persons for whom pensions need to be paid. It is public knowledge that the President looks down on this social class, "socially assisted", as he believes.

The President's <<support>> for retired persons and for employees, to an equal degree, was manifested in 2010, when he promoted the cutting of pensions and salaries.

The President's behavior is unconstitutional, infringing upon the provisions of Article 80 (2) of the Constitution [...], given that he takes the role of an authority issuing judgments of value contrary to the constitutional powers of mediation between the State and the society.

The President should not wait for a conflict so he can mediate it, on the contrary, he should prevent such situations."

In addition, the suspension proposal underlines that the President of Romania addressed "*repeated insults to the Roma community*". In this respect, it is stated that "*in 2007, Traian Băsescu was sanctioned by the National Council for Fighting against*

Discrimination (CNCD) for his statements referring to the Roma community. However, what is extremely grave is the relapse, of 18 October 2011, when the President Traian Băsescu received two more warnings from CNCD, one for his insulting statements referring to disabled individuals, and the other for new offending statements referring to the Roma community.

Thus, the relapse proves that the attitude of Mr. Traian Băsescu is sometimes governed by racism and xenophobia, incompatible with his capacity of president of a Member State of the European Union and with the Constitution of Romania. Besides, the severity of the act per se is ascertained by the very decision rendered by CNCD, the relevant body of the Romanian State.

The advice to the doctors to leave the country, despite the national realities confirming a shortage of medical personnel, prejudices the right to the protection of health, as stated in Article 34 of the Constitution."

As concerns the President's unconstitutional acts and facts, "*an extremely grave one is the promulgation of the Pensions Law, passed by fraud in the Plenum of the Chamber of Deputies. The fact that the President's signature has been affixed on a document acknowledged to be the result of a gross theft of votes, which will go down in the black history of the Romanian Parliament, constitutes a grave infringement of the constitutional power referring to the promulgation of laws (Article 77 of the Constitution)*."

Another emphasis, in the same respect, refers to the "*attempts to intimidate the mass media, by including it in the vulnerabilities affecting the national security*". Thus, "*obviously irritated by the critics in the mass media at his address and at that of his closed ones, the President used his capacity as head of the Romanian Supreme Council of National Defense and included the mass media among the weaknesses threatening the national defense, identified in the National Defense Strategy, and the State institutions shall have the obligation, following the enactment of this document, to act against mass media entities and with a view to limit the freedom of expression*."

In relation to the allegations specified in chapter II of the proposal to suspend the President of Romania from office, the Court holds that the reasons invoked by the authors of the proposal in respect of the infringement upon certain fundamental rights, such as the right to work and the right to pension, cannot constitute elements triggering the prejudice of the substance of such fundamental rights. To this extent, the Court notes that the legislative measures referring to cutting salaries and pensions were adopted by the Government, by assuming responsibility [before the Parliament].

As regards Mr. Traian Băsescu's statements referring to the Roma community and his having been sanctioned by the National Council for Fighting against Discrimination, it is for the Parliament to decide, in reliance upon the data and information to be submitted during the debates, on the existence and severity of such acts.

In respect of the other statements made by the President of Romania, the Court notes that they are mere assertions, without constituting acts or facts able to lead to grave infringements upon the Constitution. Thus, the President's manifestations referred to by the authors of the suspension proposal may be characterized as opinions. Similar to these, there are also the considerations of Decision no. 53 of 28 January 2005, published in the Official Journal of Romania, Part I, no. 144 dated 17 February 2005, stating as follows: "*The Court finds that the opinions, judgments of value or assertions of the holder of a public dignity office – as is the case of the President of Romania, a single public authority, or the head of a public authority referring to other public*

authorities, stay within the limits of the freedom to express political opinions, with the limitations provided under Article 30 (6) and (7) of the Constitution."

3.4. In chapter III of the suspension proposal, it is underlined that "*The President repeatedly infringed the principle of separation of the powers in the State and the independence of justice*".

In this respect, it is emphasized that "*The President Traian Băsescu proved through his actual actions, performed throughout the 3 years of holding office, that he has an arbitrary vision, fully contrary to the principle of separation and balance among the powers in the State. Contrary to his role as a mediator among the powers of the State, as granted by the Constitution, Traian Băsescu caused crises in the relationships between the President's office and the main public authorities, breaching and disregarding their competences, disparaging their activity and prejudicing their credibility.*

The direct manner in which he demanded the Government to adopt laws, virtually without the Parliament, undermines democracy, in disregard of the law-maker's role, the democratic venue for debates created by the will of the people, by encouraging the procedure of the Government assuming liability, procedure that should be the exception, and not the rule.

The unprecedented attacks to justice, jeopardizing its independence, meanwhile instigating to disrespect of the law, are classified not only as unconstitutional, but touch upon the criminal sphere. The aberrant argument of the President, when talking about failure to enforce a court decision, without indicating the financing source, questions the mandatory character of a court decision, simultaneously denying the role of justice as a power in the State, as provided under Article 21 and Article 16 of the Constitution. In his opinion, justice had a worse effect on Romania than the politicians or the Romanians begging in Rome or Paris. We are witnesses, it seems, to an unprecedented attack to justice and to magistrates, for narrow electoral reasons, in order to dissimulate the inability of the Government he appointed in office on that date (Boc Government) to settle the actual issues of the country, such as Romania's accession to Schengen.

The President's attacks also targeted the Higher Chamber of the Parliament, the Senate of Romania. Traian Băsescu attacks in a direct manner the legislative power, represented by the Senate of Romania. By flagrantly breaching the same principle of separation and balance among the powers of the State, the President Traian Băsescu stated, on the Romanian National Television channel (TVR), at that time, that the health reform, the social security law and the justice-related laws need to be adopted by the Government assuming its liability, asserting that the Senate <<is compromised from the chairperson down to the last senator>>, deferring the discussions on such topics:

<<We discussed, with Prime Minister Boc to let them pass through the Parliament, although they were obligations undertaken by the Romanian State, now I cannot help but conclude that we cannot rely on the Parliament's wish to upgrade, to continue the reform processes. This means that the health reform, the justice-related laws, the laws referring to social security must be assumed by the Government, by assuming responsibility.>>

<<The Senate as a whole, the chairperson included, is compromised. To refuse to adopt the law on the creation of a mechanism for the promotion and selection of judges for the Supreme Court disqualifies the Senate. The only matter was to find a system

that would remove kin relations from the process of promotion to the Supreme Court, and the Senate disqualified itself.>>

Traian Băsescu's statements referring to the situation in the Senate are all the more grave considering that he not only gave instructions to the law-maker in respect of the enactments to be adopted, but even in relation to the form of their editing, an attitude that is incompatible with the Constitution and with the democratic principles. His attempt to determine the Senate to adopt such enactments in the form of his choice equals a grave attempt to devoid of content the legislative power, as provided under the Constitution."

It was also noted that the President gravely and repeatedly infringed the independence of justice. "*The abusive interventions in justice, the attempts to intimidate the magistrates, supporting a legislative initiative likely to create a political control over the magistrates' career, the repeated statements whereby the President betrays that he is aware of acts taken by the prosecutors in criminal prosecution files, the political siege of the Superior Council of Magistracy, all of the above are indicative of a decline of Romania as a State subject to the rule of law.*

Starting from the beginning of his second term of office, the President Traian Băsescu manifested a continuous interference in the judicial activity and authority, likely to directly prejudice the independence of justice and the principle of separation of the powers in the State. Infringing the powers of the Superior Council of Magistracy is another customary action for Traian Băsescu. In accordance with the Constitution, the Superior Council of Magistracy shall guarantee the independence of justice."

It is also underlined that "*Taking the role of the Superior Council of Magistracy is a grave departure from the constitutional rule, but Traian Băsescu has often taken this road:*

<<It is impossible not to pay full attention to the MCV report and, although we cannot accept the addition of conditions, we cannot help acknowledging the shortcomings which the Romanian justice still faces. I refer to the long court proceedings, the proceedings to delay the files before the Supreme Court (files on trial for 2 - 3 years and deferred and referred back to the prosecutors to be reviewed only two years later).>>

<<Judges overload their own activity, because they do not judge, they defer (...) it goes without saying that one reaches 100 and some files when the practice is to defer and not to judge. Please, the inspection with the Superior Council of Magistracy, I am curios to be delivered a standpoint to this effect: Out of 100 files assigned to one judge for a session, how many are deferred 15 times, disregarding the procedure?>>

<<I understand that the procedure is sacrosanct because it is intended to guarantee the rights of the parties during trials, especially during a criminal trial (...) However, taking advantage of guaranteeing rights, trials are deferred upon the attorneys' requests for almost no reason. If the summoning is tilted or if the signature of the prosecutor is affixed inside another field, do not refer the file back, because this did not prejudice the rights of the accused person during the trial >>, explained the President on 10 June 2011.

Nevertheless, accordance with the Constitution of Romania, Article 134 (2), the Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law. In such cases, the Minister of Justice, the

president of the High Court of Cassation and Justice, and the general Public Prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice shall not be entitled to vote. The President often attempted to interfere into the activity of the Superior Council of Magistracy or to put pressure on this institution.

Besides, the National Union of Romanian Judges (UNJR) reacted by means of a press release, aimed at drawing attention to the negative effects entailed by these repeated departures by the President on the functioning of the State subject to the rule of law. <<We believe it is our duty, as a professional association, to explain the role of the judge in the society, just as it is the role of the president to be correctly and fully informed prior to making extremely grave assertions, likely to affect the citizens' trust in the justice system and by which the judges are encouraged to breach the fundamental values of the judicial system.>>

Equally grave and having an overt intimidating role seem to be the statements dated 3 November 2011 referring to judges:

<<You are aware there is a custom for the losers of tenders to go to court and, from the sixth position, mister or madam judge rules they are the winners. I want you to be informed of the reactions of the European Commission as of late: "Do not enforce such judgments! We will no longer finance projects where the winner was decided in justice." A letter was received yesterday referring to a tender on a motorway section: "If this is what justice told you, finance it with money from the budget, but not with European money." It is the second reaction of this kind of the European Commission over a very short period of time. Thus, justice must also understand that it may not replace the Executive indefinitely.>>

<<Please also pay attention to the appointment of general managers, police chief inspectors. We are expecting the magistrates to tell us soon who to appoint with the SRI and maybe, in no time, you will decide by court decisions who the President of Romania is. Pay attention to the balance of powers in the State! Folks, you cannot be everything, legislative, and executive, and justice.>>

<< What would happen if, as soon as we enforced the court decisions ordering the payment of salaries, Romania faces a huge macroeconomic fall. Would justice have any responsibility for this? This is a rhetorical question. The operative word is, I think, on the one hand, balance and, on the other hand, credibility. The laws, either assumed by the Executive or passed through the Parliament, once having received the approval of the Constitutional Court, are laws for the judges as well and have to be enforced. If we were to enforce the court decisions, Romania would be in an extremely difficult situation. At the Ministry of Finance, the latest numbers were RON 9 billion – payment obligations deriving from court decisions. It is certain that others will come, because it is a big fuss. Other trials are delayed for tens of years, where there are all kinds of interests, but these are like clockwork. From where can the Government take RON 9 billion to show respect for the court decisions?! Any party affecting the State budget has to indicate the source. It is only fair for the magistrates to do so, when issuing such judgements">>.

The above statements were extremely grave, and a few fragments of the replies delivered by the magistrates are of relevance:

<<In a police state, in which more and more levers are built to control and surmount justice, in which laws are made from one day to the other and amended even before they take effect, in which secret services increase their budget, and not even a penny can be found for justice, in which reforms only exist in words and television

appearances, a president, in a dictatorial tone of voice, can afford to call judges to order, to defy them with hostility, threatening, to blame and discredit them in public from the position of the father of the nation to whom the right to stigmatize, at the infamy pole, judicial authorities, is acknowledged. This is Romania. The State subject to the rule of law, the precepts of democracy, the independence of justice are mocked with authority.

What the President fails to mention is that the State, in its turn, is subject to laws, to constitutional rules. The State, through its representatives, cannot breach the law without being punished, that court decisions are rendered in reliance upon laws also bearing the President's signature, that infringement of the act of justice and instigations to disrespect the act of justice entail repercussions which are also determined by law and which may, in their turn, have repercussions including on those which authored them.

The State is the sole debtor allowed, subject to an open abuse of power, to set itself, in excess of the fundamental law, the conditions under which to pay its creditors, who are none other than the citizens of the country.

The Romanian judges accept neither the dictatorial tone, nor the message of the President of the country, whose appointment, among others, passes through the filter of the Constitutional Court.>>

November 2011"

As regards the reasons invoked in chapter III of the suspension proposal, the Court notes that these statements made by the President of Romania did not entail legal effects, as they do not have a decision-making nature. Therefore, it may not be held that constitutional provisions referring to the independence of justice were infringed, and the critical statements made were aimed to determine the magistrates not to fulfill their constitutional duties.

The Court expresses its disapproval in respect of the accusations, disparaging labels and insults addressed to the representatives of the public authorities in relation to the activity they conduct, as also indicated in Advisory Opinion no. 1 dated 5 April 2007, when, invoking Decision no. 435/2006, published in the Official Journal of Romania, Part I, no. 576 dated July 4, 2006, stated that the "*freedom of expression and freedom to make critical remarks is indispensable to constitutional democracy, however, it has to show respect, even when criticism is strong*".

By its Decision no. 53/2005, published in the Official Journal of Romania, Part I, no. 144 dated 17 February 2005, the Court held that, in accordance with Article 1 (4) of the Constitution, public authorities are organized in accordance with the "principle of separation and balance of powers – legislative, executive and judicial". Thus, the powers of the President of Romania have the meaning of a counterweight to the legislative power, in order to achieve the balance of the powers in the State governed by the rule of law, as set forth by the provisions of Article 1 (3) of the Constitution. The same meaning is assigned to the right of the President of Romania to request the Constitutional Court to settle legal conflicts of a constitutional nature occurred between public authorities, in accordance with Article 146 (e) of the Constitution, given that this right is exercised in the context of expressing a standpoint in relation to the possible ways of settling the dispute, implicitly on the well-grounded or ungrounded character of the behavior or allegations of the public authorities involved in the conflict.

3.5. In chapter IV of the suspension proposal it is stated that "*The President initiated an*

unconstitutional project aimed at amending the Constitution and infringed the Constitution amendment procedure, as provided by the fundamental law".

In this respect, it is stated that "*Another action by Traian Băsescu falling outside the Constitution is the decision to send before the Parliament a draft amended Constitution declared unconstitutional by the Constitutional Court. He thus took once more the role of the Government, reversing the roles specified in the Constitution, setting forth that the proposal to amend the fundamental law lies with the Government". Thus, in accordance with Article 150 (1), "The amendment of the Constitution may be initiated by the President of Romania, upon the proposal of the Government, by at least one quarter of the number of deputies or senators, as well as by at least 500,000 voting citizens*."

It is stated that "*the amendment draft was delivered by the President to the Government, which returned it to the President. The Constitutional Court found unconstitutional items, however the President decided to refer the amendment draft to the Parliament.*

<<As regards the second part of the debates with the majority coalition, I decided to deliver, as soon as possible, that is immediately after the decision of the Constitutional Court is received at Cotroceni, to the Parliament, to the Chamber of Deputies, the draft amended Constitution, mainly aiming at complying with the votes of the Romanian people expressed at the referendum of November 2009. This is the target I undertook to reach and I will reach it.>>

21 June 2011

The procedure implemented by the President is obviously a grave infringement of the Constitution, both in terms of its initiation, from the President, instead of the Government, and the disregard of the decision ruled by the Constitutional Court in respect of the conformity of the draft with the fundamental law, which is mandatory."

As concerns these allegations, the Court notes that, by its Decision no. 799/2011, published in the Official Journal of Romania, Part I, no. 440 dated 23 June 2011, held that "*by Letter no. 1,172 dated June 9, 2011, the President of Romania submitted to the Constitutional Court the draft law concerning the amendment of the Constitution of Romania, initiated upon the Government's proposal*" and found that the draft law for amending the Constitution was initiated in observance of the provisions of Article 150 (1) of the Constitution, according to which such amendment may be initiated by the President of Romania, upon the Government's proposal.

The fact that certain provisions of the draft law for amending the Constitution were deemed to be unconstitutional, as they entailed the effect of suppressing certain fundamental rights, this cannot lead to the conclusion that the President of Romania infringed the provisions of the fundamental law.

3.6. In chapter V of the suspension proposal, it is stated that "*The President instigated to disrespect of the decisions rendered by the Constitutional Court and put direct pressure on the judges of the Court, paying <<visits>> prior to key decisions.*"

In this respect, it is emphasized that "*The President Traian Băsescu gravely infringed upon the constitutional provisions, when he stated publicly, on 16 November 2011, that the personal regime instituted by the former does not intend to observe the decisions of the Constitutional Court.*

The public announcement made by the Members of the Parliament from the National Liberal Party and the Social Democratic Party to the meaning that they will approach the Constitutional Court, challenging the decision according to which the Government is to freeze the pensions and salaries of State employees for 2012, was followed by a surprise visit of President Traian Băsescu to the Constitutional Court, in an obvious attempt to place pressure on the judges of the Court. Shortly afterwards, in a radio intervention on the public radio channel, Traian Băsescu declared, in obvious disrespect of the authority of the Court and of the Constitution that no decision of the Constitutional Court will radically change the decision of the Coalition to maintain the level of salaries and pensions, throughout 2012.

<<Irrespective of the result rendered by the Constitutional Court (to the challenges against the decision to freeze the pensions and salaries paid from the State budget in 2012 – our note.), there is no money. If there were, payments would be made. We could live on loans for the Government – but it would be easy to be generous, condemning the country for the following year. We already lived through this experience in 2007 and 2008>>.

16 November 2011

Such acts and statements mean, without any doubt, a defiance and grave breach of the constitutional provisions clearly and undeniably setting forth the supremacy of the decisions rendered by the Constitutional Court. Article 147: <<The provisions in the laws and ordinances in force, as well as in the regulations, found to be unconstitutional, cease all legal effects starting with the 45th day as of the publication of the Constitutional Court decision if, within this period, the Parliament or the Government, as applicable, fail to comply with the unconstitutional provisions with the requirements of the Constitution. Throughout this period, the provisions challenged as unconstitutional shall be suspended de jure*>>; Article 1 (5): <<In Romania, compliance with the Constitution, its supremacy and the laws is mandatory.>>*

The President's statements are indicative of another issue likely to determine the severity of the action of infringing the Constitution. The key role of the President of Romania is to guard the observance of the Constitution and the proper functioning of State institutions. But, from his statements, he not only fails to observe the constitutional provisions, in addition publicly incites to the breach thereof, which gives increased severity. Besides, this last attack at the address of the Court is enclosed within a series of statements the President made, likely to render the Constitutional Court irrelevant, culminating with the assertion according to which <<Constitutional Court acts like a pitiful institution. I still deeply regret the increase of VAT>>.

In addition, the President appointed Mr. Petre Lăzăroiu to the Constitutional Court, for a second term of office, in breach of the provisions of Article 142 (2) of the Constitution, stipulating that the term of office of the members of the Court may not be renewed."

In respect of the above allegations, the Court ascertained that these statements made by the President of Romania are not likely to prejudice the independence of constitutional judges.

As regards the appointment of Mr. Petre Lăzăroiu as judge at the Constitutional Court, in breach of Article 142 (2) of the Constitution, the Court holds that, in accordance with Article 68 (2) and (3) of Law no. 47/1992 on the organization and functioning of the Constitutional Court, *"(2) If the term of office ceased before the expiry of the period for which the judge was appointed, and the remaining period exceeds 6 months, the*

president shall notify the public authority stipulated under paragraph (1), within no more than 3 days as of the cessation date of the term of office, in order to appoint a new judge. The term of office of the thus appointed judge shall cease upon the expiry of the term of office held by the replaced judge.

(3) If the period for which the new judge was appointed, in accordance with paragraph (2), is shorter than 3 years, he may be reappointed, when the Constitutional Court is renewed, for a full term of office of 9 years."

Besides, the two Chambers of the Parliament also applied the legal provisions quoted above.

3.7. In chapter VI of the suspension proposal, it is stated that the "*President repeatedly breached the principle of no political membership of the person holding the office of president and abandoned the constitutional role of mediator between the State and society.*"

In this respect, it is underlined that "*The President conducted open political actions placing him in the position of the de facto leader of the Liberal Democratic Party.*

The President Traian Băsescu took the position of Emil Boc not only as Prime Minister, but also as President of the Liberal Democratic Party. He frequently attended the meetings of this political party, talked with the representatives in relation to the guidelines of economic, social policy, etc. In such context, we are far from witnessing the impartiality and neutrality required from a true President (Article 84), which should be reflected in the manner in which he relates to all political forces. Article 84 (1) stipulates that <<During the terms of his office, the President of Romania cannot be a member of a party and cannot hold any other public or private office.>>

His attitude is openly politically biased, by his active participation in the internal life of the Liberal Democratic Party.

The President explicitly and directly acted as the leader of the Liberal Democratic Party, in various instances. For example, on 4 March 2011, he attended the meeting of the European Popular Party (PPE), in Helsinki. The formal head of Liberal Democratic Party, Emil Boc, was not invited. Furthermore, in relation to the President's travel in Finland, the financial and materials resources of the Romanian State were used, despite the fact that the PPE meeting was obviously a party one. This was acknowledged by the speaker of the President Administration, who stated as follows: <<The travel was paid with money assigned from the State budget to the President Administration, given that this was a travel made for the national interest, and not a private one.>>

These arguments reminds of the times of the state party prior to 1989, when the official ideology of the times stipulated the interests of a certain political party are the same as the national interest.

Besides, throughout his entire term of office, Traian Băsescu had a behavior of rejecting the genuine dialogue with the political parties, except for his own party, Liberal Democratic Party, which he applauds, supports and manages in an authoritative manner. Traian Băsescu acts on the political stage of the country as the de facto president of Liberal Democratic Party, thus flagrantly breaching the provisions of Article 80, Article 84 respectively, of the Constitution:

ARTICLE 80
<<(1) The President of Romania shall represent the Romanian State and is the safeguard of the national independence, unity and territorial integrity of the country.

(2) The President of Romania shall guard the observance of the Constitution and the proper functioning of the public authorities. To this effect, he shall act as a mediator between the Powers in the State, as well as between the State and society.>>

Mr. Băsescu constantly attended various meetings with the members of this party and actively partook in the decision-making process. His behavior was obviously that of a head of party, and not of an unbiased president of the country. Furthermore, the President even attended the summer school of the PDL Youth Organization. In fact, during his last term of office, Traian Băsescu had at least 20 meetings with top leaders of PDL, outside the framework of consultations with the parliamentary parties. No such meeting was held with any other of the parties in opposition at that date. Repeated attacks, offenses and defamation against the leaders of the other parties culminating with the recent threats against the presidents of the parliamentary parties, show the overt lack of neutrality of the President of Romania and is an obvious breach of the provisions of Article 8, Article 80 (2), Article 82 (2) and Article 84 (1) of the Constitution."

At the same time, the authors of the suspension proposal object to the fact that the President sowed dissention between various social categories. In this respect, it is stated that "*Disregarding with cynicism the constitutional provisions contained in Article 80 referring to the President's role, Traian Băsescu created a practice of instigating certain social categories one against the other, seeking to divide the society in order to be able to gather as much political power as possible. In this respect, the president made countless public statements whereby he attempted to determine the hatred of the young against retired persons, of employees in the private sector against those of the State, of patients against doctors, of parents against teachers etc.*

<<And, to be descriptive – this is an image that springs to mind now: the State looks like a very fat person who climbed on top of a very thin and slender one. And this stands for the Romanian economy. And the huge expenses of the State were transferred to the three million working in the Romanian services and industry.>>

6 May 2010

<<And I want to make another clarification referring to why we are not prepared to give satisfaction to those who did not achieve a full military carrier, but managed to stretch the hand to the State's money and take one billion RON when they retired.>>

23 January 2011

It is obvious that this type of public interventions infringe the role of the President, as provided by the Constitution, that of mediator between the State and society."

In relation to such allegations, the Court notes that the actual acts mentioned herein above, attributed to the President, take the form of conflicts with the other participants to the political life.

As for the abovementioned statements made by Mr. Traian Băsescu, the Court notes that they may be characterized as political opinions, for which the President of Romania shall be liable, from the political and moral perspectives, before the electorate and the civil society.

In respect of the role of the President of Romania, provided by Article 80 of the Constitution, the Court ascertains that Mr. Traian Băsescu failed to exercise the function of mediation between the powers in the State, as well as between the State and society with maximum efficiency and exigency.

3.8. Chapter VII of the suspension proposal states that "*President gravely infringed upon the constitutional provisions and the fundamental principle of representative democracy, when declaring that he would not appoint a Prime Minister from USL, even if this political entity gains absolute majority in the Parliament*."

It is emphasized that "*similarly to the statements referring to the failure to observe the decisions of the Constitutional Court, the President also made statements concerning the fact that he would not observe the future decisions of the electorate:*

<<I do not play with the Constitution. It has to be correctly read, and (Article – our note) 103 refers to parties, not alliances. Alliances are variable. (The opposition – our note) should read this Article, get a good understanding of what happened in these (partial – our note) elections and decide accordingly. If there is a party, inside the Social Liberal Union, holding 51 percent of the Members of the Parliament, I will call no other entity (to negotiations – our note) besides that party.>>

22 August 2011"

In relation to these allegations, the Court finds that they are irrelevant, considering that the Prime-Minister of Romania is the president of the Social Democratic Union, appointed by the President of Romania.

The debates took place on 6 July 2012, and were attended by the chairperson of the Constitutional Court, Augustin Zegrean, and of the judges Aspazia Cojocaru, Acsinte Gaspar, Mircea Ştefan Minea, Julia Antoanella Motoc, Ion Predescu, Puskas Valentin Zoltan.

The advisory opinion shall be delivered to the chairpersons of the two Chambers of the Parliament, to the President of Romania and shall be published in the Official Journal of Romania, Part I.

CHAIRPERSON OF THE CONSTITUTIONAL COURT,
AUGUSTIN ZEGREAN

Judges,
Aspazia Cojocaru
Acsinte Gaspar
Mircea Ştefan Minea
Iulia Antoanella Motoc
Ion Predescu
Puskas Valentin Zoltan

Head Assistant Magistrate,
Doina Suliman

Assistant Magistrate,
Ioana Marilena Chiorean

RULING no. 1 of 9 July 2012 of the Constitutional Court on ascertaining the existence of the circumstances justifying the *ad interim* exercise of the office of President of Romania

Published in the Official Journal of Romania no. 467 of 10 July 2012

Augustin Zegrean - chairperson
Aspazia Cojocaru - judge
Acsinte Gaspar - judge
Petre Lăzăroiu - judge
Mircea Ştefan Minea - judge
Iulia Antoanella Motoc - judge
Ion Predescu - judge
Puskas Valentin Zoltan - judge
Tudorel Toader - judge
Ioana Marilena Chiorean - assistant magistrate

The Court is reviewing the request for ascertaining the existence of the circumstances which justify the interim in the exercise of the office of President of Romania, submitted, in accordance with the provisions of Article 44 (3) of Law no. 47/1992 on the organization and functioning of the Constitutional Court, by the chairperson of the Senate, Mr. George-Crin Laurenţiu Antonescu, who chaired the debates of the common session of the two Chambers of the Parliament on 6 July 2012, when the decision to suspend Mr. Traian Băsescu from the office of President of Romania was adopted.

Mr. Sorin Grațianu submitted to the file an "*action for ascertainment*" so that, through the ruling to be rendered, the Court "*shall compel the two Chambers of the Parliament to repeat the procedure of the vote severely flawed in the session dated 6 July 2012, when a new decision to suspend the President of Romania was illegally adopted*". In respect of the request referred to above, the Court holds that, during the procedure to ascertain the circumstances which justify the interim in the exercise of the office of President of Romania, in accordance with Article 146 (g) of the Constitution, no requests or complaints may be raised. Therefore, the Court finds that the request submitted to the file is inadmissible.

THE COURT,

having regard to the documents and proceedings of the file, ascertaining the following:

By means of Letter no. 33HP of 6 July 2012, registered with the Constitutional Court under no. 4699 on 6 July 2012, the chairperson of the Senate, Mr. George-Crin Laurenţiu Antonescu, who chaired the session of the common session of the two Chambers of the Parliament on 6 July 2012, notified the Constitutional Court the fact that, at that meeting, it was decided to suspend from office the President of Romania, Mr. Traian Băsescu, and, in this respect, the Parliament of Romania adopted Decision no. 33/2012 on suspending from office the President of Romania. The suspension was decided based on the provisions of Article 95 of the Constitution and of Articles 66 and

67 of the Regulation of common session of the Chamber of Deputies and of the Senate.

Having regard to the decision of the Parliament, the chairperson of the Senate requests the Constitutional Court to ascertain the existence of the circumstances which justify the interim in the exercise of the office of President of Romania.

The following documents were attached to the request: Decision no. 33/2012 issued by the Parliament of Romania on the suspension from office of the President of Romania; the protocol prepared by the permanent offices of the two Chambers of ascertaining the result of the vote; the letter whereby the President of Romania was invited to participate in the common session of the two Chambers of the Parliament on 5 July 2012.

Upon the request of the Constitutional Court, the following were sent, through Letter no. 1/1.070/VZ of 5 July 2012: the transcript of the common session of the two Chamber of the Parliament, from 5 July 2012; the letter whereby the President of Romania was invited to participate in the common session of the Chamber of Deputies and of the Senate on 5 July 2012.

THE COURT,

having regard to the provisions of Article 146 (g) of the Constitution, as well as of Articles 44 and 45 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, the Court is entitled to ascertain the existence of the circumstances which justify the interim in the exercise of the office of President of Romania.

The proposal to suspend Mr. Traian Băsescu from the office of President of Romania, submitted in accordance with Article 95 of the Constitution of Romania, by 154 deputies and senators, was presented in the common session of the Chamber of Deputies and of the Senate on 5 July 2012. Thus, as resulting from the transcript of this session, the chairperson having chaired the session consulted the deputies and senators in relation to the necessity to create an investigation commission, in accordance with Article 67 of the Regulation of the reunited meetings of the Chamber of Deputies and of the Senate. After being submitted to the voting procedure, this proposal to create a reunited investigation commission was rejected with 216 votes against and 19 abstentions.

Through Letter no. 1/1.023/VZ dated 5 July 2012, the two Chambers of the Parliament of Romania submitted to the Constitutional Court the proposal to suspend Mr. Traian Băsescu from the office of President of Romania, in view of issuing the advisory opinion.

The letter was registered with the Constitutional Court under no. 4617 dated 5 July 2012, forming the object of File no. 1.200H/2012. The two Chambers of the Parliament requested the Constitutional Court to render, in accordance with the provisions of Article 146 (h) of the Constitution and of Articles 42 and 43 of Law no. 47/1992, an advisory opinion in respect of the proposal to suspend Mr. Traian Băsescu from the office of President of Romania.

The Constitutional Court deliberated on the proposal to suspend Mr. Traian Băsescu from the office of President of Romania and delivered the Advisory Opinion no. 1 dated 6 July 2012.

In accordance with the provisions of Article 43 (3) of Law no. 47/1992, the Advisory Opinion no. 1 dated 6 July 2012 was transmitted to the President of Romania, to the chairpersons of the two Chambers of the Parliament with Letter no. 4,690 dated 6 July 2012, and, in accordance with the transcript of the reunited session of the two Chambers of the Parliament dated July 6, 2012 and Letter no. 1/1.070/VZ dated 9 July 2012, was immediately disseminated to the members of the permanent bureaus, the leaders of parliamentary groups and to the others Members of the Parliament. At the same time, in accordance with the provisions of Article 11 (3) of Law no. 47/1992 was published in the Official Journal of Romania, Part I, no. 456 dated 9 July 2012.

In accordance with the provisions of Article 95 of the Constitution and of Articles 66 and 67 of the Regulation of the common session of the Chamber of Deputies and of the Senate, the proposal to suspend from office the President of Romania, Mr. Traian Băsescu, initiated by 154 deputies and senators, was presented in the reunited session of the two Chambers of the Parliament on 5 July 2012. The President of Romania was informed by the chairpersons of the two Chambers of the Parliament of the submission of the proposal to be suspended from office through the letter sent on 4 July 2012, in which he was informed of the date of the reunited meeting of the two Chambers of 5 July 2012, 10:00 hours, having on its agenda the request for the suspension of the President of Romania.

The proposal to suspend from office the President of Romania, Mr. Traian Băsescu, was debated in the common session of the two Chambers of the Parliament dated 6 July 2012. By Letter no. 1/1.035/VZ dated 6 July 2012, in accordance with the provisions of Article 95 of the Constitution of Romania, Mr. Traian Băsescu was invited to attend the debates.

Answering these two invitations, the President of Romania attended the sessions of the two Chambers of the Parliament on 5 and 6 July 2012, providing the necessary explanations in relation to the acts attributed to him.

By Decision no. 33/2012 on suspending from office the President of Romania, adopted by the Chamber of Deputies and the Senate in the common session dated 6 July 2012, it was decided:

“Article 1. – Mr. Traian Băsescu shall be suspended from the office of President of Romania.

Article 2. – The decision shall be communicated to the Constitutional Court in view of ascertaining the existence of the circumstances which justify the interim in the exercise of the office of President of Romania.”

The draft decision concerning the suspension of Mr. Traian Băsescu from the office of President of Romania was subject to secret vote with balls.

The protocol referring to the result of the vote in relation to the draft decision concerning the suspension of the President of Romania from office, concluded on 6 July 2012, leads to the following conclusions:

- the total number of deputies and senators: 432
- the number of attending deputies and senators: 374
- the total number of cast votes: 372

- the number of cancelled votes: 2
- the total number of votes validly cast: 370, our of which:
    - votes in favor of adopting the draft decision: 256
    - votes against adopting the draft decision: 114

In accordance with the provisions of Article 95 (1) of the Constitution of Romania, the proposal to suspend the President of Romania from office need to be adopted by vote of the majority of the deputies and senators, meaning a minimum number of 217 votes.

As a consequence of the fact that, out of the total number of 432 deputies and senators, 370 cast a valid vote, out of which 256 votes were in favor, and 114 votes were against, which stands for the majority of the votes cast by deputies and senators, requested by the Constitution, the Draft Decision on the suspension from office of Mr. Traian Băsescu, the President of Romania, was passed.

The protocol dated 6 July 2012 is signed by the members of the permanent bureaus of the two Chambers of the Parliament.

Having regard to the provisions of Article 146 (h) and (g) and of Article 98 (1) of the Constitution, as well as of Article 11 (1) (B) (b), Articles 44 and 45 of Law no. 47/1992, by majority of votes,

THE CONSTITUTIONAL COURT
In the name of the law
DECIDES:

1. The Court ascertains that the procedure referring to the suspension of Mr. Traian Băsescu from the office of President of Romania was observed.

2. The Court ascertains the existence of the circumstances which justify the interim in the exercise of the office of President of Romania.

3. The Court ascertains that, in accordance with the provisions of Article 98 (1) of the Constitution, the interim for the office of President of Romania shall be exercised by the chairperson of the Senate, Mr. George-Crin Laurențiu Antonescu.

The ruling is final and mandatory.

This ruling shall be delivered to the Parliament and to the Government and shall be published in the Official Journal of Romania, Part I.

The debates took place on 9 July 2012 and were attended by: Augustin Zegrean, chairperson, Aspazia Cojocaru, Acsinte Gaspar, Petre Lăzăroiu, Mircea Ştefan Minea, Iulia Antoanella Motoc, Ion Predescu, Puskas Valentin Zoltan, Tudorel Toader, judges.

CHAIRPERSON OF THE CONSTITUTIONAL COURT,
AUGUSTIN ZEGREAN

Assistant Magistrate,
Ioana Marilena Chiorean

DECISION no. 727 of 9 July 2012 on the referral of unconstitutionality of the Law amending Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court[1]

Through Letter no. 51/2853 of 27 June 2012, the Secretary General of the Chamber of Deputies has sent to the Constitutional Court, pursuant to the provisions of Article 146a) of the Constitution and Article 15 (1) and (4) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, the referral concerning the unconstitutionality of the Law amending Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, signed by 67 Deputies of the parliamentary group of the Liberal Democrat Party.

The list comprising the signatures of the authors of the referral of unconstitutionality was enclosed to the referral. According to this list, the authors of the referral of unconstitutionality are: Mircea-Nicu Toader, Cătălin Ovidiu Buhăianu-Obuf, Adrian Gurzău, Dănuț Liga, Maria Stavrositu, Sulfina Barbu, Ştefan Daniel Pirpiliu, Dan-Radu Zătreanu, Gabriel Andronache, Gabriel-Dan Gospodaru, Adrian Florescu, Raluca Turcan, Vasile-Silviu Prigoană, Stelică Iacob Strugaru, Constantin Dascălu, Costică Canacheu, Mihai Stroe, Marius Rogin, Petru Călian, Carmen Axenie, Cornel Ştirbeț, Daniel Buda, Claudia Boghicevici, Gheorghe Albu, Cezar-Florin Preda, Monica Maria Iacob-Ridzi, Mihai Cristian Apostolache, Sanda-Maria Ardeleanu, Valerian Vreme, Adrian Henorel Nițu, Ioan Oltean, Tinel Gheorghe, Dan Mihai Marian, Mihai Doru Oprişcan, Adrian Bădulescu, Mircea Lubanovici, Florian Daniel Geantă, Gelu Vişan, Elena Gabriela Udrea, Valeriu Tabără, Victor Boiangiu, Alin Silviu Trăşculescu, Sever Voinescu-Cotoi, Mihaela Stoica, Cristian-Ion Burlacu, Valeriu Alecu, Clement Negruț, George Ionescu, Doru Braşoan Leşe, Lucian Nicolae Bode, Stelian Ghiță-Eftemie, Vasile Gherasim, Iosif Veniamin Blaga, Constantin Severus Militaru, Florin Postolachi, Gheorghe Ialomițianu, Viorel Cărare, Ştefan Seremi, Ioan Holdiş, Teodor-Marius Spînu, Cristina Elena Dobre, Bogdan Cantaragiu, Stelian Fuia, Iosif Ştefan Drăgulescu, Doinița-Mariana Chircu, Alin Augustin Florin Popoviciu and Răzvan Mustea-Şerban.

The Law amending Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court was enclosed to the referral.

The referral was registered with the Constitutional Court under no. 4331 of 27 June 2012, and is the subject-matter of File no. 1155A/2012.

Through the referral of unconstitutionality, its authors request the Court to rule upon the constitutionality of the Law amending Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, considering that the impugned law is unconstitutional, as it deprives the Constitutional Court of its competence consisting of the constitutional review of the resolutions of the Plenary of the Chamber of Deputies, of the Senate and of the Plenary of the joint Chambers of Parliament. It thus leads to the situation in which a legal act (the above-mentioned resolutions) issued by a public authority can no longer be reviewed in terms of lawfulness or constitutionality. Therefore, the Parliament could decide anything, including things that are contrary to the Constitution, which is unconceivable.

[1] The wording of the provisions of the sole article of the Law amending Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court is identical to the one of the provisions of the sole article of Government Emergency Ordinance no. 38/2012 amending Law no. 47/1992 on the Organisation and Operation of the Constitutional Court.

It states that the constitutional practice of other countries cannot be used, as the social, political, legal and economic conditions are not identical.
The authors of the referral claim that the principle of separation and balance of State powers and the characteristic defining Romania as a democratic state are infringed. As the Constitution does not provide that the legal acts of the Parliament be reviewed by the other powers, a political-judicial public authority with this competence was established, and the absence of such a constitutional review could lead to an imbalance between State powers and to dictatorship, tyranny or despotism for the Romanian society. It also states that, from a historical point of view, the idea of a constitutional review dates back to the French Revolution of 1789, and the purpose of that review was to verify compliance, by the popular assemblies, with the duties referred to in the Constitution.

Neither can we claim that, by establishing such a review, the role of the Parliament as the supreme representative body of the Romanian people would be infringed, because it is possible that this supreme body be in breach of the Constitution as well.

It also points out that, unlike the legal system in the United Kingdom, where the Parliament is sovereign, in the Romanian legal system, the people, and not the Parliament holds the power (sovereignty).

On the other hand, they claim that similar arguments to those mentioned above have been invoked in 2010, by the parliamentarians of the Social Democratic Party, when they initiated the Law amending and supplementing Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, the Civil Procedure Code and the Criminal Procedure Code of Romania (which later became Law no. 177/2010), which introduced the constitutional review of the Standing Orders of Parliament, discarded by the law currently subject to constitutional review.

Finally, the authors of the referral consider that the arguments in the explanatory memorandum to the law subject to constitutional review, in the sense that the respective law would serve the best interests of the Constitutional Court as it would diminish its caseload, cannot subsist, because, starting with 2010, very few cases having as subject-matter the review of the constitutionality of certain resolutions by the Plenary of the Chamber of Deputies, by the Plenary of the Senate or by the Plenary of the joint Chambers of Parliament have been registered with the Constitutional Court.

Pursuant to the provisions of Article 16(2) of Law no. 47/1992, the referral of unconstitutionality was notified to the Presidents of the two Chambers of Parliament and to the Government, in order for them to issue opinions on the referral of unconstitutionality.

Through Letter no. I 408/5 July 2012, registered with the Constitutional Court under no. 4648 of 5 July 2012, **the President of the Senate** has sent to the Constitutional Court its opinion, assessing that the referral of unconstitutionality is groundless. For that purpose, it points out that the law subject to constitutional review is fully compliant with Article 1(3) and (4) of the Constitution. By referring to the provisions of Article 146c) of the Constitution, according to which the Constitutional Court adjudicates on the constitutionality of the Standing Orders of Parliament, it claims that, if the framers had wanted to enshrine the Court's competence to conduct the constitutional review of other parliamentary resolutions than its standing orders, they would have expressly and separately regulated it. Therefore, it considers that the framers chose to exclude Parliament's resolutions from the constitutional review, as these are always issued pursuant to the law and in compliance with the Parliament's Standing Orders, being included in this type of review. Consequently, the legislator's option to maintain within the scope of the regulation of the Constitutional Court's competence only the powers referred to by the Constitution cannot be considered its breach, but only a matter of legislative necessity, for which the Parliament is fully competent.

The President of the Senate also points out that this law is also fully compliant with the provisions of Article 142(1) of the Basic Law, according to which the Constitutional Court is the guarantor for the supremacy of the Constitution. It states that the amendment of Law no. 47/1992, through Law no. 177/2010, led to an excessive overload of the Constitutional Court's activity, which hindered its activity, by also making it hard for the Court to carry out its role of guarantor for the supremacy of the Constitution.

Through Letter no. 51/2929 of 3 July 2012, registered with the Constitutional Court under no. 4481 of 3 July 2012, **the President of the Chamber of Deputies** has sent to the Constitutional Court its opinion, requesting the admission of the referral lodged and the finding of the unconstitutionality of the Law amending Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, in relation to Article 1(3) and (4) of the Constitution. For that purpose, it points out that, in the absence of any other public authority or institution with powers in this field, only the Constitutional Court can review the manner in which the Parliament fulfils its constitutional role. The implementation of a constitutional review does not affect the Parliament's role of supreme body of the Romanian people, precisely because this supremacy should not lead to a breach of its constitutional duties.

Thus, according to Article 2(1) of the Constitution, the Parliament only exercises sovereignty, without holding it. It also states that the reason for adopting the law in question, in the sense that the constitutional review of the resolutions issued by the Plenary of the Chamber of Deputies, by the Plenary of the Senate or by the Plenary of the joint Chambers of Parliament leads to an excessive overload of the Constitutional Court's activity, cannot be accepted, considering the fact that from 2010 until now very few such cases have been registered with the Constitutional Court.

Through Letter no. 5/4660/2012 of 5 July 2012, registered with the Constitutional Court under no. 4615 of 5 July 2012, **the Government** has sent to the Constitutional Court its opinion, assessing that the referral of unconstitutionality is groundless. To that end, it points out that the purpose of the constitutional review is to make inapplicable any law inconsistent with the Basic Law, thus sanctioning the breach, by the Parliament, of the lawmaking limits set by the framers. Thus, the Constitutional Court can establish the breach of the constitutional norms concerning law enactment competence or procedure – extrinsic unconstitutionality, or intrinsic unconstitutionality, in the sense that, through its content, the law subject to review is in breach of constitutional provisions or principles.

In what concerns the matters of unconstitutionality mentioned in this referral, the Government points out that, according to Article 146 l) of the Constitution, the Court also fulfils other prerogatives as provided by the Court's organic law. Thus, Article I(1) of Law no. 177/2010 amended Article 27(1) of Law no. 47/1992, in the sense of granting the Constitutional Court a new prerogative, meaning the one to adjudicate on the constitutionality of the resolutions by the Plenary of the Chamber of Deputies, by the Plenary of the Senate or by the Plenary of the joint Chambers of Parliament. The Law supplementing the Court's competence as mentioned above was reviewed from the perspective of its constitutionality, and through Decision no. 1106 of 22 September 2010, the Court has established its constitutionality. Restating the grounds held by the Court when issuing Decision no. 1106 of 22 September 2010, the Government considers that, in compliance with the Constitutional Court's case-law, adding or discarding competences for the Court, through its organic law, is a matter of necessity left at the discretion of the ordinary legislator.

The Court,
having examined the referral of unconstitutionality, the opinions of the Presidents of the two Chambers of the Parliament and the Government, the report drawn up by the Judge-

rapporteur, the provisions of the impugned law, in relation to the provisions of the Constitution, as well as Law no. 47/1992, holds as follows:

The Court was legally referred to and is competent, based on the provisions of Article 146a) of the Constitution and Articles 1, 10, 15, 16 and 18 of Law no. 47/1992 on the Organisation and Operation of the Constitution, to adjudicate on the referral of unconstitutionality signed by 67 Deputies.

The subject-matter of the referral of unconstitutionality is represented by the Law amending Article 27**(**1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, which includes the sole article with the following content:

"Sole Article – *Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, republished in the Official Gazette of Romania, Part I, no. 807 of 3 December 2010, shall be amended and shall have the following content:*

(1) The Constitutional Court shall pronounce on the constitutionality of the Standing Orders of Parliament, when a case is submitted to the Court by one of the Presidents of the two Chambers, by a parliamentary group or by a number of at least fifty Deputies or at least twenty-five Senators".

The authors of the referral of unconstitutionality claim that the provisions of the impugned law are in breach of the following provisions of the Constitution: Article 1(3) referring to the characteristics of the Romanian State and Article 1(4) on the principle of separation and balance of powers within the framework of the constitutional democracy.

Examining the referral of unconstitutionality, the Court finds the following:

I. Through the Law amending Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, subject to constitutional review, the Court's competence to rule upon the constitutionality of the Parliament's resolutions is discarded.

The Court also holds that, after being referred to with the referral of unconstitutionality of the above-mentioned law, and before the constitutional court could rule upon it, the Government adopted Emergency Ordinance no. 38/2012 amending Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, legislative act published in the Official Gazette of Romania, Part I, no. 445 of 4 July 2012. Government Emergency Ordinance no. 38/2012 includes the sole article, according to which: '*Article 27(1) of Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, republished in the Official Gazette of Romania, Part I, no. 807 of 3 December 2010, with subsequent amendments and supplements, shall be amended and shall have the following content:*

"Article 27-(1) *The Constitutional Court shall pronounce on the constitutionality of the Standing Orders of Parliament, when a case is submitted to the Court by one of the Presidents of the two Chambers, by a parliamentary group or by a number of at least fifty Deputies or at least twenty-five Senators.*"'

After having examined the provisions of the sole article of the law impugned and the provisions of the sole article of Government Emergency Ordinance no. 38/2012, the Court finds that they enshrine an identical legislative solution, having the exact same legislative content.
From this perspective, the Court outlines the fact that the solution chosen by the Government, to adopt, shortly before the constitutional court could rule upon the constitutionality of the Law amending Article 27(1) of Law no. 47/1992, an emergency ordinance fully incorporating the legislative content of the impugned law, brings up for

debate the Government's unconstitutional and abusive behaviour towards the Constitutional Court.

From this perspective, the Court finds that, according to its case-law, the subsequent primary regulation acts cannot incorporate the legislative content of an unconstitutional legislative norm and thus extend its existence (see, to that effect, Decision no. 1615 of 20 December 2011, published in the Official Gazette of Romania, Part I, no. 99 of 8 February 2012).

II. As for the pleas of unconstitutionality lodged, the Court holds that the legislative solution impugned discards the resolutions by the Plenary of the Chamber of Deputies, by the Plenary of the Senate or by the Plenary of the joint Chambers of Parliament from the category of acts that the Constitutional Court can exercise its constitutional review on.

The power of the Constitutional Court to rule upon the resolutions by the Plenary of the Chamber of Deputies, by the Plenary of the Senate or by the Plenary of the joint Chambers of Parliament was implemented by Article I(1) of Law no. 177/2010 amending and supplementing Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, the Civil Procedure Code and the Criminal Procedure Code of Romania, published in the Official Gazette of Romania, Part I, no. 672 of 4 October 2010.

Examining, within the *a priori* constitutional review, the provisions of Article I(1) of the Law amending and supplementing Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, the Civil Procedure Code and the Criminal Procedure Code of Romania (currently Law no. 177/2010) in relation to Article 146 of the Constitution, the Constitutional Court found that, pursuant to the provisions of Article 142 of the Constitution in conjunction with those of Article 1(1) and (2) of Law no. 47/1992, the Constitutional Court is the guarantor for the supremacy of the Constitution and the sole authority of constitutional jurisdiction of Romania. Under these provisions, the Court ensures the constitutional review of acts, procedures and circumstances on which it was referred, ascertaining their compliance or non-compliance with the Basic Law.

Therefore, the Court found that, by amending Law no. 47/1992, the regulation in question enshrines a new power of the Court, respectively the constitutional review of the resolutions of the Plenary by the Chamber of Deputies, the resolutions of the Plenary by the Senate and the resolutions by the Plenary of the two joint Chambers of Parliament, **a power clearly circumscribed to the constitutional framework enshrined by Article 146** (see Decision no. 1106 of 22 September 2010, published in the Official Gazette of Romania, Part I, no. 672 of 4 October 2010).

On the other hand, in its case-law, concerning the power to adjudicate on the constitutionality of the resolutions by the Plenary of the Chamber of Deputies, the resolutions by the Plenary of the Senate and the resolutions by the Plenary of the two Joint Chambers of Parliament, the Court defined its power of review of constitutionality of Parliament Resolutions, which had been established following the amendment and completion of Article 27 of Law no. 47/1992, by specifying that subject to constitutional review can be only those resolutions of Parliament adopted following the granting of the new power, **resolutions that affect constitutional values, rules and principles** or, as the case may be, the organisation and operation of constitutional authorities and institutions (see Decision no. 53 of 25 January 2011, published in the Official Gazette of Romania, Part I, no. 90 of 3 February 2011 and Decision no. 1631 of 20 December 2011, published in the Official Gazette of Romania, Part I, no. 84 of 2 February 2012).

Likewise, the Court stated that Article 27 of Law no. 47/1992 did not establish any differentiation between resolutions that can be subject to review by the Constitutional Court

in terms of area in which they were adopted or in terms of normative or individual nature, which means that all these resolutions are likely to be subject to constitutional review - *ubi lex non distinguit nec nos distingere debemus*. (see Decision no. 307 of 28 March 2012, published in the Official Gazette of Romania, Part I, no. 293 of 4 May 2012).

In these circumstances, the Court finds that granting its power to exercise such constitutional review represents a diversification and strengthening of the competence of the Constitutional Court, the sole authority of constitutional jurisdiction in Romania, and a gain in the efforts to achieve a democratic State governed by the rule of law, and thus it cannot be considered a circumstantial action or one justified on grounds related to necessity. However, even the legal, political and social reality proves its actuality and usefulness, since the constitutional court was asked to rule on the constitutionality of certain resolutions of Parliament questioning the constitutional values and principles.

Further, the Court holds that, pursuant to Article 1(3) of the Constitution: "*Romania is a democratic and social state governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values, in the spirit of the Romanian people's democratic traditions and the ideals embodied by the December 1989 Revolution, and shall be guaranteed*". At the same time, Article 1(4) of the Basic Law expressly enshrines the principle of separation and balance of powers - legislative, executive and judicial - within the framework of constitutional democracy.

Therefore, the Court finds that one of the dimensions of the Romanian State is that of constitutional justice, achieved by the Constitutional Court, a political-jurisdictional public authority outside the scope of the legislative, executive or judicial power, its role being to ensure the supremacy of the Constitution, as Basic Law of the rule of law. Thus, pursuant to Article 142(1) of the Constitution of Romania, *"The Constitutional Court shall be the guarantor for the supremacy of the Constitution".* The supremacy of the Basic Law is therefore essential in terms of requirements of the rule of law, representing, at the same time, a legal reality with consequences and guarantees. The consequences include the differences between the Constitution and the laws and, not lastly, the compatibility of the entire law with the Constitution, while the guarantees include the constitutional review.

The constitutional review, as a whole, and, integrated thereto, the constitutional review of Parliament Resolutions questioning constitutional principles and values, is not only a fundamental legal guarantee for the supremacy of the Constitution. It represents a means to endow the Constitutional Court with a coherent capacity of expression, likely to efficiently ensure the separation and balance of powers in a democratic state.

Moreover, the European Commission for Democracy through Law - the Venice Commission, advisory body of the Council of Europe on matters of constitutional law, stressed the fact that the limitation of the Hungarian Constitutional Court's powers in budgetary matters should be abolished (see, in this respect, Opinion no. 665/2012 of the Venice Commission on the Act on the Constitutional Court of Hungary, adopted at its 91st Plenary Session, 15-16 June 2012, paragraph 54 point 10).

Consequently, the legislative amendment, which abolishes the power of the Constitutional Court to rule on the constitutionality of the resolutions by the Plenary of the Chamber of Deputies, the resolutions by the Plenary of the Senate and the resolutions by the Plenary of the two Joint Chambers of Parliament, without any distinction, does nothing but to diminish the authority of the Constitutional Court – fundamental institution of the State, and to infringe, thus, the principles of the rule of law, leading to by nothing unforeseeable difficulties in achieving an appropriate State policy to consolidate and build a democratic State in which the Constitution, its supremacy and the laws are mandatory. In these circumstances, the

Court notes that the democratic and social State based on the rule of law should not remain a fundamental principle, with purely theoretical nuances, without any practical results, but a reality, properly perceived, both by public authorities and by citizens.

The Court also points out that exclusion from constitutional review of all resolutions by the Plenary of the Chamber of Deputies, the resolutions by the Plenary of the Senate and the resolutions by the Plenary of the two Joint Chambers of Parliament, is not based on the rule of law but, possibly, on grounds of necessity, which, by nature, involves subjectivity, interpretation and arbitrary.

However, constitutional justice is based on the rule of law, not on necessity. Therefore, this power cannot mean an "*excessive*" burden for the Constitutional Court, as stated in the explanatory memorandum to the law subject to review, claim without legal significance, but it is inextricably integrated, once legitimately given, into a legal mechanism likely to contribute to the separation and balance of powers in a democratic and social State governed by the rule of law. To assess and decide on the activity of the Constitutional Court, especially in terms of quantitative standards, is to incorrectly perceive it and furthermore, to ignore the substance of its fundamental role. Therefore, the Court can neither accept the argument of the President of the Senate, expressed in his viewpoint, in that the amendment to Law no. 47/1992, through Law no. 177/2010, created an excessive burden for the Constitutional Court, which was prejudicial to the due course of its operation.

The Government's argument in that the provisions of Article 146 l) of the Constitution allows the legislator to amend the powers of the Court for the purposes of adding or discarding them by organic law cannot be accepted for the following reasons:

The Court held that the provisions of Article 146 of the Constitution enumerated the powers of the Constitutional Court, but that the express enumeration set forth by subparagraphs a) to k) of the said article was not exhaustive, as long as the same article under subparagraph l) provided that the constitutional court "*also fulfils other prerogatives as provided by the Court's organic law*" (see Decision no. 1106 of 22 September 2010, published in the Official Gazette of Romania, Part I, no. 672 of 4 October 2010).

Likewise, examining the bill for revision of the Constitution of Romania, submitted by the President of Romania, the Court considered appropriate the completion of the provisions of subparagraph c) under Article 146 as follows: *"c) it adjudicates on the constitutionality of the Standing Orders and normative resolutions of Parliament, upon referral by the President of Parliament, by a parliamentary group or by a number of at least 40 parliamentarians;".* This proposal concerned the explicit constitutionalisation of the norms comprised in Law no. 47/1992 on the Organisation and Operation of the Constitutional Court, regulating at Constitution level the powers of the Courts set forth in Article 27(1) of its organic law.

In these circumstances, the Court recommended the repeal of subparagraph l), stating that it "*also fulfils other prerogatives as provided by the Court's organic law*". The proposal was justified by the fact that, under this provision, besides the powers "*with constitutional status*" provided under Article 146 a) - k), the Court may acquire other powers established by the ordinary legislator in its law of organisation and operation, powers with legal "*status*".

The Court also held that under the constitutional text proposed for repeal - Article 146 l), the powers of the Constitutional Court can be replicated whenever interests of the political forces require a change or amendment of the law concerning the organisation of the Court. The Court held that, by abolishing the constitutional provision, the constitutional court's independence was guaranteed and the will of the initial constitutional power on the prerogatives of the Court exhaustively provided in the Constitution was preserved (see

Decision no. 799 of 17 June 2011 on the bill for revision of the Constitution, published in the Official Gazette, Part I, no. 440 of 23 June 2011).

In light of the mentioned case-law, the Court held that the meaning of the norm of reference comprised in Article 146 l) of the Constitution, as results from its wording - *„it also fulfils other prerogatives as provided by the Court's organic law*", was to allow the legislator to increase, to extend the powers of the constitutional court. Therefore, to interpret the mentioned fundamental rule in that the legislator would be able to limit, abolish or reduce these powers, at the expense of other fundamental provisions, amounts to emptying it of its contents, respectively to its diversion from the purpose to improve constitutional democracy, pursued by the framers themselves during the revision, which is absolutely unacceptable. Therefore, the powers of the Constitutional Court provided under Article 146 l) of the Basic Law cannot be changed if such results in abolishing, under any conditions and in breach of certain fundamental norms, any of these powers.

In this regard, even if the power to review the constitutionality of the resolutions issued by Parliament was given to the Constitutional Court in its organic law, it acquired a constitutional nature under the provisions of Article 146 l) of the Constitution

Moreover, the *fulfilment of other prerogatives* by the Constitutional Court involves, without doubt, their presence and not their absence in the Law on the Organisation and Operation of the Constitutional Court. This is also the meaning of Article 3(1) of Law no. 47/1992, stating that "*The powers of the Constitutional Court are those laid down by the Constitution and by the present law*", and of Article 10(1) of the same law, stating that institutions of proceedings can be made before the Constitutional Court only for the cases expressly provided under Article 146 of the Constitution, republished, or under its organic law.
Therefore, the Court finds that the legitimacy of the Constitutional Court's power to rule on Parliament resolutions affecting constitutional values and principles arises from the Basic Law whose supremacy the Court is required to guarantee, while the impugned legislative solution abolishing this power is not based on the Constitution, but, as noted, it results from the breach thereof.

Therefore, the Court emphasizes the importance of constitutional review of Parliament resolutions for the proper operation of the rule of law and for the observance of the separation and balance of state powers so that when it comes to the breach of constitutional values and principles by means of certain resolutions of Parliament, besides the political conflicts characterizing the relations between the majority and the Opposition, the Court may be required to ensure compliance with those values and principles, intrinsic to democracy, as sole political model compatible with the Basic Law.

The Court considers that within the legislative process of re-examination of the unconstitutional provision, while this is a different prerogative entrusted to the Court, it should be regulated in a different section, following the Section concerning the constitutional review of the Standing Orders, which would comprise the procedures to be applied, specific to the new regulation, the effects of the decisions issued by the Constitutional Court, ascertaining the unconstitutionality of the Parliament resolutions, the harmonization with the provisions of Article 2 (1) and Article 11 (1) A.c) of Law no. 47/1992.

Finally, the Court recalls that the *res judecata* accompanying jurisdictional acts, therefore also the decisions of the Constitutional Court, relates not only to the operative part of a decision, but also on the statement of grounds supporting it. Thus, both the statement of grounds and the operative part of the decisions issued by the Constitutional Court are generally binding, according to the provisions of Article 147 (4) of the Constitution, and are equally opposable to all subject of law.

For the reasons set forth herein, on the grounds of Article 146a) and Article 147(4) of the Constitution, as well as Article 11(1)A.a), Article 15(1) and Article 18(2) of Law no. 47/1992, by majority vote,

THE CONSTITUTIONAL COURT
In the name of the law

DECIDES:

Allows the referral of unconstitutionality formulated by 67 Deputies belonging to the parliamentary group of the Liberal Democrat Party and finds that the legislative solution excluding from constitutional review Parliament Resolutions affecting constitutional principles and values is unconstitutional.

Final and generally binding.
The decision will be communicated to the President of Romania, the Presidents of the two Chambers of Parliament and the Prime Minister and will be published in the Official Gazette of Romania, Part I.
The proceedings took place on 9 July 2012 and were attended by: Augustin Zegrean, president, Aspazia Cojocaru, Acsinte Gaspar, Petre Lăzăroiu, Mircea Ştefan Minea, Iulia Antoanella Motoc, Ion Predescu, Puskás Valentin Zoltán and Tudorel Toader, judges.

PRESIDENT OF THE
CONSTITUTIONAL COURT,
AUGUSTIN ZEGREAN

Assistant-Magistrate,
Simina Gagu

DECISION no. 728 of 9 July 2012 of the Constitutional Court on the rejection of the claim of inconsistency with the Constitution of the Decision of the Senate no. 24 of 3 July 2012 for the dismissal of Mr. Vasile Blaga from the office of President of the Senate

Published in the Official Journal of Romania no. 478 of 12 July 2012

I. By the Letter no. 397 of 3 July 2012, registered with the Constitutional Court under no. 4529 of 3 July 2012, Mr. Vasile Blaga, as President of Senate, sent the claim of inconsistency with the Constitution of the Senate Decision no. 24 of 3 July 2012 regarding his dismissal from the office of President of the Senate.

The claim was registered with the Constitutional Court under no. 4.701 of 7 July 2012 and is the subject matter of File no. 1.205L/2/2012.

Through Letter no. 243 of 6 July 2012, registered with the Constitutional Court under no. 4.693 of 6 July 2012, the Group of the Liberal Democrat Party from the Romanian Senate sent a claim of inconsistency with the Constitution of Senate Decision no. 24 of 3 July 2012 regarding Mr. Blaga's dismissal as President of the Senate.

The list comprising the signatures of the 28 senators was enclosed with the claim. The authors of the claim are the following: Ion Ruset, Sorin Fodoreanu, Marian Iulian Rasaliu, Ioan Sbirciu, Vasile Pintilie, Petru Basa, Anca-Daniela Boagiu, Toader Mocanu, Traian Constantin Igas, Alexandru Peres, Tudor Panturu, Dorel Jurcan, Gabriel Berca, Mircea Florin Andrei, Augustin Daniel Humelnicu, Dumitru Florian Staicu, Mihai Stanisoara, Viorel Constantinescu, Alexandru Mocanu, Dumitru Oprea, Iulian Urban, Radu Alexandru Feldman, Mihai Nita, Gheorghe Birlea, Radu Mircea Berceanu, Ion Ariton, Marius Gerard Necula, and Mihail Hardau. The claim was registered with the Constitutional Court under no. 4.693 of 6 July 2012 and is the subject matter of File no. 1.205L/2/2012.

II. The subject matter of the claims is represented by Senate Decision no. 24 of 3 July 2012 regarding Mr. Vasile Blaga's dismissal as President of the Senate, published in the Romanian Official Journal, Part I, no. 446 of 4 July 2012, which reads as follows:

"Sole Article. – Senator Vasile Blaga, from the parliamentary group of the Liberal Democrat Party, is hereby dismissed from the office of President of the Senate."

III. Throughout the claims, which have a similar content, it is considered that the Decision in question is unconstitutional pursuant to Article 64(5) of the Constitution, stating that the Permanent Bureaus and the Parliamentary Committees are to be made up according to the political spectrum of each Chamber.

In support of this opinion, it is shown that the Decision in question was adopted in the absence of of any request from the Senate Parliamentary Group of the Liberal Democrat Party whatsoever. The authors of the claim show that, while Mr. Vasile Blaga was leading the works of the joint session of the Parliamentary Chambers as President of the Senate, the Permanent Bureau of the Senate was convened *ad-hoc*, without his prior notification, thus violating both the provisions of the Senate Rules and of Article 66(2) of the Constitution. For these reasons, it is considered that the Permanent Bureau was illegally convened, as, according to the mentioned legal arguments, the Permanent Bureau of the Senate is convened by the President

of the Senate or at the request of either at least five of its other members or of a parliamentary group.

In addition, the authors of the claim uphold that the Permanent Bureau of the Senate carried out its work in absence of the legal quorum, taking into account the fact that two of its members had quit the Parliamentary Group of the Liberal Democrat Party, thus losing their political support, and therefore lawfully losing their status as members of the Permanent Bureau or any other positions obtained through political support.

Furthermore, it is considered that the Permanent Bureau unlawfully adopted the decision of convening the plenary meeting of the Senate in order to discuss Mr. Vasile Blaga's dismissal as President of the Senate, as the Parliament was sitting in an extraordinary session, approved by the joint Permanent Bureaus of the two Parliamentary Chambers, lawfully and reasonably convened, strictly regarding specific topics on the daily agenda.

The authors of the claim consider "the actions undertaken by the Social-Liberal Union against [Mr. Vasile Blaga] are unlawful and void," violating his right of carrying out the powers given to him by Article 39(1)(d) of the Senate Rules, according to which the President of the Senate has the duty of ensuring respect for the Constitution and for the Senate Rules, as well as violating his right to defense and freedom of expression, both guaranteed by the Constitution.

In support of the aforementioned arguments, the authors also point out the ideas expressed in the Decision of the Constitutional Court no. 601 of 14 November 2005, published in the Romanian Official Journal, Part I, no. 1.022 of 17 November 2005, where this Court has stated that *"the provisions on the dismissal of the President of the Senate cannot contravene the principle of political spectrum, which, according to Article 64(5) of the Constitution, stands at the basis of the formation of the Permanent Bureau. From the constitutional text it can be concluded, without equivoque, that the political spectrum of each Chamber means its composition as it resulted from the elections, according to the percentage that the parliamentary groups hold out of the total members of the Chambers. By virtue of the political configuration arisen from the will of the electoral body the President of the Senate is appointed, as well as the President of the Chamber of Deputies. The vote granted to the President of a Chamber is a political vote that cannot be annulled except if the group that proposed him/her requests his/her political revocation or, in case of a dismissal as sanction, when this group or another component of the Chamber requests the replacement from office of the President for having committed certain acts that imply his/her legal responsibility. This replacement can be made only with a person of the same parliamentary group, which cannot lose his/her right to the office of President, achieved by virtue of the results of the election, observing the principle of political spectrum."*

In the same decision, the Constitutional Court held that *"the dismissal from office before the expiry of the term of office always produces effects only upon the term of office of the person dismissed, and not over the right of the parliamentary group which proposed his/her appointment, of being represented in the Permanent Bureau as well and, therefore, to propose the election of another Senator for the vacancy. The nonobservance of the mentioned principle and the institution of the possibility to elect a new President from another parliamentary group would mean that the sanction applied to the President of the Senate, dismissed from office, extends over the parliamentary group that proposed his/her election. And the Constitution of Romania does not allow the application of such collective sanctions."*
The allegedly violated constitutional provisions referred to in the claim of inconsistency with the Constitution are those of Article 64(5), which states that *"The Permanent Bureau and Parliamentary Committees shall be made up so as to reflect the political spectrum of each Chamber."* In addition, it is considered that there have been violations of the right to defense, regulated by Article 24 of the Constitution, as well as of the freedom of expression, guaranteed by Article 30 of the Constitution.

IV. Pursuant to the provisions of Article 27 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, the Presidents of the two Parliamentary Chambers have been notified of the claims of inconsistency with the Constitution in order for them to express their viewpoints on the matter.

The Secretary General of the Senate notified the viewpoint of the Permanent Bureau of the Senate through Letter no. XXXV/2.495 of 6 July 2012, registered with the Constitutional Court under no. 4.694 of 6 July 2012, considering that the claim of inconsistency with the Constitution is inadmissible.

In this respect, it is shown, on the one hand, the claim should be rejected as prematurely introduced, by taking into account the Court received the claim concerning Senate Decision no. 24 of 3 July 2012 before its publication in the Romanian Official Journal; publication of the Decisions adopted by the Parliament and, accordingly, by each Chamber, is a condition for their validity, for their entry into force.

On the other hand, it is considered that the claim is inadmissible as the Decision in question was published in the Romanian Official Journal after the entry into force of the Government Emergency Ordinance no. 38/2012, amending the Constitutional Court's competence.

It is pointed out that Senate Decision no. 24 of 3 July 2012 represents a decision having an individual character, such decisions being those regarding the election or the naming of a person, their dismissal or their confirmation. In this respect, the jurisprudence of the Constitutional Court is invoked: the Court cannot extend its control over acts of applying the Parliamentary Rules, as this would violate the principle of self-regulation by the two Chambers, according to which any appeal concerning the way in which the Rules were applied falls within the exclusive competence of each Chamber.

V. Pursuant to Article 76 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, the Court requested on 6 July 2012 the following documents from the Secretary General of the Senate: the transcript of the Permanent Bureau of the Senate meeting of 3 July 2012 on the convening of the Senate in extraordinary session through Decision no. 4 of 3 July 2012 in order to discuss Mr. Vasile Blaga's dismissal as President of the Senate; the transcript of the Senate plenary meeting which adopted Decision no. 24 of 3 July 2012 regarding Mr. Vasile Blaga's dismissal as President of the Senate; the report (proposal) of the Judicial, Discipline and Immunities Commission of the Senate concerning the reasons which led to the proposal of Mr. Vasile Blaga's dismissal.
Through Letter no. XXXV/2.493 of 6 July 2012, the Secretary General of the Senate sent the Court the following documents:
- the transcript of the Permanent Bureau of the Senate meeting of Tuesday, 3 July 2012, 1:45 PM;
- the transcript of the Permanent Bureau of the Senate meeting of Tuesday, 3 July 2012, 4:55 PM;
- the transcript of Senate extraordinary session of 3 July 2012, 5:20 PM.

VI. At the hearing of 9 July 2012, the Court, noticing the subject matter identity between the two claims, ordered, pursuant to Article 164 of the Civil Procedure Code and Article 14 of Law no. 47/1992, the annexation of File no. 1.205L/2/2012 to File no. 1.177L/2/2012, the first one to be registered.

T H E C O U R T,

having examined the claims of inconsistency with the Constitution, the opinions of the Permanent Bureau of the Chamber of Deputies, the additional documents annexed to the file,

the reports drawn up by the judge-rapporteur, the provisions of the Senate Decision no. 24 of 3 July 2012, in relation to the provisions of the Constitution, as well the provisions of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, holds as follows:

I. Regarding the admissibility of the claim, the Court notices two matters must be analyzed, first: the exception of the claim's prematurity, rose by the Permanent Bureau of the Senate in their viewpoint, and the matter of the Court's competence on Senate Decisions.

1. Relating to the alleged prematurity of the claim introduced by Mr. Vasile Blaga, the Court observes the claim of inconsistency with the Constitution was registered with the Constitutional Court on 3 July 2012 and it regards a decision adopted by the Senate in the same day, but published in the Romanian Official Journal on 4 July 2012. The Court holds that the Senate Decision on Mr. Vasile Blaga's dismissal as President of the Senate became opposable to him the moment it was adopted, although it started generating effects, naturally, from the day it was published in the Official Journal. Therefore, the Court finds that the registration of the claim of inconsistency with the Constitution cannot be conditioned by the impugned decision's publication in the Romanian Official Journal, and it cannot be held that the claim of the matter to the Court prior to the actual publication of the decision represents a reason of inadmissibility.

2. Regarding the Constitutional Court's competence of examining the decision in question, the Court finds that, taking into consideration the special character of the case, relating to the current legal framework, a detailed analysis is required.

The Constitutional Court was given the power to examine the constitutionality of decisions adopted by the plenary of the Chamber of Deputies, the plenary of the Senate and the plenary of the joint Chambers through Article I(1) of Law no. 177/2010 amending and supplementing Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, the Civil Procedure Code and the Criminal Procedure Code of Romania, published in the Romanian Official Journal, Part I, no. 672 of 4 October 2010. This prerogative was given through an organic law, pursuant to Article 146 l) of the Constitution, and can be found in Article 27(1) of Law no. 47/1992, republished in the Romanian Official Journal, Part I, no. 807 of 3 December 2010. Through its Decision no. 53 of 25 January 2011, published in the Romanian Official Journal, Part I, no. 90 of 3 February 2011, the Constitutional Court defined its power to review decisions adopted by the plenary of the Chamber of Deputies, the plenary of the Senate and the plenary of the joint Chambers, by specifying that *"subject to constitutional review can be only those resolutions of Parliament adopted following the granting of the new power, resolutions that affect constitutional values, rules and principles or, as the case may be, the organization and functioning of constitutional authorities and institutions."*
On 27 June 2012, the Constitutional Court was referred with the objection of inconsistency with the Constitution regarding the Law amending Article 27(1) of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, claim which was the subject matter of File no. 1.155A/2012, with the hearing set for 9 July 2012. The amendment provided by the law analyzed before its promulgation to Article 27(1) meant the Court's power to review the constitutionality of decisions adopted by the plenary of the Chamber of Deputies, the plenary of the Senate and the plenary of the joint Chambers was to be discarded.

At the same time, the Government Emergency Ordinance no. 38/2012 amending Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, published in the Romanian Official Journal, Part I, no. 445 of 4 July 2012, amends the provisions of Article 27(1) of Law no. 47/1992 in the same respect as the Law amending Article 27 of Law no. 47/1992, currently before the Court for an *a priori* constitutional review.

At the plenary hearing of 9 July 2012, the Constitutional Court first discussed File no. 1.155A/2012, having as subject matter the inconsistency with the Constitution of the Law amending Article 27(1) of Law no. 47/1992 on the Organization and Functioning of the

Constitutional Court. Through Decision no. 727 of 9 July 2012, the Court, by majority vote, allowed the objection of inconsistency with the Constitution and found that *"the legislative solution excluding from constitutional review Parliament Decisions affecting constitutional principles and values is unconstitutional."*

According to Article 147(2) of the Constitution, *"In cases of inconsistency with the Constitution of laws, before the promulgation thereof, the Parliament is bound to reconsider those provisions, in order to bring them into line with the decision of the Constitutional Court,"* and paragraph (4) of the same Article states that *"The decisions of the Constitutional Court shall be published in the Official Journal of Romania. As from their publication, decisions shall be generally binding and effective only for the future."*

The Constitutional Court has constantly stated in its jurisprudence, e.g. Decision no. 124 of 27 March 2003, published in the Romanian Official Journal, Part I, no. 275 of 18 April 2003, that the court rulings on constitutionality matters are binding from the moment of their pronunciation, not from the date of publication in the Official Journal, Part I. It would be contrary to the very reason of exercising the constitutional control by a single, specialized court, that performs materially this type of control, to do otherwise, as absurd situations may occur, in which, for example, the same act or the same provisions of an act were twice declared unconstitutional, making derisory the legal effects of the Constitutional Court decisions.

Given this, at the time of the delivery of the present decision, subsequent to Decision no. 727 of 9 July 2012, the Constitutional Court is about to assess its own competence to rule on the constitutionality of the Chamber of Deputies decisions, the Senate decisions and the decisions of the plenary meeting of the two Chambers of Parliament, taking into account, on the one hand, the provisions of the single Article, point 1 of Government Emergency Ordinance no. 38/2012 and, on the other hand, the solution delivered by Decision no. 727 of 9 July 2012.

Therefore, the Court finds that the provisions of the Government Emergency Ordinance no. 38/2012 contain the same regulations, in shape and content, as those of the Law amending paragraph (1) of Art. 27 of Law no. 47/1992.

However, the Constitutional Court, is, according to Article 142 (1) of the Constitution, the guarantor of the supremacy of the Constitution, which requires, among other things, an active role as an institution fundamental to the rule of law and involved, within the limits of the Constitution, in ensuring the compliance of the entire active legislation to the fundamental rules and principles.

The natural conclusion which can be drawn from analyzing the entire legal context of the moment, as presented above, cannot be, in constitutional sense, other than that of the interpretation and application of legal norms in force in accordance with the decisions of the Constitutional Court, which find as inconsistent with the Constitution some legal provisions and in accordance with the specific legal effects of these decisions.

Given this, in order to maintain the constitutionality of the legislative framework in force and applicable in this case, the Constitutional Court can decide on Parliament decisions "that affect values and constitutional principles."

Consequently, the decision of the Constitutional Court is to examine if the Decision no. 25 of 3 July 2012 of the Chamber of Deputies, on whose inconsistency with the Constitution it was legally seized, is circumscribed, by its object, to its sphere of competence.

The Court finds that the dismissal from office of the President of the Senate does not affect values and constitutional principles, by its object and legal effect of such a decision.

Under the principle of the regulatory autonomy of the Parliament, established by Article 64 (1) of the Constitution, each of the two Chambers of Parliament has the right to regulate, by regulation, its own rules for organization and functioning, which, as stated by the Constitutional Court Decision no. 601 of 14 November 2005, published in the Official Journal, Part I, no. 1022 of 17 November 2005, are constitutional inasmuch as they respect the constitutional principles, they strictly respect the norms for organization and functioning established expressly in the Constitution and they only concern the internal organization and functioning of the Chambers. The Parliament's decisions are legal documents that express the will of the members of the Parliament, and are adopted in the implementation and in compliance with the provisions of the regulations. Furthermore, the Constitutional Court has constantly stated in its relevant jurisprudence that it cannot decide on acts implementing regulations, as this would mean not only the delivery of solutions without a constitutional basis, but also the violation of the principle of regulatory autonomy of the Parliament (See Decision no. 17 of 27 January 2000 on the constitutionality of the Chamber of Deputies Decision no. 25 of 1 September 1999 to elect the vice-presidents, secretaries and quaestors of the Chamber of Deputies, Decision published in the Official Journal, Part I, no. 40 of 31 January 2000, where it was noted: "the Chamber of Deputies is the only competent public authority, under the principle of regulatory autonomy, stipulated in Article 61 (1) of the Constitution, under which "The organization and functioning of each Chamber shall be ruled by its own regulation [...]", competent to interpret, on its own, the normative content of its own regulation and to determine its implementation, respecting each time, of course, the applicable constitutional standards." On the same note, the Court showed that for resolving the complaints by the Senators, the Deputies and the parliamentary groups, regarding concrete measures for the implementation of the Parliament's regulations, only parliamentary means and procedures shall be used.

Moreover, the Court notes that Senate Decision no. 24 of 3 July 2012, aimed at the removal from office of the President of the Senate, is a legally binding act of an individual nature. Furthermore, these kinds of legal documents cannot be subjected to the review of the Constitutional Court, as they do not regard matters of law, which could be subjected to the constitutionality control by reference to the fundamental norms and principles. The Constitutional Court cannot turn into an arbiter of political conflicts in the Parliament, cannot censor the policy options of the majority of members of Parliament in the choice of the President of a Chamber, the management or members of the Permanent Bureau of each Chamber or other working bodies and does not act as an appeal chamber intended to resolve the disputes or disagreements between persons having the capacity of parliamentarians. Such acts are political manifestations which, even if they have the form of legal acts, they are not normative, meaning that they do not contain legal regulations of broad general applicability and with legal effect or circumscribed to a specific category of legal subjects, but they are legal acts of an individual nature and political purpose, aimed at appointing, electing or validating functions. Replacing a person with another, with the respect of the regulatory procedures, cannot represent a matter of constitutionality that the Constitutional Court can be requested to clarify.

In light of all the considerations presented, the Court notes that the Senate Decision no. 24 of 3 July 2012 cannot be subject to the control of constitutionality, because, by its object of regulation, it does not fall within the sphere of parliamentary acts on which the Constitutional Court can decide.

For the reasons set out, under Article 146 letter l) of the Constitution, Articles 1, 3, 10 and 27 of Law no. 47/1992, by majority vote,

CONSTITUTIONAL COURT

In the name of law

D E C I D E S:

Rejects as inadmissible the complaint of inconsistency with the Constitution regarding Senate Decision no. 24 of 3 July 2012 on the revocation of Mr. Vasile Blaga from its position of President of the Senate.
Final and binding.

The decision is communicated to the Senate President and is published in the Official Journal, Part I.

The debate took place on 9 July 2012 and it was attended by: Augustin Zegrean, chairman, Aspazia Cojocaru, Acsinte Gaspar, Petre Lazaroiu, Mircea Stefan Minea, Iulia Antoanella Motoc, Ion Predescu, Puskas Valentin Zoltan and Tudorel Toader, Judges.

PRESIDENT OF THE CONSTITUTIONAL COURT, AUGUSTIN ZEGREAN

Assistant magistrate, Valentina Barbateanu

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SEPARATE OPINION

In disagreement with the solution adopted by the Constitutional Court in Decision no. 728 of 9 July 2012, by majority vote, we consider that the complaints of inconsistency with the Constitution of Senate Decision no. 24 of 3 July 2012 on the revocation of Mr. Vasile Blaga from its position of President of the Senate should have been accepted as well-founded.

I. On the admissibility of the complaint
The Court had jurisdiction to determine the inconsistency with the Constitution of Decision no. 24 of 3 July 2012, taking into account Decision no. 727 of 9 July 2012 (pronounced before the solution of this case), which found that "the legislative solution which excludes from constitutional control the Parliament decisions affecting constitutional values and principles is unconstitutional".

We mention that in its case law, for instance in Decision no. 210 of 15 May 2003, published in the Official Journal, Part I, no. 416 of 13 June 2003, and Decision no. 263 of 20 March 2012, published in the Official Journal, Part I, no. 357 of 28 May 2012, the Court held that its own decisions are binding for itself, from the time of their delivery.

Consequently, since the adoption of Decision no 727 of 9 July 2012, the Court had to consider the constitutionality of the Decision no. 24 of 3 July 2012 as it did in decisions no. 53 and no. 54 of 25 January 2011, decision no. 1630 and no. 1631 of 20 December 2011.

We recall that in these decisions and in Decision no. 727 of 9 July 2012, the Court did not distinguish between legal acts and the acts of an individual nature, distinction that appears in the Decision. 728 of 9 July 2012.

Instead, Decision no. 727 of 9 July 2012 expressly provides that the Constitutional Court retains its powers as were granted by Law no. 177/2010.

II. On the merits of the complaint we note the following:
Decision no. 24 of 3 July 2012 is in contradiction to Article 1 (5) and Article 64 (5) of the Constitution.

Thus, a complaint was made by an Letter signed by two thirds of the members of the Permanent Bureau.

Also, there was no commission of inquiry to determine that there were serious violations of the Senate Regulation, consisting of its lack of independence as required by Article 30 (1) b) of the Regulation.

The revocation, as it is clear from the transcript of the meeting, was based on allegations in the above sense, supported by the Senate Judiciary Committee chairman, without providing any evidence.

We recall that by Decision no. 1630 of 20 December 2011 it was stated that the idea of political neutrality of the President of the Senate – expressed by the Court in Decision no. 601/2005 – refers to the specific tasks of that function and cannot be interpreted as meaning the independence from the political party whose member is the President of the Senate, quality in consideration of which, he was elected in this position.

The decision subject to constitutional control was adopted in the absence of any request from the Liberal Democrat Party parliamentary group in the Senate. Thus, while Vasile Blaga was chairing the plenary meeting of the two Chambers of the Parliament, as President of the Senate, the Permanent Bureau of the Senate was convened ad-hoc, without notice thereof, thus contravening the Regulation of the Senate and Article 66 paragraph (2) of the Constitution.

We consider that the Permanent Bureau of the Senate was illegally convened, since, according to the legal provisions mentioned, it is convened ex officio by the President of the Senate or at the request of at least 5 of its other members or of a parliamentary group.

Also, the Permanent Bureau illegally took the decision to convene the Senate in the view of the revocation of Mr. Vasile Blaga from its position of President of the Senate, given that the Parliament was in an extraordinary session, approved by the joint permanent bureaus of the two Chambers of the Parliament, convened legally and justified, strictly on the issues submitted and approved on the agenda.

Moreover, by Decision no. 601 of 14 November 2005, published in the Official Journal, Part I, no. 1022 of 17 November 2005, the Constitutional Court ruled that "the regulation on the dismissal of the President of the Senate cannot contravene the principle of political configuration, which, according to Article 64 (5) of the Constitution, is the basis for composition of the Permanent Bureau. From the mentioned constitutional text it can be concluded, unequivocally, that the political configuration of each Chamber represents its composition as a result of the elections, based on the proportion that the parliamentary groups hold in the total members of the Chamber concerned. By virtue of the political configuration resulted from the will of the electoral body, the President of the Senate and President of the Chamber of Deputies will be appointed. The vote for the President of a Chamber is a political vote that can be canceled only if the group who proposed the President requests its political revocation, or, in case of a revocation as a penalty, when this group or another component of the Chamber requests the replacement of the President for committing acts that result in legal liability. This replacement can only be made with a person of the same parliamentary group, which can not forfeit the right to the President position, acquired as a result of the elections, respecting the principle of political configuration ".

By the same decision, the Constitutional Court has held that the "dismissal from office before the term expires always produces effects only on the mandate revoked and not on the right of the parliamentary group which has proposed its appointment, to be represented in the Permanent Bureau and therefore to propose the election of another senator in vacant position. The disrespect of the mentioned principle and the possibility of choosing a new president from another parliamentary group would draw the consequence that the sanction applied to the President of the Senate, recalled from office, is extended to the parliamentary group which proposed its election. Moreover, the Romanian Constitution does not permit such a punishment of a collective nature".

By Decision no. 1630 of 20 December 2011, the Court stated the following:
“The constitutionality of Article 23 (3) of the Rules of the Senate, according to which political affiliation of members of the Permanent Bureau, which includes the President of the Senate, should reflect the political configuration resulting from the elections, respecting the principle enshrined in Article 16 (3) second sentence of the Constitution, which are allegedly regarded as unconstitutional insofar as they are interpreted in the sense that would allow the revocation or the termination of the mandate of the President of the Senate as a result of changes in the general political configuration and, in particular, following the withdrawal of the political support by the parliamentary group that proposed him."

For the reasons presented, we believe that complaint was admissible and well-founded.

Judge, prof. Dr. Iulia Antoanella Motoc
Judge, prof. Dr. Aspazia Cojocaru
Judge, prof. Dr. Mircea Stefan Minea

DECISION no. 729 of 9 July 2012 of the Constitutional Court on the rejection of the claim of inconsistency with the Constitution of the Decision of the Chamber of Deputies no. 25 of 3 July 2012, on the dismissal of Mrs. Roberta Alma Anastase from the office of President and member of the Permanent Bureau of the Chamber of Deputies

Published in the Official Journal of Romania no. 480 of 12 July 2012 (Official Journal 480/2012)

1. By Letter no. 1/1.015/RA of 3 July 2012, Mrs. Roberta Alma Anastase, as President of the Chamber of Deputies, sent to the Constitutional Court an claim on the inconsistency with the Constitution of the Decision of the Chamber of Deputies no. 25 of 3 July 2012 on the dismissal of Mrs. Roberta Alma Anastase from the office of President and member of the Permanent Bureau of the Chamber of Deputies.

The claim was registered at the Constitutional Court under no. 4.530 of 4 July 2012, being the object of File no. 1.78L/2/2012.

By Letter no. 16/418 of 6 July 2012, the Parliamentary Group of the Liberal Democrat Party forwarded to the Constitutional Court, in accordance to the provisions of Article 146 letter c) of the Constitution, the claim on the inconsistency with the Constitution of the Decision of the Chamber of Deputies no. 25 of 3 July 2012 on the dismissal of Mrs. Roberta Alma Anastase from the office of president and member of the Permanent Bureau of the Chamber of Deputies. To the claim the nominal table comprising 58 deputies, signatories of the claim on inconsistency with the Constitution, was attached. The authors of the claim are the following: Roberta Alma Anastase, Daniel Buda, Cristian Alexandru Boureanu, Raluca Turcan, Ioan Oltean, Mircea-Nicu Toader, Sever Voinescu-Cotoi, Marius-Sorin Gondor, George Ionescu, William Gabriel Brinza, Lucian Nicolae Bode, Alin Silviu Trasculescu, Iosif Stefan Dragulescu, Gheorghe Ialomitianu, Mihai Stroe, Valeriu Tabara, Nicusor Paduraru, Constantin Severus Militaru, Costica Canacheu, Adrian Badulescu, Mihai Cristian Apostolache, Florian Daniel Geanta, Dan-Radu Zatreanu, Samoil Vilcu, Cristian Petrescu, Mihai Surpateanu, Valeriu Alecu, Gabriel Andronache, Maria Stavrositu, Cristina Elena Dobre, Doinita-Mariana Chircu, Razvan Mustea-Serban, Theodor Paleologu, Valerian Vreme, Constantin Dascalu, Iulian Vladu, Clement Negrut, Adrian Gurzau, Constantin Chirila, Carmen Axenie, Ioan Nelu Botis, Sorin Stefan Zamfirescu, Petru Calian, Viorel Balcan, Gelu Visan, Tinel Gheorghe, Mihai Marian Dan, Adrian Radulescu, Vasile Gherasim, Cristian-Ion Burlacu, Catalin Ovidiu Buhaianu-Obuf, Ioan Balan, Marius-Cristinel Dugulescu, Mihai Doru Opriscan, Florin Postolachi, Danut Liga, Eugen Badalan and Teodor Marius Spinu.

The claim was registered with the Constitutional Court under no. 4701 of 7 July 2012, being the object of File no. 1208L/2/2012.

II. The object of the claim is the Decision of the Chamber of Deputies no. 25 of 3 July 2012 on the dismissal of Mrs. Roberta Alma Anastase from the office of president and member of the Permanent Bureau of the Chamber of Deputies, published in the Official Journal of Romania, Part I, no. 446 of 4 July, having the following content:
“Sole Article:

The Chamber of Deputies decides the dismissal of Mrs. Roberta Alma Anastase from the office of president and member of the Permanent Bureau of the Chamber of Deputies”

III. In the motivation of the claims, which have similar contents, their authors argue that the challenged decision was adopted in the absence of a request from the Parliamentary Group of

the Liberal Democrat Party from the Chamber of Deputies, in breach of the provisions of Article 64 paragraph (5) of the Constitution, as well as of the findings of the Constitutional Court in the Decision no. 602 of 14 November 2005, published in the Official Journal of Romania, no. 1.027 of 18 November 2005. In accordance with this decision, in case of election of the members of the Permanent Bureau of each Chamber, including of the president, as well as in case of their dismissal before the end of the term, account is taken of the criterion of the political configuration of each Chamber. The regulation of the dismissal of the president of the Chamber of Deputies cannot run contrary to the principle of the political configuration, by this being understood the comoffice of each Chamber resulting from elections, on the basis of the proportion of the parliamentary groups from the total of the members of the respective Chamber. The Court found, on the same occasion, that the vote given for the president of the Chamber is a political vote which cannot be annulled unless the group that proposed him/her requests his/her political dismissal.

As such a request from the Parliamentary Group of the Liberal Democrat Party is absent, the authors of the claim consider that the challenged decision can only be unconstitutional.

The Decision no. 25 of 3 July 2012 is also contrary to the provisions of Article 66 paragraph (3) of the Constitution, as it was adopted by the Chamber of Deputies in an extraordinary session which was not convened by the president of this Chamber. It is true that, previously, the President has convened the Chamber in an extraordinary session, but with another agenda, which was completed, while the meeting concerning the dismissal of the president of the Chamber of Deputies took place after the extraordinary session convened constitutionally and without the publication of the convocation in the Official Journal of Romania.

The authors of the claim argue that the dismissal from the office of president of the Chamber of Deputies was decided on the basis of a report drafted by the Legal Affairs, Discipline and Immunities Commission, but a report adopted in the absence of the president of the Chamber, so without respecting her right of defense, although this was requested. Thus, on 3 July 2012, on the basis of the proposal of the Permanent Bureau of the Chamber of Deputies the Legal Affairs, Discipline and Immunities Commission has proposed to the plenum of the Chamber of the Deputies, unconstitutionally convened, the disciplinary sanction of the president of the Chamber of Deputies, sanction which was applied. This sanction was applied following an claim made almost 6 months ago by the then parliamentary opposition, concerning several alleged irregularities referring to the joint session of the two chambers of the Parliament of 27 September 2011, a meeting presided though by a vice-president of the Chamber of Deputies and not by its president. But no norm of the Constitution or of the parliamentary regulations provides for the dismissal of the president of the Chamber of Deputies as disciplinary sanction, on account of which it is argued that “the so-called sanction is not a sanction, but an unconstitutional political demarche”.

The Constitution provisions invoked in the motivation of the claim on inconsistency with the Constitution are those of Articles 64 para (5) which provide that “the permanent bureaus and the parliamentary commissions are set up in accordance with the political configuration of each Chamber” and of Article 66 paragraph (3) in acordance to which “the convocation of the Chambers is done by their presidents”. The right of defense, regulated by Article 24 of the Constitution, is also invoked.

IV. In accordance with the provisions of Article 27 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, the claims on inconsistency with the Constitution were forwarded to the presidents of the two Chambers of the Parliament to express their views in respect of those.

The president of the Chamber of Deputies has transmitted, by Letters no. 1/1.040/VZ of 6 July 2012, respectively 1/1.072/VZ of 9 July 2012, the opinions of the Permanent Bureau of the

Chamber of Deputies on the claim that constitutes the object of files no. 1.178L/2/2012 and no.1.208L/2/2012, Letters registered at the Constitutional Court under no. 4.703 of 7 July 2012, and no. 4.744 of 9 July respectively, arguing the following:

1. The claims on the inconsistency with the Constitution of the Chamber of Deputies no. 25 of 3 July 2012 on the dismissal of Mrs. Roberta Alma Anastase from the office of president and member of the Permanent Bureau of the Chamber of Deputies are inadmissible, being invoked, in this respect, two reasons:

a) The first reason concerns the competence of the Constitutional Court to check the conformity with the constitutional provisions. Thus, it is shown that at the date on which the Court was seized to settle the current claims on inconsistency with the Constitution, the constitutional contentious court did not have within its competence the capacity to check the constitutionality of the decisions of the plenum of the Chamber of Deputies, of the plenum of the Senate or of the plenum of the Joint Chambers of the Parliament. The provisions of Article 27 para (1) of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, which regulated this competence, were modified by the sole Article paragraph (1) of the Government Emergency Ordinance no. 38/2012, published in the Official Journal of Romania, part I, no. 445 of 4 July 2012, this having, currently, the following content:

"*1) The Constitutional Court shall decide on the consistency with the Constitution of the Parliament's regulations, upon notification by one of the chairpersons of the two Chambers, by a Parliamentary group or by a number of at least 50 deputies or at least 25 senators*."

In the opinion sent in the File no. 1.208L/2/2012 it is shown that the elimination of this competence of the Constitutional Court was the reason for which the claim of the parliamentary group of the Liberal Democrat Party from the Chamber of Deputies, concerning the inconsistency with the Constitution of the Decision of the Chamber of Deputies no. 25 of 3 July 2012, was registered, initially, with the secretary general of the Chamber of Deputies, and afterwards was returned to its authors, with the Letter that the secretary general of the Chamber of Deputies has, in accordance to the latest amendments of the Law no. 47/1992 by Government Emergency Ordinance no. 38/2012, the legal competence to register and forward to the Court only claims concerning the constitutionality of Parliament regulations, and not other claims concerning decisions of the Chamber of Deputies.

b) In File no. 1.178L/2/2012, the president of the Chamber of Deputies mentions another reason for inadmissibility, regarding the procedural standing of the author of the claim. It is shown in this respect, that at the date of the claim on inconsistency with the Constitution forwarded to the Court – 4 July 2012 – Mrs. Roberta Alma Anasatase was not holding anymore the office of president of the Chamber of Deputies, so that, without this office, she is not entitled to seize the Constitutional Court in accordance with Article 146 letter c) of the Constitution.

2. In respect of the reasons invoked by the authors of the claim, it is shown, firstly, that the Decision of the Chamber of Deputies no. 25 of 3 July was adopted by the plenum of the Chamber of Deputies with 160 votes "for" and one vote "against", out of 161 votes cast, 171 deputies being present. As to the alleged breach of the provisions of Article 64 paragraph (5) of the Constitution, in accordance to which "the parliamentary bureaus and the parliamentary commissions are set up in accordance with the political configuration of each Chamber", it is argued that this text does not refer to the institution of the dismissal but to the phase of the setting up of the permanent bureaus and of the permanent commissions, so this motivation for inconsistency with the Constitution cannot be upheld.

The provisions of Article 66 (3) of the Constitution in accordance to which "the convocation of the Chambers is done by their presidents" must be interpreted, in the case of dismissal of the president, in relation to the provisions of Article 26 (5) of the Regulation of the Chamber of

Deputies, in accordance to which “the president of the Chamber of Deputies whose dismissal was requested cannot preside the meeting of the permanent bureau or of the plenum in which his dismissal is discussed”. Likewise, by Decision no. 1.630 of 20 December 2011, the Constitutional Court held that “the dismissal of president of the Senate as a political sanction” is possible, this being a different situation from the dismissal at the request of the parliamentary group that proposed him/her for the office. In respect to the fact that Mrs. Roberta Alma Anastase did not attend the meeting of the Legal Affairs, Discipline and Immunities Commission during which the dismissal report was adopted, and to the claim that the sanction applied by the dismissal concerns an claim made 6 months ago, it is shown that these do not infringe any constitutional provision, because the Constitution of Romania does not regulate the internal provisions on the basis of which the parliamentary commissions function and does not provide a time limit for the claim of sanctions. Article 64 of the Fundamental Law offers complete discretion to the two Chambers of the Parliament to organize themselves and to function through their own regulations, and in its jurisprudence (Decision no. 1.446 of 10 November 2009, Decision no. 710 of 6 May 2009 or Decision no. 209 of 7 March 2012) the Court constantly held that the extension of the constitutionality control to the acts of claim of the regulations would amount to a breach of the principle of the autonomy of regulation and a breach of the constitutional competencies of the Court. The Court showed on this occasion that the claim of the Regulation is a power of the Chamber of Deputies, so that contestations of the deputies in respect to specific acts in claim of the regulations provisions fall under the exclusive competence of the Court.

V. In accordance to Article 76 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, on 5 July 2012, the Constitutional Court asked the secretary general of the Chamber of Deputies for the records of the meeting of the Permanent Bureau of the Chamber of Deputies of 3 July 2012 concerning the termination of the status of member of the Permanent Bureau of the Chamber of Deputies and of president of the Chamber of Deputies of Mrs. Roberta Alma Anastase, the decision to convene the Chamber of Deputies in extraordinary session and the records of the meeting of the plenum of the Chamber of Deputies during which Decision no. 25 of 3 July 2012 was adopted, as well as the report of the Legal Affairs, Discipline and Immunities Commission of the Chamber of Deputies in which the reasons for the proposal to remove the president of the Chamber of Deputies are stated.

By means of Letter no. 51/2.996 of 9 July 2012, the secretary general of the Chamber of Deputies forwarded for the Court’ file the requested documents, namely:

- the records of the meeting of the Permanent Bureau of the Chamber of Deputies of 3 July 2012, 15, 45 hours
- the Decision to convene the Chamber of Deputies in extraordinary session for the day of 3 July 2012, 21, 15 hours
- the records of the meeting of the plenum of the Chamber of Deputies of 3 July 2012, 21, 15 hours
- the report of the Legal Affairs, Discipline and Immunities Commission no. 31/966/2011/2012 on the claim of the parliamentary groups of the Social Democrat Party and of the National Liberal Party from the Chambers of Deputies concerning an alleged infringement of the regulations of two Chambers of the Parliament by Mrs. Roberta Alma Anastase, president of the Chamber of the Parliament, Mr. Deputy Ioan Oltean, vice president of the Chamber of Deputies and Mrs. Deputy Maria Barna, president of the Budget, Finances and Banks Commission.

VI. During the hearing of 9 July 2012, the Court, noting that the two claims have the same object, has decided, in accordance to Article 164 of the Civil Procedure Code, read together with Article 14 of Law no. 47/1992, the joining of File no. 1.208L/2/2012 to File no. 1.178L/2/2012, which was the first to be registered.

The Court,

After examination of the claims on inconsistency with the Constitution, the opinions of the Permanent Bureau of the Chamber of Deputies, the additional documents attached to the file, the reports drafted by the judge-rapporteur, the content of the Decision of the Chamber of Deputies no. 25 of 3 July 2012, in relation to the provisions of the Constitution, as well as the provisions of Law no. 47/1992 on the organization and functioning of the Constitutional Court, finds the following:

I. In order for any request or claim addressed to the Constitutional Court to be subjected to the constitutionality control in one of the forms provided by Article 146 of the Constitution, this has to meet two preliminary and mandatory requirements: to respect the procedural conditions which determine the lawfulness of the claim and to fall within the competencies of the Constitutional Court, conferred by the Fundamental Law.

As to the lawfulness of the claim in respect to the procedural status of the author of the claim, the Court finds that it was legally seized. Thus, as to File no. 1.178L/2/2012 the claim on the inconsistency with the Constitution of the Decision of the Chamber of Deputies no. 25 of 3 July 2012 was made by Mrs. Roberta Alma Anastase, in the exercise of her function as president of the Chamber of Deputies. The Constitutional Court has analyzed a case similar in this respect, finding, by Decision no. 1.630 of 20 December 2011 concerning the claim on the inconsistency with the Constitution of the Decision of the Senate no. 53 of 23 November 2011 on the acknowledgment of the termination of the status of member of the Permanent Bureau and of president of the Senate of Mr. Senator Mircea – Dan Geoana, published in the Official Journal of Romania, Part I, no. 84 of 2 February 2012, the following: " *The Court finds that the author of the claim has the required procedural standing in the case, as seizing the Constitutional Court represents the only procedural means available to the president of the Senate to challenge a decision of the plenum of the Senate concerning his office; under such circumstances, to find a lack of procedural standing would amount to a breach of the free access to justice, enshrined by Article 21 of the Constitution of Romania. Furthermore, as it results from the case' file, the claim was made on the same day on which the challenged decision was adopted and published*". Relating this reasoning to the circumstances of the case at hand, the Courts finds that the facts are the same, namely: the author of the claim made the request on the same day on which Decision no. 25 of 3 July 2012 was adopted in the plenum of the Chamber of Deputies, by which her dismissal from the office of president of the Chamber of Deputies was decided. This meeting of the Plenum of the Chamber of Deputies took place, according to the Decision to convene the Chamber of the Deputies in Extraordinary session for 3 July 2012 and according to the records of this meeting, at 21,15. On the same day of 3 July 2012, but, logically, after this moment, the author of the claim made this claim, which was registered on the docket of the Court under no. 4.530 of 4 July 2012, the same day on which the Decision of the Chamber of Deputies no. 25 of 3 July 2012 was published in the Official Journal of Romania, Part I, no 446 of 4 July 2012. Thus, those found by the Constitutional Court by Decision no. 1630 of 20 December 2011, mentioned above, are applicable, *ad similis*, also in the current case.

In File no. 1.208L/2/2012, the parliamentary group of the Liberal Democrat Party has made, in accordance to Article 146 letter c) of the Constitution, the claim on inconsistency with the Constitution concerning the same decision no. 25 of 3 July 2012 of the Chamber of Deputies. In the opinion sent for the file by the Permanent Bureau of the Chamber of Deputies, under the signature of the president of the Chamber of Deputies, it is shown that, initially, the claim was filed with the secretary general of the Chamber of deputies in order to be forwarded to the Constitutional Court, as provided by Article 17 para (2) of Law no 47/1992, being afterwards returned to the author, on the grounds that the Court lacked competence to settle the concerned claim. Therefore, the parliamentary group of the Liberal Democrat Party filed directly

with the Constitutional Court its claim regarding the acknowledgment of the inconsistency with the Constitution of the Decision of the Chamber of Deputies no. 25 of 3 July 2012.

Given the above, the issue of compliance with the procedural requirements necessary to seize the Court rises. In respect of this, the Court has stated its opinion, in a similar situation, by Decision no. 305 of 12 March 2008, published in the Official Journal of Romania, Part I, no 213 of 20 March 2008, finding the following: "*In this respect the Court finds that, although the claim of the group of senators of the Great Romania Party was filed directly with the Constitutional Court, contrary to the provisions of Article 15 paragraph (4) final thesis of Law no. 47/1992 on the organization and functioning of the Constitutional Court, in accordance to which "the claim is sent by the secretary general of the respective Chamber", this is not a reason for inadmissibility, but for irregularity. Therefore, finding itself lawfully seized, the Court shall examine the merits of the claim being the object of the current file*". Given that the circumstances are the same in this case and in the case to which the reasoning mentioned above refers, the Court finds that the same conclusion is warranted in the current case.

II. In respect of the competence of the Court to assess the concerned decision, the Court finds that, in the very special circumstances of the case, an in-depth analysis is required.

The competence of the Constitutional Court to assess the constitutionality of the decisions of plenum of the Senate and of the decision of the plenum of the Joint Chambers of the Parliament was regulated by Article I paragraph 1 of the Law no. 177/2010 on the amendment and supplement of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, of the Civil Procedure Code and of the Criminal Procedure Code of Romania, published in the Official Journal of Romania, Part I, no. 672 of 4 October 2010. This competence was conferred by organic law, pursuant to 146 letter l) of the Constitution of Romania, being regulated by Article 27 paragraph (1) of Law no. 47/1992 republished in the Official Journal of Romania, Part I, no 807 of 3 December 2010. By Decision no. 53 of 25 January 2011, published in the Official Journal of Romania, Part I, no. 90 of 3 February 2011, the Constitutional Court has qualified its new control competence in respect of the constitutionality of the decisions of the plenum of the Chamber of Deputies, the decisions of the plenum of the Senate and of the plenum of the joint Chambers of the Parliament, stating, in this regard, that "*may be subjected to constitutionality control only the decisions of the Parliament, adopted after the conferral of the new competence, decisions that concern constitutional values, rules and principles or, respectively, the organization and functioning of authorities and bodies provided by the Constitution*".

On 27 June 2012, the Constitutional Court was seized with an inconsistency with the Constitution objection concerning the inconsistency with the Constitution of Law on the amendment of paragraph (1) of Article 27 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, claim constituting the object of File no. 1.155A/2012, the date for its hearing being set for 9 July 2012. The legislative amendment provided by the law subjected to constitutionality control prior to the promulgation concerned the elimination from Article 27 (1) of the decisions of the plenum of the Chamber of Deputies, the decisions of the plenum of the Senate and of the plenum of the joint Chambers of the Parliament, which fell within the competence of the Court.

Likewise, by Government Emergency Ordinance no. 38/2012 on the amendment of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, published in the Official Journal of Romania, Part I, no. 445 of 4 July 2012, the provisions of paragraph (1) of Article 27 of Law no. 47/1992 are modified, in the same respect as through the provisions of Law on the amendment of paragraph (1) of Article 27 of Law no. 47/1992, currently on the docket of the Court to be subjected to the *a priori* constitutionality control.

During the plenum meeting of 9 July 2012, the Court settled firstly the File no1.155A/2012 concerning the claim on the inconsistency with the Constitution of Law on the amendment of paragraph (1) of Article 27 of Law no. 47/1992 on the organization and functioning of the Constitutional Court. By Decision no. 727 of 9 July, the Court, by majority of votes, has admitted the inconsistency with the Constitution objection and has found that "the legislative provision which excludes from the constitutionality control the decisions of the Parliament that concern constitutional values and principles is unconstitutional."

In accordance to Article 147 (2) of the Constitution "In cases of inconsistency with the Constitution concerning laws, before their promulgation, the Parliament is obliged to reexamine the concerned provisions in order to make them consistent with the decision of the Constitutional Court", while paragraph (4) of the same Article provides that "The decisions of the Constitutional Court are published in the Official Journal of Romania. From the date of publication, the decisions are generally binding and have force only for the future".

The Constitutional Court has consistently held in its jurisprudence, for example by Decision no. 124 of 27 March 2003, published in the Official Journal of Romania, Part I, no. 275 of 18 April 2003, that the decisions of the constitutional contentious court are opposable for itself from the date of the pronounciation, and not from the date of publication in the Official Journal of Romania. It would be contrary to the very reason of the exercise of constitutionality control by a sole, specialized court, for this court, while exercising this type of control, to proceed in such manner as to reach absurd situations, in which, for example, the same normative act or the same provisions of a normative act to be declared unconstitutional twice, making derisory the legal effects of the decisions of the Constitutional Court.

This being so, at the moment of the delivery of this decision, a moment posterior to the delivery of Decision no. 727 of 9 July, the Court shall assess its own competence to settle the constitutionality of the decisions of the plenum of the Chamber of Deputies, the decisions of the plenum of the Senate and of the plenum of the joint Chambers of the Parliament, taking into account, on the one side, the provisions of the sole Article of Government Emergency Ordinance no. 38/2012 and, on the other hand, the solution delivered by Decision no. 727 of 9 July 2012.

Thus, the Court finds that the provisions of Government Emergency Ordinance no. 38/2012 restate the same legislative solution regulated by Law on the amendment of paragraph (1) of Article 27 of Law no. 47/1992.

The Court is, in accordance to Article 142 (1) of the Fundamental Law, the guarantor of the supremacy of the Constitution, which implies, among others, its active role as fundamental institution of the rule of law, and its involvement, within the limits of the Constitution, certainly, in order to ensure the conformity of the entire body of the legislation with the fundamental norms and principles.

The natural conclusion that may be inferred from the examination of the entire current legal framework, as presented above, can only be, in the constitutional sense, that legal norms in force must be interpreted in accordance with the decisions of the Constitutional Court by which the inconsistency with the Constitution of legal provisions was established and in conformity with the specific legal effects of such decisions.

Thus, in order to maintain the constitutional status of the legislative framework in force and relevant for the current case, it follows that the constitutional contentious court may adjudicate in respect of decisions of the Parliament "which concern constitutional values and principles".

Consequently the Constitutional Court shall assess if the Decision of the Chamber of Deputies no. 25 of 3 July 2012, the inconsistency with the Constitution of which it was seized to

adjudicate, falls, as subject matter, within its sphere of competence, as it was determined by Decision no. 727 of 9 July 2012.

The Court finds that the dismissal from his/her office of the president of the Chamber of Deputies does not affect, by the object and legal effect of such a decision, constitutional values and principles.

By virtue of the regulatory autonomy of the Parliament, enshrined in Article 64 (1) of the Constitution, each of the two Chambers of the Parliament has the right to establish, by regulation, its own rules of organization and functioning, which, as the Constitutional Court held by its Decision no. 601 of 14 November 2005, published in the Official Journal of Romania, Part I, no. 1.022 of 17 November 2005, are constitutional to the extent that they respect the constitutional principles, faithfully reproduce the norms of organizations and functioning expressly provided by the Constitution and concern only their internal organization and functioning. The decisions of the Parliament are legal acts that express the will of the members of the Parliament and are adopted in claim of and in conformity with provisions of the Regulation. Furthermore, the Constitutional Court has constantly held in its jurisprudence in this field that it cannot assess acts in the claim of the Regulation, as this would amount not only to the delivery of decisions without constitutional grounds, but to an infringement of the principle of the regulatory autonomy of the Parliament (See Decision no. 17 of 27 January 2000 on the constitutionality of the Decision of the Chamber of Deputies no. 25 of 1 September 1999 on the election of the vice-presidents, secretaries and quaestors of the Chamber of Deputies, decision published in the Official Journal of Romania, Part I, no. 40 of 31 January 2000, where it found that “the Chamber of Deputies is the only public authority which has the competence, by virtue of the principle of regulatory autonomy, provided in the Article 61 (1) of the Constitution, reading as follows “the organization and functioning of each Chamber are establish by its own Regulation”, to interpret, on its own, the normative content of its own Regulation and to decide on its way of claim, respecting each time, certainly, the applicable constitutional norms”). In the same vein, the Court has shown that in order to settle contestations of the senators, deputies or parliamentary groups in respect to specific measures in claim of the Regulations, the Parliament shall resort to the use of exclusively parliamentary means and procedures.

Moreover, the Court finds that Decision of the Chamber of Deputies no. 25 of 3 July 2012, concerning the dismissal from her office of the president of the Chamber of Deputies, is a legal act having an individual character, which does not affect constitutional values and principles. Such types of legal acts cannot be subjected to the constitutionality control exercised by the Constitutional Court. Such acts represent public manifestations without normative character, in the sense that they do not contain legal norms of extensive applicability and having a general legal effect or related to a determined category of legal actors, but are legal acts having an individual character and a political purpose, concerning designations, elections or validations of offices. Furthermore, the replacement of a person with another, in compliance with the Regulation procedure, cannot amount to a constitutionality issue.

In the light of the above reasons, the Court finds that the Decision of the Chamber of Deputies no. 25 of 3 July 2012 cannot be subjected to constitutionality control, because, given its object, it does not fall within the sphere of parliamentary acts which can be assessed by the Constitutional Court.

For these reasons, in accordance with Article 146 letter l) of the Constitution, of art 1, 3, 10 and 27 of Law no. 47/1992, with majority of votes,

The Constitutional Court,

In the name of the law,

D E C I D ES:

Rejects, as inadmissible, the claim on the inconsistency with the Constitution of the Decision of the Chamber of Deputies no. 25 of 3 July 2012 on the dismissal of Mrs. Roberta Alma Anastase from the office of president and member of the Permanent Bureau of the Chamber of Deputies.

Final and binding.

The decision shall be communicated to the President of the Chamber of Deputies and published in the Official Journal of Romania, Part I.

The hearing took place on 9 July 2012 and it was attended by: Augustin Zegrean, president, Aspazia Cojocaru, Acsinte Gaspar, Petre Lazaroiu, Mircea Stefan Minea, Iulia Antoanella Motoc, Ion Predescu, Puskas Valentin Zoltan and Tudorel Toader, judges.

DECISION no. 732 of 9 July 2012 of the Constitutional Court on the rejection of the claim of inconsistency with the Constitution of the Decision of the Parliament no. 32 of 3 July 2012 for the dismissal of Mr. Gheorghe Iancu from the office of Ombudsperson

Published in Official Journal of Romania 480 of 12 July 2012 (Official Journal 480/2012)

I. Through Letter no. 16/407 of 4 July 2012, the leader of the parliamentary group of the Liberal Democrat Party, Mr. Mircea-Nicu Toader, has sent to the Constitutional Court the claim of inconsistency with the Constitution signed by 58 Deputies of the parliamentary group of the Liberal Democrat Party concerning the constitutional control on Parliament Decision no. 32 of 3 July 2012 on the removal from office of the Ombudsperson, Mr. Gheorghe Iancu, in accordance with Article 146 letter. l) of the Constitution and Article 27 of Law no. 47/1992 on Organization and Functioning of the Constitutional Court.

The claim was regsitred with the Constitutional Court under no. 4548 of 4 July 2012, and is the subject-matter of Case no. 1179/L/2/2012.

The list comprising the signatures of the authors of the claim of inconsistency with the Constitution was enclosed to the claim. According to this list, the authors of the claim of inconsistency with the Constitution are: Roberta Alma Anastase, Daniel Buda, Cristian Alexandru Boureanu, Raluca Turcan, Ioan Oltean, Mircea-Nicu Toader, Sever Voinescu-Cotoi, Marius- Sorin Gondor, George Ionescu, William Gabriel Brinza, Lucian Nicolae Bode, Alin Silviu Trasculescu, Iosif Stefan Dragulescu, Gheorghe Ialomitianu, Mihai Stroe, Valeriu Tabara, Nicusor Paduraru, Constantin Severus Militaru, Costica Canacheu, Adrian Badulescu, Mihai Cristian Apostolache, Daniel Florian Geanta, Dan-Radu Zatreanu, Samoil Vilcu, Cristian Petrescu, Mihai Surpateanu, Valeriu Alecu, Gabriel Andronache, Maria Stavrositu, Cristina Elena Dobre, DoinitaMariana Chircu, Razvan Mustea-Serban, Theodor Paleologu, Valerian Vreme, Constantin Dascalu, Iulian Vladu, Clement Negrut, Adrian Gurzau, Constantin Chirila, Carmen Axenie, Ioan-Nelu Botis, Sorin Stefan Zamfirescu, Petru Calian, Viorel Balcan, Gelu Visan, Tinel Gheorghe, Dan Mihai Marian, Adrian Radulescu, Vasile Gherasim, Cristian-Ion Burlacu, Catalin Ovidiu Buhaianu-Obuf, Ioan Balan, Marius Dugulescu, Mihai Doru Opriscan, Florin Postolachi, Danut Liga, Eugen Badalan si Teodor Marius Spinu.

The authors of the claim consider the Parliament Decision no. 32 of 3 July 2012 as inconsistent with the Constitution, claiming that, under Article 146 letter. d) of the Constitution, the Ombudsperson has the constitutional competence to formulate the claim of inconsistency with the Constitution with respect to laws and ordinances adopted by the competent authorities.

Through the claim of inconsistency with the Constitution of the Government Emergency Ordinance no. 15/2012 on the allocation of a budget reserve fund to the government, provided in the budget for 2012, and the claim of inconsistency with the Constitution of the Government Ordinance no. 27/2012 on measures in the cultural field, the Ombudsperson has exercised one of its constitutional powers and, therefore, cannot be considered as being partisan in those cases. Moreover, in both cases, it was argued that fundamental rights have been violated by the Government through the adoption of emergency ordinances. These ordinances have been the subject of the claim of inconsistency with the Constitution.

It also points out that the work of the Ombudsperson is not subjective, given that the views expressed and complaints lodged to the Constitutional Court and to the High Court of Cassation and Justice, without considering the political orientations of those who criticized the adopted acts. Moreover, the analysis of the activity of the Ombudsperson, which is found on

the website of this institution, shows that it was carried out in order to protect the individuals rights and freedoms.

On the other hand, according to Article 58 (1) of the Constitution, the Ombudsperson is appointed for a term of five years; the mandate cannot be withdrawns unless specific violations of the Constitution or of laws occur.

The simple assertion that the Ombudsperson was appointed by the political former power cannot and should not have any importance in connection with the dismissal of the Ombudsperson.

Finally, the authors of the claim ask the Court to determine the inconsistency with the Constitution of the decision, without basing the claim on any fact that would have violated any text of the Constitution or laws.

II. According to Article 27 of Law no. 47/1992, the claim of inconsistency with the Constitution has been submitted to the presidents of both Chambers of Parliament, the permanent bureaus having the possibility to communicate their viewpoints.

Through Letter no. XXXV/2.494 of 6 July 2012, registered with the Constitutional Court under no. 4695 of 6 July 2012, the President of the Senate has sent the opinion of the Permanent Bureau of the Senate, assessing that the claim of inconsistency with the Constitution is inadmissible; for that reason, the Senate asked the rejection of the claim.

In this respect, as a result of the modification of Article 27 (1) of Law no. 47/1992 through the Government Emergency Ordinance no. 38/2012, the Constitutional Court has no competence on the constitutionality of the decisions of the Senate, the Chamber of Deputies, and the decisions of common sessions of the Chambers of Parliament, except the Regulation on the permanent bureaus of Parliament.

It points out that the Parliament Decision no. 32 of 3 July 2012 is published in the Official Journal of Romania Part I, no. 445 of 4 July 2012; also in the same edition of the Official Journal, the Government Emergency Ordinance no. 38/2012 was published.

In accordance with Article 115 (5) of the Constitution, the Government Emergency Ordinance no. 38/2012 entered into force only after it has been submitted for debate under in an emergency procedure to the Chamber having the competence to be notified, and after it has been published in the Official Journal of Romania.
It points out that the Decision on revoke of Mr. Gheorghe Iancu from the office of Ombudsperson is an individual one; this category of decisions includes the election or appointment of a position, removal from the office, and those relating to the validation of the positions.
It invokes the dissenting opinion by one judges of the Constitutional Court regarding the Decision no. 1631 of 20 December 2011 on the claim of inconsistency with the Constitution of Decision of the Senate no. 54/2011 for the election the President of the Senate. In the dissenting opinion it is stated that, if the legislator had intended to devote to the Court the competence on the constitutionality control of individual decisions, this power would have been regulated "expressly and directly".

It also points out that, according to the case-law of the Constitutional Court, the Court has no jurisdiction to review the manner in which the regulations of the Parliament are implemented. The Parliament Chambers are the only public authorities having jurisdiction to interpret the content of their own rules and decide on their application in accordance with the Constitution.

It considers also that only the Parliament can appreciate the existence of some violations of the Constitution and laws, violations that put the Ombudsperson's mandate beyond the requirements of objectivity and impartiality, as the authority that made his appointment.

The Constitutional Court has no jurisdiction to appreciate the partisan nature of the exercise of powers by the Ombudsperson, this prerogative belonging to the authority which appointed that persons, namely the Parliament of Romania. *Per a contrario*, such a situation could lead to the competence of the Court to censure acts by which appointments are made, triggering, in fact, competence to censure the criteria for appointment, criteria that fall exclusively within the competence of the Parliament. This would lead to an alteration of the role that fundamental institutions of the State, governed by the rule of law, and, in fact, to a disguised transfer of the competence with respect to appointment of certain authority position, from the Parliament to other institutions.

The President of the Chamber of Deputies, through Letter no. 1/1.039/vz of 6 July 2012, registred with the Constitutional Court under no. 4704 of 7 July 2012 communicated the viewpoint of the Permanent Bureau of the Chamber of Deputies, by showing that the claim of inconsistency with the Constitution must be rejected as inadmissible, because, after the modification of Article 27 (1) of Law no. 47/1992 by the Government Emergency Ordinance no. 38/2012, the area of competence of the Constitutional Court decisions no longer includes the decisions of the Chamber of Deputies, the Senate and the common sessions of the Chambers of Parliament.

Regarding the reasons of the claim of inconsistency with the Constitution, it notes that according to Law 35/1997 on the Organization and Functioning of the Ombudsperson, republished, with subsequent amendments, the Ombudsperson's mandate ends before the term in cases expressly and exhaustively provided.

Therefore, in accordance with Article 9 (2) of the Law, the removal from office of the Ombudsperson takes place according to predetermined parliamentary procedures, "following the infringement of the Constitution and laws". The competence to revoke the Ombudsperson belongs to the Chamber of Deputies and Senate in common session with respect for the principle legal symmetry. Also, the reasons of legality and the opportunity of revocation are at the discretion of the two Chambers of Parliament, according to Article 9 (2) of Law no. 35/1997, without those aspects to be subject to analysis by the Constitutional Court.
As for the possibility to raise before the Constitutional Court the claim of inconsistency with the Constitution of the Government Emergency Ordinances, it shows that this privilege was conferred to the Ombudsperson, in order to fulfill his or her mandate as effective defender of citizens' rights against abuses of administrative authorities, and not to pursue political and partisan aims, as stated in the preamble of the Parliament Decision no. 32 of 3 July 2012.

III. Pursuant to Article 76 of Law no. 47/1992, on 5 July 2012, the Constitutional Court requested to the Secretary General of the Chamber of Deputies a copy of the transcript of the debates that took place in the common session of the Chamber of Deputies and the Senate on 3 July 2012 on the revocation from the office of Ombudsperson of Mr. Gheorghe Iancu and the joint report of the permanent bureaux of the two Chambers of Parliament, with the same object.

Also, under the same provisions of law, the Court has requested to the Secretary General of the Chamber of Deputies and the Parliamentary Group of Liberal Democrat Party to provide information on the submission by the above-mentioned Parliamentary Group of the claim of inconsistency with the Constitution of the provisions of the Resolution of Parliament no. 32 of July 3, 2012, to the Secretary General of the Chamber of Deputies in order to send it to the Constitutional Court, as provided by Article 27 (2) of Law no. 47/1992.

Through Letter no. 16/414 of 5 July 2012, registred with the Constitutional Court under no. 4655 of 5 July 2012, the Liberal Democrat Party group showed essentially that the claim of inconsistency with the Constitution was submitted directly to the Constitutional Court because it was considered that it is sufficient to have the approval of the plenary meeting of Parliament to attack this decision to the Court, before being published in the Official Journal of Romania, knowing that the Government plans to issue an emergency ordinance amending the powers of the Constitutional Court. According to the Government Emergency Ordinance, Parliament's decisions were not subject to constitutional review anymore.

On the other hand, it was considered that the direct submission to the Constitutional Court allows the authors of the claim of inconsistency with the Constitution to benefit of the principle that this claim would be examined under the law existing at the date of its submission, not on the basis of the Emergency Ordinance.

Secretary General of the Chamber of Deputies did not release the documents and information requested.

A petition of Mr. Nicholas Arsene was registered in the case under no. 2977 of 5 July 2012 which, in essence, asks the Constitutional Court an impartial analysis for Parliament Decision no. 32 of 3 July 2012, only on concrete evidence.

Also, the statements made by Mr. Gheorghe Iancu, which expose his arguments against to the reasons for removal from office of the Ombudsperson, claiming, in essence, that all his actions in the exercise of this function were accomplished with the observance of the Constitution and of the law, was registred under no. 4666 of 6 July 2012. Finally, he asks the Constitutional Court to determine the inconsistency with the Constitution of Parliament Decision no. 32 of 3 July 2012.

THE COURT,

having examining the claim of inconsistency with the Constitution, the opinions of the Permanent Bureaus of the Senate and Chamber of Deputies, documents, files, the report drawn up by the Judge-rapporteur, the Parliament Decision no. 32 of 3 July 2012, provisions of the Constitution and Law no. 47/1992 on organization and functioning of the Constitutional Court, holds as follows:
The subject-matter of the claim of inconsistency with the Constitution is represented by the Parliament Decision no. 32 of 3 July 2012 to on removal from the office of Ombudsperson, Mr. Gheorghe Iancu published in the Official Journal of Romania, Part I, no. 445 of 4 July 2012, with the following contents:

"*Article 1 -*
Mr. Gheorghe Iancu Mr. Gheorghe Iancu was removed from the office of Ombudsperson
Article 2. -
Until the appointment of a new Ombudsperson, Mr Valer Dorneanu, Deputy Ombudsperson, will perform the duties of office of Ombudsperson. "

The authors claim that the Parliament Decision no. 32 of 3 July 2012 violates the following provisions of the Constitution: Article 58 (1) on the appointment and role of the Ombudsperson and Article 146 letter d) on the competence of the Constitutional Court to decide on inconsistency with the Constitution of laws and ordinances, which may be raised directly by the Ombudsperson.

Having examining the claim of inconsistency with the Constitution, the Court finds the following:

1. Any claim adressed to the Constitional Court must accomplish the following two conditions in order to fall within the competence of the Court, according to Article 146 of the Constitution: to respect the procedural requirements that determine the legality of the claim and to be circumscribed to one of the specific powers of the Constitutional Court, conferred by the Basic Law.

In terms of legality of claim, The Court notes that, although the claim of inconsistency with the Constitution filed by 58 members of Parliament belonging to the Liberal Democrat Party group was submitted directly to the Constitutional Court, contrary to Article 27 (2) of Law no. 47/1992, according to which "*if the claim is made by Parliament, it is sent to the Constitutional Court by Secretary General of the Chamber of which they belong, on the day of deposit*", this is not a ground of inadmissibility, but an irregularity (see *ad similis*, the Constitutional Court Decision no. 305 of 12 March 2008, published in the Official Journal of Romania, Part I, no. 213 of 20 March 2008, and Decision 729 of 9 July 2012, unpublished until the delivery of this decision).

Consequently, the Court considered that it was legally invested with the claim of inconsistency with the Constitution of Parliament Decision no. 32 of 3 July 2012.

2. In terms of competence of the Constitutional Court to rule on the constitutionality of the criticized decision, the Court finds the following:

The competence of the Constitutional Court to rule on the constitutionality of decisions of the Chamber of Deputies, of the Senate, of the common sessions of the Chambers of Parliament was regulated by Article I point 1 of Law no. 177/2010 amending and supplementing Law no. 47/1992 on organization and functioning of the Constitutional Court, the Civil Procedure Code and Criminal Procedure Code of Romania, published in the Official Journal of Romania, Part I, no. 672 of 4 October 2010. This power was conferred by an organic law, under Article 146 letter l) of the Constitution, located in the Article 27 (1) of Law no. 47/1992, republished in the Official Journal of Romania, Part I, no. 807 of 3 December 2010.
In its case-law , the Constitutional Court has precised its competence to rule on the constitutionality of decisions of the Chamber of Deputies, of the Senate, of the joint common sessions of the Chambers of Parliament, retaining, in this respect, that "*only the decisions of Parliament, adopted after conferring new competence, decisions that affect values, rules and constitutional principles or, as appropriate, the organization and functioning of authorities and institutions of constitutional rank are subject to constitutional review*" (see, for example, Decision no. 53 of 25 January 2011, published in the Official Journal of Romania, Part I, no. 90 of 3 February 2011).

Through the Law amending paragraph (1) of Article 27 of Law no. 47/1992, adopted by Parliament, which was not yet promulgated by the President of Romania, the competence of the Court to rule on the constitutionality of Parliament decisions was eliminated.

After sending the claim of inconsistency with the Constitution of the above-mentioned law, and before the Constitutional Court had the opportunity to rule on it, the Government adopted Emergency Ordinance no. 38/2012 amending Law no. 47/1992 on Organization and Functioning of the Constitutional Court, published in the Official Journal of Romania, Part I, no. 445 of 4 July 2012.

This Emergency Ordinance established a legislative solution with the same content as that of Law amending paragraph (1) of Article 27 of Law no. 47/1992.

Settling the claim of inconsistency with the Constitution on the Law amending paragraph (1) of Article 27 of Law no. 47/1992, through Decision no. 727 of 9 July 2012, unpublished until delivery of this decision, the Court, by majority vote, has accepted the claim and found that

"*legislative solution which excludes from constitutional control the decisions of Parliament affecting the constitutional values and principles is unconstitutional*".

Also, in the motivation of the same decision, the Court noted that, according to its case-law, the subsequent primary regulatory acts cannot keep the normative content of legal rules that have been determined as inconsistent with the Constitution and thus such subsequent acts cannot represent a prolongation of unconstitutional acts (see, in this meaning, Decision no. 1.615 of 20 December 2011, published in the Official Journal of Romania , Part I, no. 99 of 8 February 2012).

The Court states that, according with Article 147 (2) of the Constitution, "*In cases of inconsistency with the Constitution of laws, before promulgation, the Parliament is obliged to reconsider those provisions to bring them into line with the Constitutional Court decision*" and paragraph (4) provides that "*the Constitutional Court decisions are published in the Official Journal of Romania. From their publication, decisions are generally binding and effective only for the future*."

Also, in its case-law, the Constitutional Court held that its decisions are opposable to itself since their pronouncement and not since its publication in the Official Journal of Romania, Part I (see, for example, Decision no. 124 of 27 March 2003, published in the Official Journal of Romania, Part I, no. 275 of 18 April 2003).

Therefore, at the time of the pronouncement of this decision, the Constitutional Court, under Article 3 (2) of Law no. 47/1992, will decide on its jurisdiction to rule on the constitutionality of Parliament Decision no. 32 of 3 July 2012, taking into account, on the one hand, the sole Article of the Government Emergency Ordinance no. 38/2012 and, on the other hand, the considerations and the operative part of the Decision no. 727 of 9 July 2012.

The Court notes that the decision is an individual legal act, regarding the removal from office of the Ombudsperson, Mr. Gheorghe Iancu.

Having examinied the provisions of the Constitution concerning the Ombudsperson and those from Law no. 35/1997 on Organization and Functioning of the Ombudsperson, republished in the Official Journal of Romania, Part I, no. 844 of 15 September 2004, as amended and supplemented, the Court notes, with respect to the head of the institution of the Ombudsperson, that this person is in direct constitutional and legal relations with Parliament.

Thus, from reading together Article 58 (1) and Article 65 (2) i) of the Constitution, the Court notes that the Ombudsperson is appointed to a common session of the Chamber of Deputies and Senate, for a period of five years. Also, according to Article 8 (1) of Law no. 35/1997, the Ombudsperson's mandate is exercised after taking the oath in front of the presidents of the two Chambers of the Parliament.

Moreover, according to Article 9 (1) and (2) of Law no. 35/1997, the Ombudsperson's mandate ends before the term, among others, in case of dismissal from office. The removal from office of the Ombudsperson, following the infringements of the Constitution and of the law, is decided by the Chamber of Deputies and the Senate, in common session, by a majority vote of deputies and senators present, at the proposal of the Permanent Bureaus of the two Chambers of Parliament based on the joint report of the legal committees of the two Chambers of Parliament.

On the other hand, the Court notes that, in accordance with Article 60 of the Constitution, the Ombudsperson presents reports the two Parliament Chambers, annually or upon request, and that these reports may contain recommendations on legislation or other measures aiming to protect the rights and freedoms of citizens.

Therefore, the Ombudsperson is responsible only to the Parliament, and his or her activity is subject to parliamentary control. Thus, the Parliament is the sole authority to consider if the activity of the Ombudsperson, in his or her capacity as head of the institution, was conducted within the limits set by the Constitution and laws or, by contrary, with the infringement of these, and, consequently, to decide the legal measures. To decide otherwise would mean to recognize the possibility for the Court to substitute itself to the Parliament, to invalidate the evaluations done by it and to replace these evaluations with the own appreciations of the Court, that would exceed, evidently, the attributions of the Constitutional Court. The Court found that the revocation of Mr. Gheorghe Iancu from the position of Ombudsperson does not touch, by the legal nature of the decision under criticism, constitutional values and principles.
as the Constitutional Court decided by Decision no. 727 of 9 July 2012 and, as such, this decision [of the Parliament] cannot be subject to constitutional control.

For the reasons set forth herein, on the grounds of Article 146 letter. l) of the Constitution, Article 1, 3, 10 and 27 of Law no. 47/1992, by majority vote,

CONSTITUTIONAL COURT

In the name of the law

DECIDES:

Rejects as inadmissible the claim of inconsistency with the Constitution of the Parliament Decision no. 32 of 3 July 2012 to removal from the office of Ombudsperson, Mr. Gheorghe Iancu, claim formulated by 58 MPs belonging to the Liberal Democrat Party group.
Final and binding.
The decision shall be communicated to the presidents of both Chambers of Parliament and published in the Official Journal of Romania , Part I.
The proceedings tok place on 10 July 2012 and were attended by: Augustin Zegrean, president, Aspazia Cojocaru, Acsinte Gaspar, Peter Lazaroiu, Mircea Stefan Minea, Antoanella Iulia Motoc, Ion Predescu, Puskas and Zoltan Valentin Tudorel Toader, Judges.

President of the Constitutional Court,
Augustin Zegrean

Assistant Magistrate,
Simina Gagu

*

DISSENTING OPINION

In disagreement with the solution adopted by the Constitutional Court Decision no. 732 of 10 July 2012, by majority vote, we consider that the claim of inconsistency with the Constitution of the Parliament Decision no. 32 of 3 July 2012 to remove the Ombudsperson, Mr. Gheorghe Iancu, from the office must have been declared admissible and considered well-grounded.

I. Admissibility of the claim

We consider that, by Decision no. 732 of 10 July 2012, the Court endorsed the criticism that we formulated in the dissenting opinions to decisions no. 728 and no. 730 of 9 July 2012.

Therefore, by Decision no. 732 of 10 July 2012, the Court admitted that it had jurisdiction to ascertain the inconsistency with the Constitution of the Parliament Decision no. 32 of 2012, taking into account the operative part of Decision no. 727 of 9 July 2012.

The Parliament Decision no. 32 of 3 July 2012 to remove the Ombudsperson, Mr. Gheorghe Iancu, from office belongs to the category of Parliament decisions that are subject to the control of constitutionality, according to the operative part of Decision no. 727 of 9 July 2012.

II. With regards to the merits of the claim, we note the following:

The Decision no. 32 of 3 July 2012, adopted by the Chamber of Deputies and the Senate, refers to the functioning of the Ombudsperson, a fundamental institution of the State under Title II of the Constitution "Rights, Freedoms and Duties", Chapter IV "Ombudsperson", Article 58-60.

According to the Law no. 35/1997 on the Organization and Functioning of the Ombudsperson, which details constitutional norms set out in Article 58-60, the Ombudsperson is an independent public authority, which acts in an authonomous way from any other public authority [Article Article 2 (1) of the Law]; in exercising its duties, the Ombudsperson shall not replace public authorities [Article 2 (2) of the Law]; the Ombudsperson can not be subject to any mandatory or representative role and no one can force the Ombudsperson to follow his/her instructions and dispositions [Article 2 (3) of the Law]; his activity has a public nature [Article Article 3. (1) of the Law].

Insofar as the responsibility of the Ombudsperson is concerned, the provisions of Article 30 of the Law no. 35/1997 stipulate that "*the Ombudsperson and his deputies are not liable for opinions expressed or* acts performed, in accordance with the law, in exercising their duties set out by the law".

As stated even in the preamble of Decision no. 32 of July 3, 2012, Mr. Gheorghe Iancu's removal from office is legally grounded on Article 9 (1) and (2) of Law no. 35/1997 on the organization and functioning of the Ombudsperson.

Under these circumstances, having examined the Decision no. 32 of July 3, 2012, it is found that this document contains an overview of the alleged unconstitutional manner in which he discharged his duties as follows:

- Thus, he was accused of raising the exception of inconsistency with the Constitution of Article V (1) sentence I of the Government Emergency Ordinance no. 15/2012 on the establishment of financial measures in the health insurance and public finance field, because this normative act had a financial and budgetary nature and did not have a connection with the rights and fundamental liberties.

As implied by the Decision no. 32 of 3 July 2012, the Ombudsperson's approach was meant to counter the measure taken by Ponta Government to redressthe state budget, in order to maintain the effects of discriminatory and partisan political measures taken by Ungureanu's Government.

Furthermore, he was accused of raising the exception of inconsistency with the Constitution of the Government Emergency Ordinance no. 27/2012 regarding some measures on the organization of the Romanian Cultural Institute, measures that did not affect in any way the rights and fundamental freedoms.

We believe that, in the above cases, the Ombudsperson exercised his powers conferred by Article 146 letter d) of the Constitution and Article 13 (1) letter f) of the Law no. 35/1997 on the organization and functioning of the Ombudsperson, according to which he may raise such exception directly.

For example, in the case of raising the exception regarding the Romanian Cultural Institute, the Ombudsperson has received petitions from more than 2000 intellectuals and academics from Romania and abroad, including three Nobel Prize laureates. In addition to petitions, these people have organized several events.

As for the situations when the Ombudsperson can raise the exception of inconsistency with the Constitution, we considered relevant to reiterate the considerations retained by the Constitutional Court in its Decision no. 1133 of 27 November 2007, published in the Official Journal of Romania, Part I, no. 851 of 12 December 2007. On that occasion, the Court has not upheld the plea of inadmissibility of the claim of inconsistency with the Constitution put forth by the Government, which claimed that the systematic interpretation of legal acts governing the role and powers of the Ombudsperson and of the constitutional provisions regulating the category of persons that can submit an exception of inconsistency with the Constitution to the Constitutional Court shows that the Ombudsperson has the power to initiate the constitutional control by the Constitutional Court only in relation to the protection of rights and freedoms of individuals. Article 146 of the Constitution does not condition, as stated by the Government, the situations where the Ombudsperson is empowered to lodge complaints to the Constitutional Court, respectively, exceptions of inconsistency with the Constitution.

Along the same arguments, we share the opinion that the exception of inconsistency with the Constitution raised by the Ombudsperson before the Constitutional Court relating to the Government Emergency Ordinance no. 15/2012 on setting financial measures in the health insurance and public finance field, as referred to in the preamble of Decision no. 32 of 3 July 2012, was made under and within the constitutional and legal provisions. Therefore, addressing this exception of inconsistency with the Constitution, the Constitutional Court issued its judgment no. 558 of 24 May 2012, published in the Official Journal Of Romania, Part I, no. 382 of 7 June 2012, where the Court noted that the "was legally notified of and is competent to solve the claim of inconsistency with the Constitution pursuant to Article 146 letter. D) of the Constitution and Article 1 (2), Article 2 , 3, 10, 29 and 32 of the Law no. 47/1992, ".

In addition, having examined the Constitutional Court Decision no. 558 of 24 May 2012, one can observe that the public authorities having communicated their points of view on the claim of inconsistency with the Constitution (President of the Chamber of Deputies, President of the Senate and the Government) did not raise a plea of inadmissibility of this exception in relation to a possible abuse by the Ombudsperson in exercising his competence to submit an exception of inconsistency with the Constitution to the Constitutional Court.

As for the Ombusman's ex officio exercise of his functions to submit an exception of inconsistency with the Constitution to the Constitutional Court, we note that this conduct is grounded in the provisions of Article 59 (1) of the Constitution, according to which: "the Ombudsperson shall exercise his powers *ex officio* or upon request of persons whose rights and freedoms were aggrieved, within the limits established by the law" and in Article 14 (1) of the Law no. 35/1997, according to which "the Ombudsperson shall exercise his powers *ex officio* or upon request of individuals, companies, associations or other legal entity."

Therefore, based on the elements presented above, the Ombudsperson has not violated the Constitution or laws by acting *ex officio*.

Moreover, in relation to the reasons given in the decision (that "the current Ombudsperson, Mr. Gheorghe Iancu, demonstrated by his actions that he is using his constitutional and legal

powers for political purposes, especially to serve the interests of political forces that promoted him into this office, namely the Liberal Democratic Party, by attacking to the Constitutional Court normative acts adopted by the Government invested after the dismissal by censure motion of Ungureanu's Government "), we consider that the assessment of the Ombudsperson's actions can not be achieved in isolation, but taking into account all exceptions of inconsistency with the Constitution raised directly by the Ombudsperson between 28 September 2011 (the date of publication in the Official Journal of Romania of the Parliament Decision no. 16/2011, according to which Mr. Gheorghe Iancu was appointed Ombudsperson) and 4 July 2012 (the date of publication in the Official Journal of the Decision no. 32/2012 on the removal from office of the Ombudsperson, Mr. Gheorghe Iancu). Therefore, throughout this period, the Ombudsperson raised 12 exceptions of inconsistency with the Constitution *ex officio* before the Constitutional Court, which refer to various legal provisions adopted by the Parliament or Government ordinances, adopted in different legal circumstances in time.

As a result, the mere diversity of the object of the exceptions of inconsistency with the Constitution and the various dates of adoption of the respective laws and ordinances represent sufficient arguments to dismiss the reason to remove the Ombudsperson, Mr. Gheorghe Iancu, from office on the allegation that his actions targeted "the normative acts adopted by the current government invested after the dismissal by censure motion of Ungureanu's Government ".

In addition, the conflict mediation between individuals and public administration authorities, for which he was criticized by the Parliament Decision no. 32 of 3 July 2012, is intrinsic to the constitutional and legal role of the Ombudsperson to protect the rights and freedoms, under conditions of independence and impartiality.

As the Constitutional Court noted in its case-law (see, for example, Decision no. 45 of 20 January 2011, published in the Official Journal of Romania, Part I, no. 171 of March 10, 2011), this institution has specific mechanisms, established in a comprehensive and detailed manner in its organizational law, to ensure the discharge of its constitutional role effectively.

Therefore, the fact that the Ombudsperson addressed the public authorities referred to in the preamble of the Decision no. 32 of 3 July 2012 does not constitute a violation of the Constitution or laws. On the contrary, a correct perception of his fundamental role would see these complaints as means to improve the quality of the public administration and public services, to encourage the public administration authorities to regard complaints as an opportunity to communicate effectively with the petitioners and to remedy any deficiencies in their service, so that the right to good governance enshrined in Article 41 of the Charter of Fundamental Rights of the European Union will not remain a theoretical and illusory right. The same vision is enshrined in the Declaration of the European Network of Ombudsmen adopted at the Sixth Seminar of the National Ombudsmen of EU Member States and candidate countries (Strasbourg October 14 to 16, 2007).

Examining the constitutional or legal provisions in other states on the removal from office of the Ombudsperson, one notices that this can occur for various reasons, such as: non-observance of conditions necessary for carrying out his/her duties or committing a serious offense (the European Ombudsperson), loss / withdrawal of Parliament trust (the Danish Ombudsperson and the Ombudsperson of the Republic of Moldova), serious negligence in the performance of his/her duties and work/related responsibilities (People's Defender of Spain), the failure to perform his/her duties and the violation of the Constitution, laws or generally accepted ethical rules (the Ombudsperson in Bulgaria), actions or inactions which seriously undermine the trust invested (the Ombudsperson of the Netherlands). As for the Ombudsperson of Portugal, the Portuguese Constitution guarantees the independence and the irremovability of the Ombudsperson.
The competent authority to order removal from office is usually represented by the Parliament.

Given the importance of the Ombudsperson in the state of law as an institution designed to protect fundamental rights and freedoms of citizens, we believe that the complaint had to be admitted.

Obviously, the Ombudsperson's removal from office, by the Decision of the Parliament no. 32 of 3 July 2012, affects the constitutional values and principles as stated by the Court in its Decision no. 727 of 9 July 2012.

If the Ombudsperson's removal did not affect the basic constitutional principles and values, the operative part of Decision no. 727 of 9 July 2012 would be devoid of meaning.

We believe that the Ombudsperson has exercised in good faith his duties ascribed by the Constitution and respected the Law no. 35/1997.

The claim of inconsistency with the Constitution of the Parliament Decision no. 32 of 3 July 2012 on the removal from office of the Ombudsperson, Mr. Gheorghe Iancu, must have been admitted and considered well grounded.

In this context, his removal was just the beginning of a sequence of acts occurring in a very short time, respectively three days, which led to the suspension of the President of Romania.

As stated in a dissenting opinion to Decision no. 730 of 9 July 2012, these acts constituted serious violations of the rule of law provided by Article 1 (3) and breached the respect for the supremacy of the Constitution, provided by Article 1 (5) of the Fundamental Law.

Judge-Rapporteur,
Prof. Univ. Dr. Iulia Antoanella Motoc

DECISION No. 731 of 10 July 2012 of the Constitutional Court on the rejection of the claim of inconsistency with the Constitution of the Law amending Article 10 of Law No. 3/2000 concerning the Organization of the Referendum

Published in the Official Journal of Romania no. 478 of 12July 2012

I. By means of Notice No. 51/2.847 of 27 June 2012, the Secretary General of the Chamber of Deputies passed to the Constitutional Court a claim on the inconsistency with the Constitution of the Law amending Article 10 of the Law No. 3/2000 on the Organization of the Referendum, made by a total number of 71 members of Parliament belonging to the Liberal Democratic Party parliamentary group, namely: Mircea-Nicu Toader, Obuf Catalin, Ovidiu Buhaianu, Adrian Gurzau, Danut Liga, Maria Stavrositu, Sulfina Barbu, Stefan Daniel Pirpiliu, Dan-Radu Zatreanu, Andronache Gabriel, Gabriel-Dan Gospodaru, Adrian Florescu, Raluca Turcan, Vasile-Silviu Prigoană, Stelica Strugaru Iacob, Constantin Dascalu, Gelu Visan, Elena Gabriela Udrea, Marius Rogin, Mihai Stroe, Trasculescu Silviu Alin, Monica Maria Iacob Ridzi, Clement Negrut, George Ionescu, Doru Brasoan Lese, Cornel Stirbet, Peter Calian, Sanda-Maria Ardeleanu Nicusor Paduraru, Claudia Boghicevici, Mihai Cristian Apostolache, Victor Boiangiu, Constantin Militaru Severus, Adrian Nitu Henorel, Daniel Buda, Costica Canacheu, Cezar-Florin Preda, Florian Daniel Geantă, Gherasim Vasile, Cristian Petrescu, Samoil Vilcu, Stefan Sorin Zamfirescu, Stelian Eftimie Ghita, Marius Sorin Gondor, Cristian Ion Burlacu, Adrian Badulescu, Valerian Vreme, Tinel Gheorghe, Mihai Marian Dan, Ioan Oltean, Mircea Lubanovici, Nicolae Bud, Mihaela Stoica, William Gabriel Brânză, Cristian Boureanu Alexandru, Ioan Balan, Gheorghe Ialomitianu, Carare Viorel, Stefan Sereni, Ioan Holdis, Teodor Marius Spinu, Cristina Elena Dobre, Bogdan Cantaragiu, Stelian Fuia, Iosif Stefan Dragulescu, Mariana Chircu Doinita, Alin Popoviciu Florin Augustin, Serban Razvan Mustea, Roberta Alma Anastase, Valeriu Tabara, Sever Voinescu-Cotoi and Iulian Vladu.

The claim has an annex in copy, namely the Law amending Article 10 of Law No. 3/2000 on the Organization of the Referendum, adopted by the Parliament of Romania, according to Article 75 and Article 76 (1) of the Romanian Constitution, republished.

II. The claim was made under Article 146, letter a) of the Constitution and Article 11 paragraph (1) letter A.a) related to Article 15 (2) of Law No. 47/1992 on the organization and functioning of the Constitutional Court, was registered at the Constitutional Court under No. 4321 of 27 June 2012 and is subject of the file no. 1.153A/2012.

III. In motivating the complaint, its authors argue, in essence, that through the criticized law the principle of separation of powers within the State as the foundation of the rule of law in a constitutional democracy is breached.

In this respect, they show that according to Article 81 (2) of the Constitution, the President of Romania is elected in the first round, with the majority of votes of the voting persons registered on the electoral lists, and if no candidate has obtained such a majority, the candidate who has obtained in the second ballot the largest number of votes is elected. In this regard, the authors of the exception State that, "*in other words, the State must be established with any majority." Moreover, they show that "in order to exist, the state must be stable, that is not to be abolished anyhow, by any majority or any quorum, but by majorities and quorums large and very large. Otherwise, the State could have a very fragile position and existence. Therefore, if the majority of the State composition is absolute, the one for its dissolution must be at least equal if not higher, but in no case lesser* ".

Therefore, the authors of the claim argue that through the criticized law it is intended to breach the principle of separation of powers, as the majority by which the President of Romania could be dismissed as a result of a referendum is smaller than the majority by which he is designated. In their opinion, through this law, the Parliament has created an imbalance of powers and the premises for violating the democracy, as a trait of the Romanian State.In support of the above shown, the authors of the claim claim as well the Constitutional Court Decision No. 147 of 21 February 21 2007, published in the Official Journal of Romania, Part I, No. 162 of 7 March 2007.

In conclusion, they ask the Constitutional Court to find out that the Law amending Article 10 of Law No. 3/2000 on the Organization of the Referendum is inconsistent with the Constitution because it contravenes Article 1 (3) and (4) of the Constitution, texts that have the following wording:

- Article 1 (3) and (4):

"(*3) Romania is a rule of law, democratic and social State, in which the human dignity, the rights and freedoms of the citizens, the free development of the human personality, the justice and the political pluralism represent supreme values, in the spirit of the democratic traditions of the Romanian people and the ideals of the December 1989 Revolution, and they are guaranteed.*

(4) The State is organized on the principle of separation and balance of powers - legislative, executive and judicial - in the framework of the constitutional democracy. "

IV. In accordance with Article 16 (2) of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, the claim was communicated to the Presidents of both Chambers of the Parliament and to the Government, in order to communicate their views.

The President of the Senate sent with Notice No. I 407 of 5 July 2012, his point of view on the objection of inconsistency with the Constitution, considering that it is unfounded. By supporting this opinion, he shows that the Basic Law retained the referendum as a way to facilitate the direct participation of the people in exercising the State power, and this translates the principles set forth in Article 1 of the Constitution, in accordance to which Romania is a rule of law and democratic State. He considers that the different modality of establishing the results of the referendum, existing at the moment for the dismissal of the President (the majority of the votes of the citizens registered in the electoral lists), related to the referendum on the issues of national interest, other than the dismissal of the President of Romania and related to the local referenda (the majority of votes expressed at country level or administrative-territorial entity level) finds no justification in the constitutional provisions, which do not make any distinction in terms of the organization and conduct of the various forms of referendums, leaving it to the legislator to determine the best ways of achieving this consultation of the people.

He mentions that the law subjected to the constitutionality control stipulates the rule in accordance which all matters subject to national or local referendum must be governed by similar procedural rules, thus ensuring the legal treatment unity and an accurate representation of the will of the electors.

The President of the Chamber of Deputies sent his point of view to the Constitutional Court, with Notice No. 51/2.927 of 3 July 2012, in which he considers the Law amending Article 10 of Law No. 3/2000 on the Organization of the Referendum is contrary to Article 1 (3) and (4) of the Constitution. In support of this opinion, he shows that "*the State must be organized by any majority and is to be dissolved only with large and very large majorities. This is why such large and very large majorities could not be modified in small or very small majorities* ", otherwise the democracy as a trait of the Romanian State and the separation of powers could be infringed.

He mentions that these considerations are valid for each component of the State as well, considering that the State itself would be affected in content and in form if one of its components would not meet the features mentioned. But, by the criticized law, the majority has been modified without taking into account the requirements mentioned above.

He refers to Decision no. 147 of February 21, 2007, by which the Constitutional Court concluded that "*when the constitutional legislator wanted to establish a particular majority, it made it through a reference text, the application of which to subsidiary situations was implied, excluding the cases in which such a majority is left to be provided in a law* ".He shows that, in this case, Article 95 (3) of the Constitution, concerning a referendum on the dismissal of the Romanian President, does not refer to a law establishing such a majority, so that those set by the Constitutional Court are fully applicable. Thus, he argues that since the President of Romania is elected in the first round with an absolute majority of votes of the registered voters, the establishment of a lesser majority for his dismissal would be unconstitutional. .

The Government sent to the Constitutional Court, with Notice No. 5/4.659/2012 of 5 July 2012, its point of view, according to which it considers that the claim of inconsistency with the Constitution is unfounded. In this respect, it shows that the Basic Law provisions concerning the referendum, Article 90, 95 and 151, make no reference to the fulfillment of the conditions for its validity, such as a quorum or majority required for the establishment of the results. Therefore, the organic law is to establish, specifically, the quorum and majority conditions for the local or national referendum. It mentions that through the challenged law the required majority for the President's impeachment referendum was modified.

It notices that by decisions. No.147/2007, No. 355/2007 and No. 420/2007, the Constitutional Court has previously Stated its opinion concerning the consistency with the Constituton of Article 10 of Law no. 3/2000, holding that, if that Article established a differentiated majority of votes for the dismissal of the President of Romania with the majority of votes with which he was elected, it is unconstitutional, because the legal status of the President of Romania is the same, irrespective whether he was elected in the first or the second round. Thus, the Constitutional Court has Stated that "it does not preclude the possibility for the legislator to opt for a relative majority for dismissing the President in all three situations." The Court also has noted that when the constitutional legislator wanted to establish a particular majority, he made it through a reference text, the application of which to subsidiary situations was implied, excluding the cases when such a majority is left to be provided by law.

Given the jurisprudence of the Constitutional Court, the Government takes the view in the sense that ordinary legislator can choose any desired majority when the dismissal of the President is under discussion.

THE COURT,

examining the objection of inconsistency with the Constitution, the views of the Senate Speaker, of the President of the Chamber of Deputies and of the Government, the report prepared by the judge-rapporteur, the criticized legal provisions in relation to the provisions of the Constitution and Law No. 47/1992, holds the following:

The Constitutional Court was legally seized and is competent pursuant to Article 146 letter. a) of the Constitution and Article 1, 10, 15 and 18 of Law no. 47/1992, republished, to settle the complaint of inconsistency with the Constitution.

The subject of the claim of inconsistency with the Constitution is the Law amending Article 10 of Law No. 3/2000 on the Organization of the Referendum, whose sole Article states that Article 10 of Law no. 3/2000 is amended to read as follows:" *The dismissal of the President of*

Romania is approved if, following the conduct of the referendum, the proposal meets the majority of the votes validly expressed."

The Constitutional Court notes that, after its claim to solve this objection of inconsistency with the Constitution, the Government adopted the Emergency Ordinance no. 41/2012 amending and complementing Law no. 3/2000 on the Organization of the Referendum, published in the Official Journal of Romania, Part I, No. 452 of July 5, 2012, which established, in terms of approving the dismissal of the President of Romania, a derogation from Article 5 (2) of Law no. 3/2000 on the voting quorum as a condition for validation of the referendum.

Examining the objection of inconsistency with the Constitution, the Court considers that it is unfounded and it has to establish the constitutionality of the law criticized for the reasons which will be shown below:

1. The referendum was enshrined at the constitutional level as a consultation modality by which the people has the ability to exercise directly the national sovereignty, expressing its will on matters of general interest or which have special significance in the State life.

Thus, the constitutional framework on the referendum is represented on the following provisions of the Fundamental Law:

-Article 2 (1):
"(1) The national sovereignty belongs to the Romanian people, who exercise it through their representative bodies, resulting from free, regular and fair elections, and by referendum."

-Article 73 (3) d):
"(*3) The organic law shall provide for the :*
(...)
d) organization of the referendum. "

-Article 90:
" *The President of Romania after consulting the Parliament, may ask the people to express its will on matters of national interest by referendum*."

-Article 95 (3):
"(*3) If the proposal to suspend [the President of Romania] in office has been approved, within 30 days, a referendum on the president's impeachment is organized*."

-Article 151 (3):
"*(3) Review of [the Constitution] shall be final after its approval by referendum, held within 30 days from the date of passing the draft or proposed revision."*

Therefore, the Fundamental Law provides for three national referendum types: the consultative one, initiated by the Romanian President on matters of national interest, mentioned in Article 90, the one on the Romanian president's dismissal, provided by Article 95 (3) and the one approving the revision of the Constitution, provided in Article 151 (3). Moreover, there can be also organized local referenda on issues of particular interest for the administrative-territorial units, under the law.

The constitutional provisions have been materialized in an organic law, being detailed and elaborated by Law no. 3/2000 on the Organization of the Referendum, published in the Official Journal of Romania, Part I, no. 84 of 24 February 2000, as amended and supplemented.

By interpreting the constitutional and legal texts, it results that the President's impeachment

referendum and the referendum for approving the constitutional review are mandatory, both in terms of the organization requirements and of their outcome.

2. In terms of the object of the constitutionality control, the Court notices that the text of Article 10 of Law No. 3/2000 on the Organization of the Referendum has suffered amendments from the time of adopting the law until the delivery of this decision, outlined in the table below:

Law No. 3/2000 on the Organization of the Referendum (published in the Official Journal of Romania, Part I, No. 84 of 24 February 2000)	"Article 10: *The dismissal of the President of Romania is approved if it meets the majority of votes of the citizens registered on the electoral lists"*
Law no. 129/2007 amending Article 10 of Law no. 3/2000 (published in the Official Journal of Romania, Part I, No 300 of May 5, 2007)	"Article 10: *By derogation from Article 5 paragraph (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes cast at country level, by the citizens that took part at the referendum"* [Article 5 paragraph (2) of Law No.3/2000 provides: "*The referendum is valid if at least half plus one of the persons registered in the permanent voters list participate at it"*].
Law No. 62/2012 on approving the Government Emergency Ordinance No. 103/2009 amending and complementing Law No. 3/2000 (published in the Official Journal of Romania, Part I, No. 247 of April 12, 2012)	"Article 10: *The dismissal of the President of Romania is approved if it meets the majority of votes of the citizens registered in the electoral lists".*
The Law for amending Article 10 of Law No. 3/2000 (subjected to the *a priori* control exercised by the Constitutional Court)	"Article 10: *The dismissal of the President of Romania is approved if, following the conduct of the referendum, the proposal meets the majority of the votes validly expressed."*
The Government Emergency Ordinance No. 41/2012 for amending and complementing Law No. 3/2000 on the Organization of the Referendum (published in the Official Journal of Romania, Part I, No 452 of July 5, 2012).	"Article 10: *By derogation from Article 5 paragraph (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes of the citizens that took part in the referendum".*

From the perspective of legislative developments, the Court reminds that, in the Code of Practice in respect of referendum, adopted in 2007, the European Commission for Democracy through Law (the Venice Commission) recommended that States should ensure stability in terms of the legislation in this respect.

3. The authors criticize, in essence, the change of the criterion according to which the majority of the votes cast for the dismissal of the President of Romania is reached, which, according to the law subject to constitutional control, represents the majority of valid votes cast and not the one of the registered citizens registered in the electoral lists, as stipulated by Law No. 62/2012.

By Decision no. 147 of 21 February 2007, published in the Official Journal, Part I, No. 162 of 7 March 2007, the Court examined the objection of inconsistency with the Constitution brought against the provisions of Law no. 129/2007 on amending and supplementing Law no. 3/2000,

prior to its promulgation, which, as subject to constitutional control, provided different ways of approval by referendum of dismissing the President of Romania, depending on whether he had been chosen in the first or the second ballot, as provided in Article Article 81 (2) and Article 81 (3) of the Romanian Constitution.

The Court held on that occasion that, by changing Article 10 of Law no. 3/2000, the legislator intended to apply, in terms of votes cast, the legal principle of symmetry in respect of the election of the President of Romania in the second round of elections and at his dismissal following the national consultation. The Court found out that, grounding its solutions on the principle of symmetry , the legislator did not take into account that the application of this principle in the public law, more so in the constitutional law, especially in the organization and functioning of the public authorities, is not possible. The symmetry principle is a principle of the private law, its application in the public law being ruled out. Therefore, the constitutional rules are asymmetric par excellence, for which the Court held that the requirements established by the Constitution for the election of the President of Romania and those relating to his dismissal after a referendum are not symmetrical, because they represent different legal institutions, with different roles and purposes, each having a distinct legal treatment. At the same time, the Court noticed, in this context, the dismissal of the President of Romania by referendum does not mean an election contest, but is a penalty for committing serious acts that violate the Constitution.
The distinctions on the dismissal of the President of Romania by referendum, as designed by the criticized law provisions, were aimed both at the President of Romania who won the office in the first round of elections, and the President of Romania elected in the second round as well as the Interim President. The Court noted that, following the logic of the legislator, in the first case the president could have been dismissed by an absolute majority of the votes of the electorate, and in the second case, by the relative majority of the votes of citizens present at the scrutiny, while in the situation under Article 99 of the Constitution on the "Liability of the Acting President" who was not elected, there would have been no constitutional provision on the dismissal. The Court found out that such an interpretation is contrary to Article 1 (3) of the Constitution, according to which Romania is a State governed by the rule of law, such a State opposing the application of the same sanctions to the President of Romania, in different ways, depending on how he obtained this position: in the first round of the election, in the second round of the election or as an interim president.

The Court concluded that the rational solution of this problem results from interpreting (3) of Article 95 of the Constitution and its provisions, read together with Article 81 (1) and Article 95 (1) of the Constitution. Thus, under Article 81 (1) of the Constitution, is declared elected the candidate who met in the first ballot a majority of votes cast by the voters registered on the electoral lists. According to the regulation in force, this absolute majority operates as well in the case of the establishment of the outcome of the referendum for the dismissal of the President of Romania, applying to the same extent, by the same rules, to the head of State, regardless of the number of votes obtained or of how he has assumed this position. Applying the same legal treatment to the President of Romania elected in the first round of the elections, to the one in the second round of elections or to the interim president in case of dismissal from office by referendum is required by the constitutional provisions of Article 95 (1), which provides the same legal treatment for the three cases.

Therefore, the Court held that the provisions by which the legislator found out that the Romanian President's impeachment referendum results are set differently, depending on the number of elections in which he was elected, are contrary to the constitutional provisions of Article 81 (2). Moreover, the Court noted that, when the constituent legislator wanted to establish a particular majority of votes, made it through a reference text, which subsidiarity situations application is implied, unless such a majority is left to be regulated by law.

The Court found that the constitutional provisions concerning the majority required to elect the president in the first round are sufficient to establish solutions to dismiss the head of State, in all cases, by way of analogy, and not the by legal symmetry.

4. . Given its case-law in this matter, the Court finds out that the Law amending Article 10 of Law no. 3/2000 on the Organization of the Referendum is constitutional, given that no constitutional text limits the legislator's right to choose to fix a certain majority vote for dismissing by referendum the President of Romania.

Romanian president's dismissal by referendum is a sanction for committing serious offences, for which the Court notes that it is reasonable for the citizens that it can be approved by a majority of valid votes.

The Court finds out that the referendum' outcome depends on the fulfillment of two cumulative conditions: one on the minimum number of citizens who must participate at the referendum in order to be valid and one regarding the number of valid votes, which determines the outcome of the referendum.

These conditions are detailed in Article 5 (2), and, respectively, in Article 10 of Law No. 3/2000. According to Article 5 (2), "The referendum is valid if at least half plus one of the persons registered in the permanent electoral lists are participating in it".

The Court notes that, in the version submitted to the control of constitutionality, the Law amending Article 10 of Law no. 3/2000 provides for a unified regulation for all types of referendums enshrined in the Constitution, giving expression as well to the exigency of the representativeness in terms of the vote. Thus, the same legislative solution is found for the referendum on the constitutional revision, the referendum on matters of national interest and the local referendum, which, according to Article 7 (2), Article 12 (2), respectively, Article 14 (2) of Law no. 3/2000, the result is given by the majority of the votes cast throughout the country or, where appropriate, at the administrative-unit level.

Similarly, the Court finds that the condition to be fulfilled for the validity of the referendum is the same for all types of referendum, Article 5 (2) of Law no. 3/2000 imposing the fulfillment of the condition of the absolute majority consisting in half plus one of the number of voters included in the permanent electoral lists. The Court notes that this is a prerequisite for the referendum to express really and effectively the will of the citizens, being thus the premise of a genuine democratic manifestation of sovereignty by the people, in accordance with the principle Stated in Article 2 (1) of the Basic Law.

The participation in the referendum of most citizens is an act of civic responsibility, by which the electorate is going to decide on the punishment or not of the President of Romania, with the possibility of dismissal or maintaining him in function.

For the reasons shown, under Article 146 letter. a) and Article 147 (4) of the Constitution and Article 11 (1) letter a), Article 15 (1) and Article 18 (2) of Law No. 47/1992, unanimously,

THE CONSTITUTIONAL COURT

In the name of the law

D E C I D ES:

Notes that the Law amending Article 10 of Law no. 3/2000 on the Organization of the Referendum is constitutional to the extent that it ensures the participation in the referendum of at least half plus one of the number of persons registered in the permanent electoral lists.

Final and binding.

The decision is communicated to the President of Romania, Presidents of both Houses of Parliament and to the Prime-minister as well, and it is published in the Official Journal of Romania, Part I.

The debate took place on July 10, 2012 and it was attended by Zegrean Augustin, Chairman, Aspazia Cojocaru, Acsinte Gaspar, Petre Lazaroiu, Mircea Stefan Minea, Antoanella Iulia Motoc, Ion Predescu, Puskas Valentin Zoltan and Tudorel Toader, Judges.

PRESIDENT OF THE CONSTITUTIONAL COURT,
AUGUSTIN ZEGREAN

ASSISTANT-MAGISTRATE
VALENTINA BARBATEANU

DECISION no. 734 of 24 July 2012 of the Constitutional Court on the rejection of the claim of inconsistency with the Constitution of the provisions of Article 3 of the Decision of the Parliament no. 34 of 6 July 2012 concerning the establishment of the object and of the date of the national referendum for the dismissal of the President of Romania

Published in the Official Journal of Romania no. 516 of 25 July 2012 (O.G. 516/2012)

I.
1. By Letter No. 16/425 of 17 July 2012, the leader of the parliamentary group of the Liberal Democrat Party, Mr. Mircea-Nicu Toader, sent to the Constitutional Court the claim of the parliamentary group of the Liberal Democrat Party concerning the inconsistency with the Constitution of the Decision of the Parliament no. 34 of 6 July 2012, on the establishment of the object and of the date of the national referendum for the dismissal of the President of Romania.

2. The list comprising the signatures of the authors of the claim of inconsistency with the Constitution was enclosed to the latter: Gabriel Andronache, Gheorghe Ialomitianu, Corneliu Olar, Daniel Buda, Ioan Oltean, Mircea-Nicu Toader, Elena Gabriela Udrea, Gelu Visan, George Ionescu, Roberta Alma Anastase, Stefan Daniel Pirpiliu, Cornel Stirbet, Adrian Gurzau, Stelian Fuia, Catalin Ovidiu Buhaianu-Obuf, Razvan Mustea-Serban, Alin Silviu Trasculescu, Ioan-Nelu Botis, Iulian Vladu, Claudia Boghicevici, Marius-Sorin Gondor, Marius Rogin, Arghir Iustin Marinel Cionca, Costica Canacheu, Adrian Henorel Nitu, Nicolae Bud, Eugen Badalan, Lucian Nicolae Bode, Constantin Chirila, Carmen Axenie, Doinita-Mariana Chircu, Maria Stavrositu, Clement Negrut, Florin Postolachi, Petru Movila, Sorin Andi Pandele, Mircea Marin, Stelian Ghita-Eftemie, Teodor-Marius Spanu, Nicusor Paduraru, Marius Cristinel Dugulescu, Cristian Alexandru Boureanu, Petru Calian, Cezar Florin Preda, Gabriel Dacu Gospodaru, Vasile Gherasim, Sanda-Maria Ardeleanu, Dan Mihai Marian, Gheorghe Albu, Adrian Badulescu, Adrian Florescu, Cristian Petrescu, Dan-Radu Zatreanu, Daniel-Florian Geanta, Mihai Stroe, Sever Voinescu-Cotoi, Marius Neculai, Samoil Vilcu, Valeriu Alecu and Mihai Doru Opriscan.

3. The claim was formulated in accordance with the provisions of Article 146 (i) of the Constitution and Article 27 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, republished with its subsequent amendments, and was registered to the Constitutional Court under no. 4.980 of 17 July 2012, and represents the subject-matter of File no. 1.248 /L/ 2/2012.

II. The object of the claim, as stated, represents the provisions of Article 3 of the Decision of the Parliament no. 34 of 6 July 2012, on the establishment of the object and of the date of the national referendum for the dismissal of the President of Romania, published in the Official Journal of Romania, Part I, no. 457 of 6 July 2012, which read: "*In case the Constitutional Court determines that the conditions of validity set out by law were not fulfilled, the Parliament of Romania will take notice of its decision and will rule on the procedure to be followed*."

III.
1. In the motivation of the claim it is alleged that the contested provisions are constitutional only to the extent that the phrase "*procedure to be followed*" contained in Article 3 of the Decision of the Parliament no. 34 of July 6, 2012 is understood in the sense that it does not refer to the procedure for the organization and conduct of the referendum and its validation, irrespective of the fact that the conditions of validity set out by the law were fulfilled, as such matters fall under the competence of the Constitutional Court, based on Article 146 i) of the Constitution. The Constitutional Court, and not the Parliament, decides on the correct implementation of the

referendum procedure and confirms its results, and, in case the legal criteria have not been met, the Court can invalidate the referendum.

As a result, any subsequent decision of the Parliament, concerning the competences of the Constitutional Court (confirmation, validation, invalidation of the results of the referendum), is unconstitutional and runs counter Article 146 i) of the Constitution.

2. The authors of the claim also state that the Parliament cannot decide to organize and conduct another referendum except under different grounds, given that the population have already given its opinion on the grounds which justified the validated or invalidated referendum. The decision of the Parliament to organize and conduct another referendum on the same facts allegedly committed by the President of Romania and for which the people have already given an opinion, would violate Article 2. (1) of the Constitution, as the Parliament cannot exercise sovereignty instead of the Romanian people. Moreover, the principle of *res judicata* would apply in this case.

3. The claim also claims that, in this case, the Court is competent to decide, taking into consideration the Decision no. 727 of 9 July 2012, which rules that the legislative solution which excludes the decisions of the Parliament affecting the constitutional values and principles from constitutional control is unconstitutional.

IV. Pursuant to Article 27 of Law no. 47/1992, on 17 July 12012, the Constitutional Court requested the views of the Permanent Bureaus of the Chamber of Deputies and the Senate on the claim of inconsistency with the Constitution.

V.
1. The Interim President of the Senate submitted to the Constitutional Court, by Letter no. I - 460 of July 18, 2012, registered at the Constitutional Court under no. 4996 of 18 July 2012, the opinion of the Permanent Bureau of the Senate, which considers that the claim is not admissible.

2. It is showed that the complaint does not require the control of constitutionality of the contested act, but of possible subsequent decision of the Parliament following the fulfillment by the Constitutional Court of its duties in relation to the referendum.
It is further ascertained that the Decision of the Parliament no. 34/2012 itself states that only the Constitutional Court is competent to decide whether the validity criteria regarding the referendum for the dismissal of the President of Romania have been fulfilled.

3. It is also said that the contested decision of the Parliament was published in the Official Journal, Part I, on 6 July 2012, at that date the provisions of Government Emergency Ordinance no. 38/2012, amending and complementing Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, which exempted from constitutional control such acts, being applicable. Therefore, the claim of inconsistency with the Constitution does not fall under the competence of the Constitutional Court, which cannot exercise the constitutional control over the decisions of the Parliament, even considering the circumstantiated competence as results from the Constitutional Court Decision no. 727 of 9 July 2012.

4. Regarding the request of the claim that, after the validation or invalidation of the referendum, the Constitutional Court should rule that the Parliament could not hold another referendum based on the same facts for which the Romanian people have already given an opinion, this is considered premature and inadmissible, because it targets the decision of the Constitutional Court *a priori*, without criticizing an existing legal act, but a potential one.

VI.
1. The Secretary General of the Chamber of Deputies submitted to the Constitutional Court,

by Letter No 51/3215 of 23 July 2012, registered at the Constitutional Court under no. 5040 of 23 July 2012, the opinion of the Permanent Bureau of the Chamber of Deputies, which considers that the claim can not be retained.

2. According to the point of view sent, the Court *"has no powers to rule on the constitutionality of decisions*", on the account that, by Decision no. 727/2012 on the claim of inconsistency with the Constitution of the Law amending paragraph (1) of Article 27 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, the Constitutional Court held that a series of corroborations are necessary, as well as the obligation of the Parliament to establish the procedure for claim on inconsistency with the Constitution of its decisions and the consequences for decisions declaring the inconsistency with the Constitution of provisions of such decisions, whereas the normative act by which the Parliament made these corroborations has not entered into force yet. According to the Permanent Bureau of the Chamber of Deputies, under these considerations, "*even if a decision is declared unconstitutional, it did not cease its legal effects as it is not provided by the law*".

3. As for the criticisms included in the claim, they target assumptions and non-existent facts. The text that is the object of the claim of inconsistency with the Constitution established the task of the Parliament to take some measures to solve the situation arising after the submission of the report which is the object of the decision of the Constitutional Court on the procedure for the organization and conduct of the referendum and the confirmation of its results. This is a normal task given that Parliament initiated the suspension procedure, according to Article 95 (2) of the Constitution. Restricting *a priori* the competence of the Parliament to consider such measures violates the role of the Parliament as the supreme representative organ of the Romanian people and the sole lawmaking authority of the country.

4. It is further reminded that the same text - criticized in this case – was found in the body of the Decision of the Parliament no. 21/2007 to determine the object and the date of the national referendum for the dismissal of the President of Romania, published in the Official Journal, Part I, no. 273 of 24 April 2007, and the debates in joint plenary session of the two Chambers of the Parliament dated 24 April 2007 confirm that this wording did not take into consideration the validation of the referendum, which is under the exclusive competence of the Constitutional Court, but the situation of any normative vacuum, in the scenario that the referendum is not validated for other reasons than the quorum of presence or of option. Therefore, the criticized provision is without prejudice to the competence of the Constitutional Court, but aims to solve the problem arising from the invalidation of the referendum for reasons other than those shown above, as the competence of the Parliament is built on the acknowledgement of the Constitutional Court Decision no. 731 of 10 July 2012.

5. It is also shown that the criticism of the authors of the claim, "contained in section 2 and 3 of the claim", becomes without object, "because nobody has questioned the competence of the Constitutional Court to determine the constitutionality of the Parliament Decision no. 34/2012, as the Decision of the Constitutional Court no. 727/2012 is generally binding. "In fact, such criticism relates to the Government Emergency Ordinance no. 38/2012 amending the Law no. 47/1992 on the organization and functioning of the Constitutional Court, which is not the subject of this claim.

THE COURT,

having examined the claim of inconsistency with the Constitution, the opinions of the Permanent Bureaus of the Senate and Chamber of Deputies, the raport drawn up the Judge-rapporteur, the Parliament Decision no. 34 of 6 July 2012 establishing the object and the date of the national referendum for the dismissal of the President of Romania, the provisions of the

Constitution and the Law no. 47/1992 on the organization and functioning of the Constitutional Court, holds as follows:

VII. The legality of the claim

1. Insofar as the lawfulness of the claim is concerned, the Court finds that although the claim of inconsistency with the Constitution lodged by the Liberal Democrat Party parliamentary group was submitted directly to the Constitutional Court, contrary to Article 27 (2) of the Law no. 47/1992, according to which "If the claim is made by the parliamentarians, it is sent to the Constitutional Court by the Secretary General of the Chamber to which they belong, on the day of its submission", this is not a cause for inadmissibility, but an irregularity. The Court ruled in the same way in tis Decision no. 305 of 12 March 2008, published in the Official Journal of Romania, Part I, no. 213 of March 20, 2008, Decision no. 729 of 9 July 2012 or Decision no. 732 of 12 July 2012, published in the Official Journal of Romania, Part I, no. 480 of 12 July 2012.

2. Accordingly, the Court was legally invested with the claim of inconsistency with the Constitution of Article 3 of the Decision of the Parliament no.34 of 6 July 2012.

VIII. The Jurisdiction of the Constitutional Court

1. By Decision no. 727 of 9 July 2012, published in the Official Journal of Romania, Part I, no. 477 of 12 July 2012, the Constitutional Court declared admissible the claim of inconsistency with the Constitution of the Law amending paragraph (1) of Article 27 of Law no. 47/1992, a normative act whose sole Article - which excludes the decisions of the Chamber of Deputies, the decisions of the Senate and the decisions of the joint plenary meeting of the two Chambers of the Parliament from the category of acts falling under the control of constitutionality of the Constitutional Court - is identical to the provisions of the sole Article of the Government Emergency Ordinance no. 38/2012, published in the Official Journal of Romania, Part I, no. 445 of 4 July 2012.

2. Declaring the claim of inconsistency with the Constitution admissible, the Court finds that the "*legislative solution which excludes from constitutional control the decisions of the Parliament affecting the constitutional values and principles is unconstitutional*".

3. In the considerations of the same decision, the Court noted that, according to its case-law (for example, Decision no. 1.615 of 20 December 2011, published in the Official Journal of Romania, Part I, no. 99 of 20 February 2012), subsequent primary regulatory documents can not maintain the content of an unconstitutional normative rule and, thus, become a prolongation of the latter's existence.

4. Taking into consideration Article 147 (2) of the Constitution, according to which "*in cases of inconsistency with the Constitution of laws, before promulgation, the Parliament has to reconsider the respective provisions to bring them into line with the Constitutional Court decision*", as well as paragraph. (4) of the same Article, which reports that "*the Constitutional Court decisions are published in the Official Journal of Romania. As from their publication, the decisions are generally binding and effective only for the future*", in several decisions (No. 728 of 9 July 2012, published in the Official Journal of Romania, Part I, no. 478 of 12 July 2012, no. 729 of 9 July 2012 and no. 732 of 12 July 2012, published in the Official Journal of Romania, Part I, no. 480 of 12 July 2012), the Constitutional Court, on the basis of Article 3 (2) of Law no. 47/1992, decided on its competence to rule on the constitutionality of decisions of the Chamber of Deputies, decisions of the Senate and decisions of the joint plenary meeting of the two Chambers of the Parliament, taking into account, on the one hand, the provisions of the sole

Article of the Government Emergency Ordinance no. 38/2012 and, on the other hand, the considerations and the body of the Decision no. 727 of 9 July 2012.

5. The Parliament Decision no. 34 of 6 July 2012, which is criticized in the present case, falls within the competence of the Constitutional Court, as it concerns, by its legal nature, constitutional values and principles, as previously upheld by the court in the above-mentioned case-law.

IX. As for the pleas of inconsistency with the Constitution lodged

1. Having examined the criticism of inconsistency with the Constitution raised, the Court finds that these concern especially the last sentence of Article 3 of the Parliament Decision no. 34 of 6 July 2012, namely "will decide the procedure to be followed", interpreted as meaning that the Parliament could decide on a procedure already established by the Constitutional Court's decision on the invalidation of the referendum results or may decide to repeat the referendum in the case it was invalidated by the Constitutional Court.

2. This criticism bring into discussion the suspension and dismissal procedure of the Romanian President for committing grave acts infringing upon the Constitutional provisions, and the competence and effects of acts of the Constitutional Court whilst ruling in this proceeding, respectively.

3. The Court holds that constitutional grounds for the dismissal of the President as a result of his political engagement - for committing grave acts infringing upon Constitutional provisions - is founded in paragraph (3) of Article 95 of the Constitution – “Suspension from office”, according to which “*If the proposal of suspension from office has been approved, a referendum shall be held within 30 days, in order to remove the President from office*.”

4. The Constitutional provisions of Article 95 were developed by Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, republished in the Official Journal of Romania, Part I, no. 807 of December 3, 2010, as amended, the Law no. 3/2000 on the organization and conduct of the referendum, published in the Official Journal of Romania, Part I, no. 84 of 24 February 2000, as amended and supplemented, and the Regulation of the joint meetings of the Chamber of Deputies and the Senate [named hereinafter “Regulation”] approved by the Parliament Decision no. 4/1992, published in the Official Journal of Romania, Part I, no. 34 of 4 March 1992, as amended and supplemented.

5. In accordance with the above-mentioned legal acts, the procedure for the suspension and dismissal of the President goes through the following steps:

- the initiation of the proposal of suspension from office by at least one third of the number of Deputies and Senators, and the President shall be immediately notified thereof.
[Article 95 (2) of the Constitution and Article 66 of the Regulation];

-the consultation of the Constitutional Court, which implies submitting the copy of the proposal for suspension from office of the President of Romania together with the evidence on which it rests to the Constitutional Court by the president who chaired the joint session of the two Chambers [Article 95 (1) and Article 146 letter h) of the Constitution, Article 42 (2) of Law no. 47/1992 and Article 67 (1) and (2) of the Regulation];

-the issuance by the Constitutional Court of the notice of suspension from office of the President of Romania and the communication of this notice to the presidents of both Chambers of the Parliament and the President of Romania [Article 146 letter h) of the Constitution and Article 43 of Law no. 47/1992];

-the debate of the proposal to suspend the president in a joint session of the Chamber of Deputies and the Senate [Article 95 (1) of the Constitution and Article 67 (3) and (4) of the Regulation];

-the approval of the suspension proposal and the submission to the Constitutional Court of the request for ascertaining the existence of circumstances which justify the interim President of Romania, by the president who chaired the joint session of the two Chambers of the Parliament, based on the decision adopted in the joint session. [Article 95 (3) and Article 146 letter. g) of the Constitution in conjunction with Article 44 of Law no. 47/1992];

-the ascertaining by the Constitutional Court of the existence of these circumstances, which reports its findings to the Parliament and the Government [Article 146 letter g) of the Constitution corroborated with Article 44 of Law no. 47/1992]; throughout the suspension from office, the powers of the President of Romania are transferred to the interim president, except for those provided in Article 88 of the Constitution – Messages addressed to the Parliament, in Article 89 - Dissolution of Parliament, in Article 90 – Initiating a referendum on matters of national interest, which can not be exercised during the interim presidential function [Article 98 of the Constitution];

-the establishment by the decision of the Parliament of the object and date of the national referendum to dismiss the President, within 30 days from the date of the approval of the proposal of suspension from office [Article 95 (3) of the Constitution and Article 15 (1) b) of Law no. 3/2000];

- the holding of the referendum; the Constitutional Court determines whether the procedure was observed for the organization and holding of the referendum, and confirms its results [Article 146 i) of the Constitution and Article 46. (1) of Law no. 47/1992], before publication in the Official Journal of Romania, Part I, the decision of the Constitutional Court is sent to the Chamber of Deputies and the Senate, which seat in a joint session [Article 146 letter i) of the Constitution and Article 47 (3) of Law no. 47/1992];

- the entry into force of the measure of removal from office of the President of Romania at the date of publication in the Official Journal of Romania, Part I, of the decision of the Constitutional Court confirming the results of the referendum [Article 45 of Law no. 3/2000].

6. It is ascertained, therefore, that the procedure for the dismissal of the President of Romania in case of having committed grave acts infringing upon constitutional provisions is triggered by an act of will of the Parliament - expressed by the proposal of suspension from office - and completed by the act of the will of the people - expressed through a referendum. The referendum results are confirmed by the Constitutional Court, as the ruling of the Constitutional Court acknowledges and confirms the completion of the procedure for the dismissal of the President of Romania and determines the effects generated by the implementation of this procedure. In this respect, given the effectiveness of Article 146 letter i) of the Constitution, Article 45 (2) of Law no. 3/2000 states that "*the law revising the Constitution or, where appropriate, the measure of the removal from office of the President of Romania shall enter into force after publication in the Official Journal of Romania, Part I, of the Constitutional Court decision confirming the results of the referendum*."

7. Based on the ruling of the Constitutional Court issued in the exercise of powers given by Article 146 letter. i) of the Constitution – general norm which gives an unlimited jurisdiction to the Constitutional Court circumscribed to its role as guarantor of the supremacy of the Constitution, any complaint regarding the procedure for the organization and conduct of the referendum and its effects is removed.

8. No public authority can rule instead of the Constitutional Court or contrary to generally binding decision of the Constitutional Court. Likewise, no public authority may decide on the continuation of a procedure which was found to be formally concluded by the date of publication in the Official Journal of Romania of the decision of the Constitutional Court issued in the exercise of powers granted by Article 146 letter i) of the Constitution and in accordance with those stated in this decision.

9. Having examined the criticism raised in the present case in relation to the constitutional provisions in question and the procedure they regulate, the Court notes, however, that this criticism does not concern directly, the inconsistency of the text, subject of the claim, but points out to possible future unconstitutional acts of the Parliament, in the implementation of Article 3 of the Decision of Parliament no. 34/2012, which may breach the Constitution. Practically, the authors of the claim attempt to prevent:

- a possible breach by the Parliament of a Constitutional Court ruling, issued in the exercise of the competence mentioned in Article 146 letter. i) of the Constitution, that is “any decision of the Parliament subsequent to the decision of the Constitutional Court in view of its competences (confirmation, validation, invalidation of the results of the referendum)”;

- a possible decision of the Parliament, subsequent to one of the Constitutional Court, to establish the organization and holding of a referendum within the same procedure based on Article 95 of the Constitution, procedure which would be finalized on the date of publication in the Official Journal of Romania of the decision of the Constitutional Court on the referendum.

10. Whilst, in the exercise of its powers as circumstantiated by Decision no. 727/2012, the Constitutional Court ruled on the Parliament decisions affecting constitutional values and principles. The Court can not examine and decide on the possible future acts and deeds of the Parliament on the assumption of bad faith in the interpretation and application of a text contained in a decision of this public authority and on a possible conduct contrary to the obligation of constitutional loyalty and respect for the rule of law.

11. The Constitutional Court recalls, in this context, those included in its jurisprudence (for example, Decision no. 209 of 7 March 2012, published in the Official Journal, Part I, no. 188 of 22 March 2012), meaning that the decision of the Parliament, as any normative act, shall be interpreted and applied in good faith and in a spirit of loyalty to the fundamental law.

12. Moreover, the decisions adopted by the Parliament after completion of the referendum on the dismissal of the President of Romania and the publication in the Official Journal of its results may be subject to constitutional control under the law.

For the reasons set forth herein, on the grounds of Article 146 i) of the Constitution, Article 1, 3, 10 and 27 of the Law no. 47/1992, by majority vote,

THE CONSTITUTIONAL COURT

In the name of the law

D E C I D E S:

Rejects as ill-founded, the claim of inconsistency with the Constitution of Article 3 of the Decision of the Parliament no. 34 of 6 July 2012, establishing the date and the object of the national referendum for the dismissal of the President of Romania.

Final and generally binding.

The decision will be communicated to the Presidents of both Chambers of the Parliament and will be published in the Official Journal of Romania, Part I.

The proceedings took place on 24 July 2012 and were attended by: Augustin Zegrean, president, Aspazia Cojocaru, Acsinte Gaspar, Peter Lazaroiu, Mircea Stefan Minea, Antoanella Iulia Motoc, Ion Predescu, Valentin Zoltan Puskas and Tudorel Toader, Judges.

President of the Constitutional Court,

Augustin Zegrean

Prime Assistant Magistrate,

Marieta Safta

RULING no. 3 of 2 August 2012 of the Constitutional Court on the claims related to the compliance with the procedure for the organization and carrying out of national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu

Published in the Official Journal of Romania no. 546 of 3 August 2012 (Official Journal 546/2012)

The Court examines hereby the claim made by the International League of the Romanians, based in Bucharest, on the national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu.

The appeal has been registered with the Constitutional Court under no. 5.221 of 31 July 2012 and forms the object of the Constitutional Court Case No. 1.289 I/2012.

The Court, considering that the claims in the cases no. 1.291 I/2012- 1.294I/2012, brought by the Social Democratic Party and the National Liberal Party, by the President of the Chamber of Deputies and by the Senate Interim President, by George Hogea and by the Organization for the Defense of Human Rights based in Bucharest, contest the procedure for the organization and carrying out of the national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu, under Article 164 of the Code of civil procedure, read in conjunction with Article 14 of Law No. 47/1992, decides to analyze jointly the cases No. 1.291I/2012-1.294I/2012 and the case No. 1.289 I/2012, which was registered first.

The intimations were registered with the Constitutional Court nr. 5.221 of 31 July 2012 and 5.250-5.253 of 1 august 2012, respectively.

In the case no. 1291 I/2012 an application to intervene, in his own interest, by Mr. Ionel Neamtu has been submitted under No. 5.257 of 1 August 2012. The Court was therein asked to consider the request for intervention as being made in the interests of the authors of the appeal made in the case no. 1.291 I/2012, in case an application for intervention in his own name was not admissible.

Also, in the case no. 1292 I/2012, it has been submitted along with the appeal, an application to request that a member of the Parliament support the reasons of the appeal, before the Constitutional Court, at the deadline set for debate.

In the statement of reasons for the appeals, the authors argue, in essence, the following:

1. The provisions in force at the time of the initiation of the referendum, therefore applicable in this case, are those of Law nr. 3/2000, as amended by the Government Emergency Ordinance no. 41/2012. Therefore, the application of the legal provisions which entered into force subsequently to the initiation of the referendum would be a violation of the provisions of Article 15 (2) of the Constitution, concerning the non retroactivity of the law.

According to the law in force at the date of the initiation of the procedure, the dismissal of the President of Romania was considered successful if it gathered the majority of the votes validly cast of those citizens who participated in the referendum.

The authors of the appeal claim that, according to the relevant international regulations, especially the recommendations of the Venice Commission - contained in the *Guidelines on the holding of the referendums* - and the provisions of Article 20 of the Constitution, the setting of a quorum for the participation in the referendum is contrary to the international and European

rules concerning the political rights of the individual, assimilating those abstaining from voting to the partisans of the negative vote, which is likely to prevent the free expression of the individual.

2.1. Should the Court conclude that the provisions of Article 5 (2) of Law no. 3/2000 are applicable with respect to the referendum of 29 July 2012, the Court is being asked to request, in accordance with the provisions of Article 46 (2) of Law no. 47/1992, information from the Central Electoral Bureau, the National Institute of Statistics, the Ministry of Interior and Administration and the Permanent Electoral Authority regarding the status of the updating of the permanent electoral lists, in view of the fact that the number of persons registered therein does not coincide with the provisional results of the 2011 census. It is argued that, according to that census, the Romanian population is of 20.254.866 persons, out of which 19.042.936 represents the stable population, 910.264 persons left for long periods of time and 301.666 persons are temporarily present.

It is being indicated that these data coincide, almost to identity, with the data owned by the National House for Health Insurance, the number of persons holding an insurance being of 20.459.558. It is further said that, according to the address no. 4.725 of 26 July 2012 of the National Institute for Statistics, the share of underage population out of the total population is 18.3% that is 3,891,082 children and young people under 18. Under these conditions, according to the National Institute for Statistics, the share of persons with voting rights is 81,7% of the total, that is 16.548.225 persons, and according to the National House for Health Insurance, the population eligible to vote would be of 16.715.458 persons. In these conditions, the actual number of votes necessary to validate the referendum would be 8.274.112+ 1, according to the National Institute for Statistics, or 8.357.729+ 1, according to the National House for Health Insurance.

Furthermore, according to the data of the Ministry of Administration and Interior, there are 622.144 expired identity cards, which mean that the number of persons with the right to vote, which could have legally voted at the referendum must be decreased with this number. It is being estimated by the authors of the appeal, that over 1,000,000 people have given up the Romanian citizenship, have established their domicile abroad or have died abroad, so that they cannot be registered on the permanent electoral lists.

It is also stated that, of all persons registered on the electoral lists, namely 18.308.612 persons, only 15.714.403 persons are in a possession of identity cards, with regard to the rest of the population not being known, in numbers, how many have identity cards, if they still are Romanian citizens or if they are alive or deceased.

The authors of the complaint point out that, in Decision no. 682 of 25 June 2012, although the Constitutional Court held that Romania's population decreased considerably, the number of persons with the right to vote taken into consideration by the Central Electoral Bureau is of 18.308.612 persons, this number being higher than the one mentioned in the Ruling no. 5 of 23 May 2007 of the Constitutional Court, regarding the procedure for the organization and holding of the 19 May 2007 national referendum, for the dismissal of the President of Romania, Mr. Traian Basescu and the confirmation of its results, that is 18.301.309 persons, or in the Ruling no. 3 of 22 October 2003 for the confirmation of the result of the national referendum of 18-19 October 2003 concerning the law for revising the Constitution of Romania, namely 17.842.103 persons.

Further, it is being shown that, in the same ruling, the Constitutional Court established that one of the reasons for the unconstitutionality of the "uninominal law" is generated by the fact that it creates conditions to increase the number of MPs, whereas the population "dropped dramatically". It is, therefore, absurd to argue that, although the population decreased by 2 million inhabitants, the number of voters increased by 500,000 persons.

It is believed that the official data are outdated in terms of citizens entitled to vote, as the mayors simply took over "*the lists of citizens from the «Services of the Electronic Records of Persons» of the Minister of Administration and Interior, transforming them, incorrectly and unrealistically, into permanent electoral lists and generating [...] at national level a fictive number of citizens entitled to vote*". For example, the authors of the appeal refer to the situation existing in the Caraş-Severin, Constanța and Vrancea counties.

In conclusion, they claim that, in this way, the will of the Romanian citizens, expressed in the 29 July 2012 referendum, was distorted.

2.2. The improper preparation of the lists of voters living abroad by the Ministry of Foreign Affairs, the Ministry of Administration and Interior and the Ministry of Justice, the chaotic voting at polling stations abroad, the lack of knowledge of the Romanian citizens living abroad of their electoral rights, the failure to take into account these citizens and the failure to print, as a consequence, a corresponding number of ballots, made it impossible the presentation to urns of 50% plus one of the total number of Romanian citizens with right to vote.

It is further said that the Constitutional Court should invalidate the referendum due to the fact that those 6 million Romanian citizens living abroad, who were not placed on the electoral lists, were in the impossibility of being present and of exercising their right to vote and the voting should be repeated within 3 months, in accordance with the general tendency of development universally accepted in the European Union for its validation without limitation and with the majority vote of those present.

3. It is being said that open boycott of the referendum by some political forces constitutes an abuse of right within the meaning of Article 57 of the Constitution. Such conduct may not have the pursued outcome, namely the refutation of the results of the referendum, an abuse of law not being able to produce any effect at the constitutional level. The boycott of the referendum carried out both through public statements, as well as through concrete actions, prevented the free exercise of the right to vote of the citizens, which resulted in the denial of all legal effects of the votes of the other Romanian citizens who participated in the popular consultation. It is being argued that political formations, such as the Liberal Democratic Party and the Democratic Union of Hungarians in Romania have acted against their constitutional aim, namely to contribute to the definition and expression of the political will of the citizens with respect for national sovereignty, territorial integrity, the rule of law and the principles of democracy. Such conduct is a violation, therefore, of the constitutional provisions of Article 1 (3), of Article 2 read in conjunction with Article 36 and with Article 57, as well as of Article 52 (1).

4. It is being argued that the provisions of the Constitution do not require a condition for quorum in order for the referendum to be valid, the Constitutional Court referring to this condition just to ensure that the decision taken by referendum is not imposed by a insignificant minority. If the idea of a compulsory participatory quorum is accepted, an absurd situation might occur when, due to lack of quorum, 7.360.000 citizens eligible to vote may not dismiss the President of Romania, but if the quorum is attained, 4.557.155 may dismiss him. Thus, the vote of the overwhelming majority, that is of those who voted "Yes" in the 29 July 2012 referendum, is being ignored.

The reasoning of the Decisions of the Constitutional Court no. 420 of 3 May 2007 and no. 682 of 25 June 2012 is, also, being invoked.

Pursuant to the provisions of Article 46 (2) and of Article 76 of the Law no. 47/1992, the Constitutional Court requested additional information from the National Institute for Statistics, the Ministry of Administration and Interior, as well as from the Permanent Electoral Authority.

The National Institute of Statistics, in the address sent under the signature of its President and registered with the Constitutional Court under no. 5270 of 1 August 2012, indicated the following:

a) According to the program for the holding of the 2011 Population and Housing Census, the census results are being published as provisional, preliminary and final data.
b) While the provisional and the preliminary results are expected to be published in 2012 (provisional results were made public on 2 February 2012), the final data will be published in the second semester of 2013, after which they will be transmitted to the European Commission.
c) Currently, the provisional results do not allow the separation by age of the population aged 18 and over. These statistical data become available at the same time with the final data, with the understanding that they do not correspond to the criteria for identifying the population eligible to vote.
d) In the Romanian system of official statistics there are no data sources to determine the number of Romanian citizens eligible to vote within the meaning of the legislation in force on 29 July 2012 or on any other date.

The Ministry of Administration and Interior, by letter communicated under the signature of the Minister Delegate for Administration and of the Deputy Minister of Administration and Interior, submitted to the Constitutional Court the position of the Department for the Record of Persons and the Database Management, signed by its director. The letter was registered with the Constitutional Court under no. 5.271 of 1 August 2012, and stated the following:

a) In the copies of the permanent electoral lists used in the national referendum for the dismissal of the President of Romania, of 29 July 2012, established in accordance with the legal provisions in force in the electoral field, there has been registered a total of 18.292.514 persons.
b) According to Article 17 (2) of Law no. 3/2000, to Law no. 35/2008 and to Law no. 67/2004, the updating of the permanent electoral lists is incumbent on the Mayor of the territorial administrative unit acting together with the local public community service for the record of persons, which is organized under the local councils (in accordance with the provisions of the Government Ordinance no. 84/2001 concerning the establishment, organization and functioning of public community services of the record of persons, approved with amendments and additions by Law no. 372/2002, with subsequent changes and additions).

The Ministry of Administration and Interior, by letter communicated under the signature of the Minister Delegate for Administration and of the Deputy Minister for Administration and Interior, submitted to the Constitutional Court some additional details from the Department of the Records of Persons and the Database Management, answer signed by its director. The letter was registered with the Constitutional Court under no. 5.273 of 1 August 2012, and included the following:

a) Since 2004, pursuant to the provisions of the Government Ordinance no. 84/2001 concerning the establishment, organization and functioning of public community services of persons records, approved with amendments and additions by Law no. 372/2002, with subsequent changes and additions, the Ministry of Administration and Interior no longer had the competence to update the permanent electoral lists, which became the exclusive competence of the local public authorities.
b) As administrator of the database, the Ministry of Administration and Interior cannot assume the veracity of the number of persons registered in the permanent electoral lists, having no additional legal instruments to control the data processed by the local public authorities. According to the legal regulations in force, the competence to verify these data belongs exclusively to the Permanent Electoral Authority.

The Permanent Electoral Authority, through its letter sent under the signature of the President and registered with the Constitutional Court under no. 5.297 of 1 August 2012, showed the following:

a) The Permanent Electoral Authority had not duties to elaborate and update the lists of voters used in the national referendum for the dismissal of the President of Romania, of 29 July 2012.
b) The total number of voters registered in the copies of the permanent electoral lists was communicated to the Central Electoral Bureau by the Department for the Records of Persons and the Database Management by letter no. 3.456.054 of 27 July 2012, available on the website of the Central Electoral Bureau, under the heading Statistics.
c) For the implementation of the electoral Register, a project initiated by the Permanent Electoral Authority, there is a need for human and financial resources, which, currently, this institution does not have, as well as for a period of time between 1 and 4 years.
d) Pursuant to the provisions of paragraph (11) of the annex to the Decision of the Government no. 683/2012, the updating of the electoral lists had to be made by mayors and by the services for the electronic records of persons no later than 10 July 2012.

In conclusion it is showed that, until the electoral register becomes practical, the Permanent Electoral Authority does not have its own data which indicates the number of voters registered in the permanent electoral lists.

THE COURT,

examining the claims relating to the compliance with the procedure for the organization and holding of the national referendum on 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu, introduced by the International League of the Romanians, based in Bucharest, the Social Democratic Party and the National Liberal Party, by the President of the Chamber of Deputies and by the Interim President of the Senate, by George Hogea and by the Organization for the Defense of Human Rights based in Bucharest, the application for intervention, the information provided by the National Institute for Statistics, the Ministry of Administration and Interior and the Permanent Electoral Authority, the evidence submitted in relation to the provisions of the Constitution and the Law no. 47/1992 concerning the organization and functioning of the Constitutional Court and the Law no. 3/2000 on the organization and holding of the referendum, states the following:

The Court has been legally notified and is competent, according to the provisions of Article 146 lit. i) of the Constitution and of Article 1, 10 and 46 to 47 of Law no. 47/1992, to decide on the appeals introduced.

I. Considering the content of the complaints, the Constitutional Court qualifies them as appeals that come under the jurisdiction of the Constitutional Court on the basis of Article 146 letter i) of the Constitution.

II. The request for intervention in his own name is not admissible within this procedure, therefore, according to the author, the Court shall qualify the application as being introduced in the interests of the authors of the appeal registered in case no. 1.291I/2012.

III. As far as the request to ask for a member of the Parliament to support the reasons of the appeal, before the Constitutional Court, at the deadline set for debate, the Court holds that, according to the provisions of Article 46, of Article 47 and of Article 52 (3) of Law no. 47/1992 concerning the organization and functioning of the Constitutional Court, the procedure for the

settlement of complaints made under Article 146 letter i) of the Constitution on the procedure for organizing and holding of a referendum and on the confirmation of its results, does not require a phase of public debate, to which the authors of the appeal would be invited or cited. The debate and the deliberations on the appeals made take place in the Plenum of the Constitutional Court and unfold during the Council session.

IV.
1.The Court concludes that the procedure for holding the referendum was triggered by the Decision of the Parliament no. 33/2012 on the suspension from office of the President of Romania, which was adopted during the joint session of the Chamber of Deputies and Senate on 6 July 2012, decision published in the Official Journal of Romania, part I, no. 457 of 6 July 2012.

At the time the decision was adopted, on 6 July 2012, the provisions of Article 10 of Law no. 3/2000, as amended by Article I position 1 of the Emergency Ordinance of the Government no. 41/2001 published in the Official Journal of Romania, part I, no. 452 of 5 July 2012, had the following wording:

"*By derogation from Article 5 (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes, on country level, of the citizens that took part in the referendum".*

In its Decision no. 731 of 10 July 2012, published in the Official Journal of Romania, part I, no. 478 of 12 July 2012, the Constitutional Court, exercising the *a priori* review of the constitutionality of the law amending Article 10 of Law no. 3/2000 on the organization and holding of the referendum, found that it is constitutional, in so far as it ensures the participation in the referendum of at least half plus one of the number of persons registered on the permanent electoral lists.
As a consequence, the Decision of the Constitutional Court confined the legislative solution of the provisions of Article 10 of Law no. 3/2000, as amended by Article I position 1 of the Government Emergency Ordinance, which were in force, they being implemented exclusively by taking into account the interpretation of the Court. The law in question was passed and became Law no. 131/2012 published in the Official Journal of Romania, part I, no. 489 of 17 July 2012, which in Article 10, provides that "*the dismissal of the President of Romania is approved if, as a result of the referendum, the proposal has obtained the majority of the votes validly cast."*

Subsequently, the Parliament debated the law approving the Government Emergency Ordinance no. 41/2012 for amending Law no. 3/2000 on the organization and holding of the referendum and, taking into account the Decision of the Constitutional Court No. 731 of 10 July 2012, adopted Law no. 153/2012, which was published in the Official Journal of Romania, part I, no. 511 of 24 July 2012. Thus, by its sole Article, point 1, of the law of approval, the provisions of Article I point 1 of the Government Emergency Ordinance no. 41/2012 were repealed.

The Court concludes that, after the initiation of the procedure for the referendum, numerous legislative events occurred that were intended to modify the legal framework for the holding of this procedure. Thus, both Law no. 131/2012 amending Article 10 of Law no. 3/2000 on the Organization of the Referendum and Law no. 153/2012 approving the Governmental Emergency Ordinance no. 41/2012 for amending Law no. 3/2000 on the Organization of the Referendum brought many changes to Law no. 3/2000. Besides those concerning organizational issues, the most important changes concern:

- the elimination of the derogation from the general provisions contained in Article 5 (2) of Law no. 3/2000 governing the quorum for the validity of the referendum, in case of the referendum for the dismissal of the President of Romania;

- the establishment of the voting program, namely the scrutiny opens at 7.00 and ends at 23.00.

On the matter of the quorum necessary for the validation of the national referendum and of the majority required for the dismissal of the President of Romania, the Court notes that, since its date of entry into force until the Decision of the Constitutional Court no. 731 of 10 July 2012, Law No. 3/2000 suffered several changes, as follows:

- the first form of the law, published in the Official Journal of Romania, Part I, no. 84 of 24 February 2000, stipulated in Article 5 (2) that "*the referendum is valid if at least half plus one of the persons inscribed in the permanent voters list participate*" and in Article 10 that "*the dismissal of the President of Romania is approved, if it obtained the majority of votes of citizens registered in the electoral lists*";

- subsequently, Article 10 of Law No. 3/2000 was amended by Law no. 129/2007, published in the Official Journal of Romania, Part I, no. 300 of 5 May 2007, establishing that "*By derogation from Article 5 (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes, on country level, of the citizens that took part in the referendum* ";

- a new amendment was introduced by Law no. 62/2012 approving the Government Emergency Ordinance no. 103/2009 for amending Law no. 3/2000 on the organization and holding of the referendum, which amended Article 10 in the sense that "*the dismissal of the President of Romania is approved if it meets the majority of votes of citizens registered in the electoral lists*";

- finally, the Government Emergency Ordinance No. 41/2012 for the modification and completion of Law no. 3/2000 on the organization and holding of the referendum made a new amendment to the provisions of Article 10, which gained the following content: "*By derogation from Article 5 (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes of the citizens that took part in the referendum*".

From the perspective of these legislative changes, the Court reminds that in the *Guidelines on the holding of the referendums* adopted in 2007, the European Commission for Democracy through Law (the Venice Commission) recommended to States the assurance of certain stability as far as the legislation in this field is concerned.

However, the identification of the law is crucial for the credibility of the electoral process and the frequent change of the norms and their complex nature may confuse the voters, so changing their fundamental parts, often or shortly (less than a year) before the referendum, should be avoided. In this context, wandering on the legal force of the provisions of this code, invoked by the authors of the appeals, Court notes that indeed this document is not binding, but its recommendations are references for a democratic electoral process, in view of which the states - which define as belonging to this type of regime - may manifest freely their option in the field of referendum, with due respect for the fundamental human rights, in general, and for the political rights, in particular. In its constant jurisprudence, the Constitutional Court stressed the need for the stability of the electoral law in the matter of referendum, as an expression of the principle of legal certainty.

The Court finds that the changes to the law on referendum, brought by Law no. 153/2012, regarding the elimination of the derogation from the application of the general provisions contained in Article 5 (2) of Law no. 3/2000 governing the quorum necessary for the validity of the referendum, do not represent the result of an arbitrary choice of the legislature, which could fall under the *Guidelines on the holding of the referendums*, adopted by the Venice Commission.

According to Article 147 (4) of the Constitution, the decisions of the Constitutional Court are generally binding and effective only for the future as from the date of their publication in the Romanian Official Journal.

Therefore, the provisions of Law no. 3/2000, as amended by Government Emergency Ordinance no. 41/2012, which provided that "*By derogation from Article 5 (2), the dismissal of the President of Romania is approved if it meets the majority of valid votes of the citizens that took part in the referendum*" could no longer have been applied by any public authority involved in the ongoing referendum. However, the immediate intervention of the legislature was in full compliance with the constitutional requirements related to the effects of the decisions of the Constitutional Court and was meant to prevent the occurrence of serious problems regarding the establishment of the legal framework applicable to procedure for the pending referendum. To uphold the inapplicability of the Decision of the Constitutional Court no. 731 from 10 July 2012 to the 29 July 2012 referendum, on the grounds that this procedure was initiated at an earlier date than the delivery of the decision by which the Constitutional Court sanctioned a certain interpretation of the legal norms applicable to this procedure would mean, on the one hand, depriving the jurisdictional act of the Court of legal effect, which gravely contradicts the provisions of Article 147 of the Constitution, and, on the other hand, accepting of an unthinkable situation, that is that the referendum be governed by legal provisions which have lost their constitutional legitimacy, in obvious contradiction with the rule of law and the supremacy of the Constitution, stipulated in Article 1 of the Fundamental Law.

Regarding the voting hours, the Court notes that the extension of the voting period from 12 hours (according to the initial form of Law no. 3/2000, the referendum was held between 8.00 a.m and 8.00 p.m) to 16 hours (following the amendment introduced by Law no. 153/2012, the referendum takes place between the 7.00 a.m. and 11.00 p.m.) represents the will of the legislator to ensure a higher presence of the citizens in the voting process, associated with the setting of a quorum to ensure the validity of the referendum (see also Decision no.735 of 24 July 2012, published in Official Journal of Romania, Part I, no. 510 of 24 July 2012).

On the other hand, the Court cannot ignore that, should it reply favorably to those requested by the authors of the appeal, meaning that it declares the applicability of the provisions in force at the date the procedure for the referendum was initiated, namely of Law no. 3/2000 as amended through the Government Emergency Ordinance no. 41/2012, the solution that the Constitutional Court would deliver with regard to the way the procedure for the organization and for the holding of the referendum was respected and with regard to the confirmation of its results would still be to invalidate the referendum since the voting hours were not within the legal framework in force. Therefore, if the applicability of the provisions in force at the date of the initiation of the procedure would be upheld, the elections should have taken place between 8.00 a.m. and 8.00 p.m. However, the amending legal provisions, being of public order, were of immediate application, so that the referendum was opened at 7.00 a.m. and closed at 11.00 p.m.

Therefore, the Court can not accept the applicability *pro parte* of the law in force at the date of the initiation of the referendum procedure and *pro parte* of the subsequent law, so that, from this perspective, the claims of the authors of the claim defy the legal logic.

Moreover, Law no. 153/2012 approving the Government Emergency Ordinance no. 41/2012 for amending and supplementing Law no. 3/2000 on the Organization of the Referendum was subject to the *a priori* control for constitutionality, the Constitutional Court finding that it complies with the fundamental law.

2.1. Concerning the claim according to which, "*the validation or the invalidation of the results of the referendum on the basis of "official" data, however not updated, regarding the number of*

citizens entitled to vote has as effect the distortion of the will of the Romanian citizens, expressed at the referendum", the Court holds the following:

According to Article 36 of the Constitution, the State authorities are obliged to ensure the exercise of the right to vote for all the Romanian citizens who have reached the age of 18 until the Election Day, including that day, except for the feeble or insane persons, placed under interdiction or convicted by final judgment to the loss of electoral rights. In order to fulfill this obligation, Law no. 35/2008 for the election of the Chamber of Deputies and of the Senate and for amending Law no. 67/2004 for the election of the authorities of the local public administration, Law no. 215/2001 of local public administration and Law no. 393/2004 on the Statute of the local elected persons, published in the Official Journal, Part I, no. 196 of 13 March 2008, requires in Article 21 the establishment of the Electoral Register, which represents a centralized database in which all Romanian citizens are enrolled, including those who have the domicile or residence abroad, who turned 18 years of age, and have the right to vote. The registration of citizens domiciled or resident abroad shall be done on the basis of the existing evidence at the Directorate General for Passports within the Ministry of Administration and Interior, used for the issuance of passports with the mentioned domicile abroad, and of the data held by the Ministry of Foreign Affairs. According to the provisions of Article 22 of the same law, "the Permanent Electoral Authority shall prepare, keep and update constantly, until 31 March of each year, the Electoral Register. In each county and district of Bucharest, the Electoral Register including the voters having the domicile or residence on the territory of the territorial-administrative unit is kept and updated by the territorial office of the Permanent Electoral Authority. National Center for Database Management concerning the Records of Persons and the Directorate General for Passports within the Ministry of Administration and Interior shall send to the Permanent Electoral Authority the data and the information necessary for the preparation and updating of the Electoral Register".

The provisions of Article 25 of the law stipulate that "*the electoral lists shall include the citizens entitled to vote registered in the Electoral Register. They shall be permanent or supplementary*" and Article 26 (1) provides that "*The permanent electoral lists for the territorial-administrative subdivisions of the national territory shall be prepared by the mayor of the village, of the town or of the municipality or of the district of Bucharest, as the case may be, on the basis of the data and information contained in the Electoral Register and sent to the mayor by the territorial office of the Permanent Electoral Authority, which operates at the level of each county on the territory of which the administrative subdivision lies."*

The Court also notes that, according to Article 17 (2) of Law no. 3/2000, "*the updating of the permanent electoral lists shall be made by the mayors [...] within 5 days from the date on which the date of the referendum was decided.*"

Moreover, as results, as well, from the letter of the Ministry of Administration and Interior, registered under no. 5271 of 1 August 2012, "*the updating of the permanent electoral lists shall be made by the mayor of the territorial-administrative unite jointly with the local community public service for the evidence of persons, established under the authority of the local council (in accordance with the Government Ordinance no. 84/2001 on the establishment, organization and functioning of community public services for the evidence of persons with subsequent amendments)*". In the present case, according to the same letter of the Ministry of Administration and Interior, in the copies of the permanent electoral lists used in national referendum for the dismissal of the President of Romania, of 29 July 2012, prepared according to the legal provisions in force in the electoral field, a number of 18,292,514 persons was enrolled.

On the other hand, the Court notes that the National Institute for Statistics, based on the census data of the population and on the demographic phenomena (births and deaths) and migration (emigration and immigration), determines and publishes data on the stable population on 1

January and 1 July of each year. The concept of stable population includes the Romanian citizens, foreigners or stateless persons domiciling in Romania who left abroad for a period of at least 12 months: for working, for finding a job, for studying, for business etc. (persons who left for a long period of time), as well as the foreign citizens or stateless persons who come to Romania for a period of less than 12 months (persons temporarily present).

Comparing the two types of records prepared by the competent public authorities, the Court finds that there is no overlap between the number of persons included in the permanent electoral rolls and the number of persons who represent the stable population situated on territory of Romania.

Moreover, the letter of the National Institute for Statistics no. 5270 of 1 August, 2012, specifies that "*currently, the provisional results do not allow the separation by age of the population aged 18 and over. These statistical data become available at the same time with the final data, with the understanding that they do not correspond to the criteria for identifying the population eligible to vote*". Moreover, "*in the Romanian system of official statistics there are no data sources to determine the number of Romanian citizens eligible to vote within the meaning of the legislation in force on 29 July 2012 or on any other date*."

Regarding the authors' allegations on the basis of the data held by the National House for Health Insurance, which provide a certain number of insured persons, the Court notes, as well, that nor these official records are relevant for determining the number of citizens entitled to vote. The Court does not dispute the veracity of records held by the public authority, but from the relevant perspective in this case, the number of insured persons in the public health care system can not be a benchmark in determining the exact number of persons who, at the date of the referendum, meet the statutory requirements for the inclusion in the permanent electoral rolls.

Finally, regarding the number of persons entitled to vote mentioned in the jurisprudence of the Constitutional Court, this number can be found in all the relevant jurisdictional documents issued by the Court following the exercise of its powers in electoral matters and in the field of referendum, varying from year to year, on the basis of the official data sent by the central electoral office. Fluctuations in these figures show that there is a concern on the part of the public authorities to periodically update the permanent electoral rolls.

Therefore, the Court cannot uphold the arguments of the authors of the claims, in the sense that, in order to determine the number of citizens entitled to vote, other data than those included in the permanent electoral rolls, the only ones to meet all the criteria provided by law for determining the population with the right to vote, should be taken into consideration.

2.2. The Court notes that, according to Article 26 (2) of Law no. 35/2008, the permanent electoral rolls "*shall be prepared for each locality and shall include all citizens entitled to vote residing in that locality where they were drawn*" and refer to the territorial-administrative subdivisions of the national territory. The Court notes that, following the adoption of Government Emergency Ordinance no. 97/2008 amending and complementing Title I of Law no. 35/2008 for the election of the Chamber of Deputies and of the Senate and for amending and supplementing Law no. 67/2004 for the election of the local authorities, and of the Local Public Administration Law no. 215/2001 and of Law no. 393/2004 on the on the Statute of the local elected, published in the Official Journal of Romania, Part I, no. 630 of 29 August 2008, approved with amendments and completions by Law no. 323/2009, published in the Official Journal of Romania, Part I, no. 708 of 21 October 2009, Article I, section 32, the second sentence of Article 26 (1) of Law no. 35/2008, was repealed, text which provided that "*the permanent electoral lists that include the Romanian citizens having the domicile or the residence abroad shall be prepared by the Permanent Electoral Authority and shall be the basis for the delimitation of the polling stations organized abroad*." Therefore, the Permanent

Electoral Authority prepares no more such electoral rolls, the Romanian citizens having the domicile or the residence abroad can, in turn, vote freely abroad on additional electoral rolls. According to Article 27 (2) of the same law, the Romanian citizens abroad who prove, with a passport mentioning the domicile abroad, that they have the domicile in a country within the respective uninominal college, the Romanian citizens who prove that they have the residence in a country within the respective uninominal college by showing their passport or, in case of EU Member States, the identity card together with the document issued by the foreign authorities to prove the residence abroad, as well as the persons voting in accordance with the provisions of Article 8 (3) of the Law, namely the personnel of the diplomatic missions and of the consular posts shall be enrolled on the electoral additional lists.

The reason for these citizens not to be included in the permanent electoral rolls is that they do not have the domicile in Romania, so that their number cannot influence the legal quorum for the participation in the referendum, that is, the majority of persons enrolled on the permanent electoral lists.

However, in this case, the provisions of Article 2 1, letter. c of the Law no. 370/2004 regarding the election of the president and the ones of Article 17 of the Law no. 3/2000 regarding the referendum are applicable.[2]

3. According to Article 2 paragraph (1) of Law no. 3/2000, the national referendum represents "the form and the means of the direct consultation and of the expression of sovereign will of the Romanian people", but the law does not include an obligation for the citizens to participate in the referendum, only their right. Moreover, the Constitution ensures only the right to vote, and not the obligation to vote (see, in this respect, General Comment no. 25 on Article 25 of the International Covenant on Civil and Political Rights – the right to take part in the conduct of the public affairs, the electoral rights and the right to access, on general terms of equality, to public functions, comments made by the Human Rights Committee). Therefore, this right is included in Title II, Chapter II of the Constitution - entitled Rights and fundamental freedoms, and not in Title II, Chapter III – Fundamental duties; therefore, it is for each citizen to decide if it exercises this right. It can not be compelled to exercise it or, on the contrary, not to exercise it, since Article 30 (2) of the Constitution guarantees the freedom of conscience.

The, expression of a political option can occur not only through participation in the referendum, but even by not participating in it, especially in those situations in which the relevant legislation requires a participatory quorum. In this way, a blocking majority can be created, taking into account the number of the citizens of a State; in this way, those who choose not to exercise their right to vote, consider that by way of a passive conduct may impose their political will. Thus, by choosing not to exercise their constitutional right, the citizens express their own beliefs by not accepting, indirectly, to the contrary. Therefore, the non-participation in the referendum, more precisely, the non exercise of the right to vote is also a form of expressing the political will of the citizens and of participation in the political life.

As noted above, the only conditionality is that the exercise or non-exercise of the right to vote must not be imposed, but must be the decision of each person.

But, in the referendum campaign, according to Article 30 (2) of Law no. 3/2000, "*the political parties and the citizens have the right to express their opinions freely and without any discrimination, through rallies, public meetings and mass media*". The political parties may ask, or, on the contrary, not ask the citizens to vote, both aspects of the right to vote contributing to the definition and expression of the political will of the citizens. The political parties cannot

[2] This paragraph was introduced following the publication of the ruling in the Official Journal of Romania, Part I, the omission being due to a material error. The rectification was published in the Official Journal of Romania, Part I, no. 556 of 7 August 2012.

undertake, however, to oblige the citizens to vote or, on the contrary, not to vote, as only in this case the right to vote is emptied of its content.

It is, nonetheless, true that, under Article 2 (1) of the Constitution, the national sovereignty belongs to the Romanian people, who exercise it through their representative bodies, resulting from free, regular and fair elections and by referendum, but the text does not impose compulsory voting, leaving to the citizens the full freedom to participate or not in the elections or in referendum and to express their options in the way they deem appropriate.

In the jurisprudence of the European Court of Human Rights, namely the judgment from 22 March 1972 in *Case X against Austria*, it was indicated that a person cannot be constrained to choose one candidate or another from the ballot; otherwise the right to choose is violated.

The campaign for the referendum must take place within the limits and in accordance with the legal framework and the Constitution; their violation could trigger the administrative or criminal liability, as applicable, under the law. However, abstention from voting, in view of the above, is not likely to trigger such penalties, according to the Constitution, not being of a nature to be qualified in any way as an offense or crime.

Finally, the Court finds that Article 52 (1) of the Constitution, invoked in support of the claim, is not relevant for this situation, the constitutional text concerning the right of a person aggrieved by a public authority; however this case does not raise issues concerning actions or inactions of a public authority.

4. In the claim, basically the Constitutional Court is being asked to validate the referendum even if the condition of quorum was not met. According to Article 5 paragraph (2) and Article 10 of Law no. 3/2000, the participation quorum and the majority voting are two conditions to be met cumulatively in order to dismiss the President of Romania (see, in this respect, the Decision no. 731 of 10 July 2012). Moreover, such a requirement exists for the validation of other types of referendum as well (for the referendum to revise the Constitution, for the consultative or local referendum).

The claim of the authors of the appeals can be compared, mutatis mutandis, with the process of the adoption of the ordinary laws: in this legislative procedure, the quorum for the meeting is represented by the mCDLajority of the members of the Chamber of Deputies or of the Senate, as appropriate (Article 67 of the Constitution), and the majority vote is represented by the majority of the members present in each Chamber [Article 76 (2) of the Constitution]. Thus, in this procedure, the authors of the exception uphold for an ordinary law to be passed in the absence of the quorum, but with a majority of half plus one of the legal quorum for the meeting to be held, which is inadmissible. In order for an ordinary law to be adopted the conditions for quorum and for majority voting must be cumulatively fulfilled.

Given these considerations, the provisions of Article 146 letter i) of the Constitution and of Article 11 (1) letter B.c) and Article 46-47 of Law no. 47/1992 on the organization and functioning of the Constitutional Court, unanimously,

THE CONSTITUTIONAL COURT
in the name of the law

D E C I D E S:

Rejects, as ill-founded, the objections concerning the procedure for the organization and holding of the national referendum of 29 July 2012 for the dismissal of the President of

Romania, Mr. Traian Basescu, appeals submitted by the Romanian International League, based in Bucharest, the Social Democratic Party and the National Liberal Party, by the President of the Chamber of Deputies and by the Senate Interim President, by George Hogea and by the Organization for the Defense of Human Rights based in Bucharest.

Final and binding.

The debate took place on 2 August 2012 and they were attended by: judge Augustin Zegrean, president, judge Aspazia Cojocaru, judge Acsinte Gaspar, judge Petre Lazaroiu, judge Mircea Stefan Minea, judge Iulia Antoanella Motoc, judge Ion Predescu, judge Puskas Valentin Zoltan and judge Tudorel Toader.

PRESIDENT OF THE CONSTITUTIONAL COURT
AUGUSTIN ZEGREAN

Magistrates- assistants- chief,
Mihaela Senia Costinescu

PRESS RELEASE [of the Constitutional Court issued on 14 August 2012]

I. The plenum of the Constitutional Court met, pursuant to Articles 50-51 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, to examine the different interpretations given by the authorities to previous acts of the Constitutional Court, found that:
"In Ruling no. 3 of 2 August 2012 of the Constitutional Court, the mentioning of the legal ground which would be used to determine the total number of voters that had to express their option at the referendum of 29 July 2012 to dismiss the President of Romania, was omitted.
The judge-rapporteur, under the direction of whom the Decision was written, proceeded, with the agreement of the majority of Court's judges, in clarifying certain aspects, stating that, for determining the total number of Romanian citizens who should express their option, << the legal provisions of Article 2 (1) c) of Law no. 370/2004 for the election of the President of Romania and those of article 17 of Law no. 3/2000 on the Organization of the Referendum apply >> ".
Therefore, by a majority vote, the Plenum of the Constitutional Court decided:
"1. Ruling No. 3 of 2 August 2012 was issued to resolve the disputes introduced in connection with the referendum procedure and not the validity of the referendum, a matter on which the Court is going to rule pursuant to Article 47 (1) of Law no. 47/1992.
2. The clarification given by the judge-rapporteur cannot influence and does not influence the decision of the Constitutional Court which will be given pursuant to article 47 (1) of Law no. 47/1992."

II. The plenum of the Constitutional Court discussed the request for the change of the date of the hearing set for the review of the compliance with the procedure for organizing and holding of the national referendum of 29 July 2012 to dismiss the President of Romania and to confirm its results, a request made by the suspended President of Romania, Mr. Traian Basescu,
in order to ensure a rapid solution of the case with which it was seized, and in order to avoid the prolongation of the political instability situation, which has a direct impact on the national economy",
Under Article 3, Article 14 and Article 50 (1) of Law no.47/1992 on the Organization and Functioning of the Constitutional Court and of Article 153 of the Code of Civil Procedure,
the Plenum of the Court decided to change the date for the debate from 31 August 2012 to 21 August 2012.

III. Thereafter, the Plenum of the Constitutional Court convened, pursuant to Articles 50-51 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, to examine the letter of the Prime Minister of the Romanian Government, decided, by a majority vote:
"By Address no. 5305 of 3 August 2012, the Plenum of the Constitutional Court requested the Government to notify **the number of persons registered in the permanent electoral lists**, updated (until 10 July 2012) in accordance with Article 17 (2) of Law no. 3/2000 on Organization of the Referendum. The permanent electoral lists are, according to Article 2 (1) letter c) of Law no. 370/2004, "the lists including the Romanian citizens with a right to vote, who are 18 years of age on election day"
If this has not been executed, it shall be done within the time frame set by the Court. "
The debates were held on 14 August 2012 and have been attended by: Augustin Zegrean, President, Aspazia Cojocaru, Acsinte Gaspar, Petre Lăzăroiu, Mircea Ştefan Minea, Iulia Antoanella Motoc, Ion Predescu, Puskás Valentin Zoltán, Tudorel Toader, judges.

External Relations Media Relations and Protocol Department of the Constitutional Court

RULING no. 6 of 21 August 2012 on the compliance with the procedure for the organization and conduct of the national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu, and on the confirmation of its results

In accordance with the provisions of Article 146 letter i) of the Constitution, of Article 46 (1) and of Article 47 of the Law no. 47/1992 concerning the Organization and Functioning of the Constitutional Court, as well as of the Article 45 (2) and (3) of Law no. 3/2000 on the Organization of the Referendum, with subsequent amendments and completions, the Constitutional Court met in its plenum to verify whether the procedure for the organization and conduct of national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu, was complied with, and to confirm the results of the referendum.

THE COURT,

Finds that, in accordance with the above-mentioned constitutional and legal requirements, it is competent to verify the compliance of the procedure for the organization and conduct of national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu, with these requirements, and to confirm the results of the referendum.

I. In respect to the procedure for the organization and conduct of national referendum

1. Preliminary objections and requests

1.1. The Court examined several preliminary objections and requests filed in respect of the organization and conduct of national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Basescu.
1.2. **The Objections** were filed by: the International League of Romanians, based in Bucharest, the Social Democrat Party, the National Liberal Party, the president of the Chamber of Deputies and the acting president of the Senate, by Gheorghe Hogea and the Organization for the Defense of Human Rights based in Bucharest. These formed the object of files no 1. 289 I/2012 and respectively no. 1291-1.291 1/2012 on the docket of the Constitutional Court, being rejected, as ill-founded, by Ruling no. 3 of 2 August 2012, published in the Official Journal of Romania, Part I, no. 546 of 3 August 2012.
1.2. **The preliminary requests** filed before the meeting of the Plenum of the Court of 1 August 2012 were examined in the meeting that took place on that date. From the documents filed by the authors of the requests, documents provided by the institutions activity of which is relevant for the field of the referendum (the Permanent Electoral Authority, the National Statistics Institute) contradictory data have resulted in comparison with the data provided by the Central Electoral Bureau, with respect to the persons registered on the permanent voting lists. Consequently, the Court acknowledged the necessity of further clarifications from the public authorities competent in this field and required several measures in this respect, will be shown infra, at chapter 2.
1.4 **Other requests** transmitted to the file by various persons and non-governmental organizations, by the president of the Chamber of Deputies, and the interim president of the Senate, respectively by Mr. Traian Băsescu, the suspended President of Romania, were preliminarily examined, the Court concluding, for the reasons mentioned in the content of the minutes of the meeting of 21 August 2012, that the elements invoked in their text have no relevance for the ruling which shall be adopted in respect of this referendum.

2. The request for information in relation to the organization and conduct of the referendum.

2.1. In this respect, the Constitutional Court wrote, on the basis of Articles 46 and 76 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, to the following authorities:

2.1.**the Ministry of Administration and Interior**, by Letter no. 5265 of 1 August, requesting it to communicate the number of persons registered in the permanent voting lists, in accordance with the provisions of Article 5 (2) of Law no. 3/2000 on the Organization of the Referendum, if the permanent voting lists were updated in accordance with the law and the date of their update.

2.3. **the National Institute of Statistics**, by Letter no. 5.264 of 1 August 2012, requesting it to transmit the following information: if the official acts of the census of the population of the year 2011 may be communicated and the number of Romanian citizens entitled to vote on the date of 29 July 2012;

2.4. **the Permanent Electoral Authority**, by Letter no. 5.295 of 2 August 2012, requesting it to communicate the following information: if the permanent voting lists were updated in accordance with the law, the date of their update, and the number of persons registered in the permanent voting lists, in accordance with the provisions of Article 5 (2) of Law no. 3/2000 on the Organization of the Referendum;

2.5 Examining the replies transmitted by the Ministry of Administration and Interior, the National Institute of Statistics and the Permanent Electoral Authority, to the requests decided by the Constitutional Court in the meetings of 1 and 2 August 2012, made public and registered in the minutes of those meetings, the Constitutional Court found that these replies also include contradictory data. Moreover, the Ministry of Administration and Interior, after the communication, by the Letter registered by the Constitutional Court under no. 5. 271 of 1 August 2012, of the number of persons registered in the permanent voting lists (18.292.514 persons), transmitted further clarifications by Letter no. 5.273 of 2 August 2012, by which it drew the attention of the Court to the existence of data which "*may be of such nature as to affect the total number of citizens having the right to vote registered in the permanent voting lists" and that "it cannot guarantee the veracity of the number of persons registered in the permanent voting lists*".

2.6 Consequently, finding that, on the basis of the existing data, the number of persons registered in the permanent voting lists could not be established with certainty, so as to verify whether the referendum was valid in accordance with the provisions of Article 5 (2) of Law no. 3/2000 on the Organization of the Referendum, the Court decided, in the meeting of the plenum of 2 August 2012, the postponement of the debates until the date of 12 September 2012 and the transmission of a request to the Government of Romania in order to communicate, until the date of 31 August 2012, the number of persons registered in the permanent voting lists, as updated.

3. The change of the date of the debates

3.1 During the meeting of the Plenum of the Constitutional Court of 3 August 2012, the date for the debates was changed, ex officio, from 12 September 2012 to 31 August 2012 "*in order to ensure a rapid solution of the case with which it was seized, and considering that the time-limit given to the Government for the communication of the data necessary for the settlement of the case in 31 august 2012*."

3.2 During the meeting of the Plenum of the Constitutional Court of 14 August 2012, at the request if the suspended President of Romania, Mr. Traian Basescu, the judgment date was changed form the date of 31 August 2012 to the date of 21 August 2012 "*in order to ensure a rapid solution of the case with which it was seized, and in order to avoid the prolongation of the political instability situation, which has a direct impact on the national economy*".

4. Measures taken in respect of the Government and the reply of this authority

4.1 During the meeting of 2 August 2012, the Court required the Government to take "*the necessary measures for the update of the permanent voting lists as on the date of 29 July 2012*

and to transmit to the Constitutional Court the number of persons registered on the permanent voting lists in order to establish if the national referendum for the dismissal of the President of Romania is valid in accordance with the provisions of Article 5 (2) of Law no. 3/2000 on the Organization and Referendum." The request decided in the meeting of the Court of 2 August 2012 was transmitted to the Government of Romania through Letter no. 5.305 of 3 August 2012.

4.2. Taking into account the diverging interpretation given in the media and in the press conference of the Prime-minister of the Government of Romania, which took place on 3 August 2012, namely the declarations concerning the undertaking, on the basis of the Letter of the Constitutional Court no. 5.305 of 3 August 2012, of a new census of the population, the Court decided to make, on the date of 6 August 2012, a further clarification consisting in the indication of the legal basis for this update, namely Article 17 (2) of Law no. 3/2000 on the Organization of the Referendum. As clearly shown by the wording of this letter, registered with the Constitutional Court under no. 5.305 of 6 August 2012, it did not include a new request for the Government, as subsequently interpreted in the media and by the government, but only a clarification in order to avoid the action intended to be undertaken by the Government, having the amplitude of a new census, an action having no grounding in the request of the Court and no legal basis in the provisions which regulate the organization and conduct of the referendum.

4.3. By the Letter registered with the Constitutional Court no. 5.412 of 14 August 2012, the Prime-minister of the Government wrote to Constitutional Court invoking an alleged contradiction existing between the letters of the Constitutional Court no. 5.305 of 3 August 2012 and no. 5.306 of 6 August 2012, as well as the confusion allegedly caused by the second letter. Likewise, the Court was informed of the fact that in the Government meeting of 7 August 2012 the Memorandum on the measures necessary to update the permanent voting lists was approved.

4.4. The plenum of the Constitutional Court, convened on the date of 14 August 2012, in accordance with articles 50-51 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, examined the letter of the Prime-minister of Romania. By the Ruling no. 5 of 14 August 2012, The Court once again clarified its request, with reference to the legal basis previously mentioned, indicating also the dates for the operation of the update of the permanent voting lists which should have been undertaken or was to be undertaken in the time-limit established by the Court, accordingly. The procedure of update of the permanent voting lists and the time-limits for the process of updating clearly result from the content of article 17 (2) of Law. No. 3/2000, in accordance with which: "*The update of the permanent voting lists is done by the mayors, in accordance with the provisions of Law no. 68/1992, respectively of Law No. 70/1991, republished, with the subsequent modifications, within at most 5 days from the date of the establishment of the date of the referendum*". The postponement of the case and the time-limit established by the Court, following the examination of the preliminary requests transmitted to the case file, were made precisely with the purpose to achieve the update of the permanent voting lists, given that the update was not performed in accordance to the law, as it resulted from the replies transmitted by the public authorities to the requests of the Constitutional Court. Thus, the Court has specified "*by Letter no. 5.305 of 3 August 2012, the Plenum of the Constitutional Court has requested the Government to communicate the number of the persons registered in the permanent voting lists, updated (until the date of 10 July 2012) in accordance with the provisions of Article 17 (2) of Law no. 3/2000 on the Organization of the Referendum* […]. *If this activity has not been executed, it shall be done within the time frame set by the Court*". Furthermore, the Court has decided that the permanent voting lists are, in accordance with Article 2 (1) letter c) of Law no. 370/2004 "*the lists including the Romanian citizens with a right to vote, who are 18 years of age on election day*".

4.5. By the Letter registered by the Constitutional Court under no. 5.451 of 20 August 2012, the Government, under the signature of the Prime-minister, transmitted a reply to the request of the Court.

4.6. In the text of its reply, the Government has specified, firstly, that "*on the date of 1 august 2012, by Letter no. 74.618/VDP, the Ministry of Administration and Interior has transmitted to the Constitutional Court the number of persons registered in the permanent voting lists*"

confirming the content of the Letter of the Ministry of Administration and Interior registered with the Constitutional Court under no. 5.271 of 1 August 2012.
4.7 Further, the Government has transmitted to the Constitutional Court certain information resulted from the official communications of the public authorities, as follows:
Data received from the Ministry of Administration and Interior:
- In accordance with the communication of the Department for the Registration of Population and Management of Databases within the Ministry of Administration and Interior "**34.654 persons must be removed by the mayors and the local public services for the registration of persons subordinated to the local councils from the permanent voting lists used for the national referendum of 29 July for the dismissal of the President of Romania",** as follows: deceased persons – 26.066**; persons having the status of Romanian citizens residing abroad – 4.475;** persons who lost the Romanian citizenship – 151; persons without the right to vote – 3.414; persons being psychically ill, that lost their electoral rights – 199; persons for which the Personal Numerical Code was corrected – 349.
- In accordance with the communications received from the Department for the Relations with Institution of the Prefect, for **a number of 512.379 persons the identity papers have expired and were not renewed until the day of the vote, inclusively.**
Data received form the Ministry of Foreign Affairs:
- From the data collected until the date of the communication of the letter it results that there a number of **3.052.397 persons are legally entitled to stay outside Romania**, out of which: 1.101.809 Romanian citizens over 18 years old, having the right to stay outside Romania, in accordance with the official data communicated by 17 States, 1.468.369 Romanian citizens having the right to stay, in accordance with the data communicated by the authorities of 29 States, in respect of which the official data received make no distinction between Romanian citizens who are over or under 18 years, 482.219 Romanian citizens having the right to stay, according to the estimations made by the diplomatic missions of Romania in another 44 States, in respect of which the official data received make no distinction between Romanian citizens who are over or under 18 years. It is shown that, in accordance to the official data of the national Institute for Statistics, the population of Romania has a general percentage of 18,3% minors;
- In respect of the data communicated by the Ministry of Foreign Affairs, the following important clarification is made: "**out of the total number of 3.052.397 persons communicated by the Ministry of Foreign Affairs, 469.810 are Romanian citizens residing abroad, 4.475 were still included in the voting lists on the date of 10 July 2012 and are mentioned in the current letter at subparagraph I letter b)".**
4.8. The Court finds, firstly, that the letter received from the Government does not meet the requirement to communicate "*the number of the persons registered in the permanent voting lists, updated (up to the date of 10 July 2012)*" but presents certain data, concerning various categories of persons.
4.9. The communicated data, in the greatest part, are not related to the request made by the Court.
4.10 Thus the number of persons whose identity papers have expired does not concern this request, as the expiry of the identity papers, as such, does not entail the removal of the concerned persons from the permanent voting lists. In accordance to article 2 (1) letter c) of Law no. 370/2004 for the Election of the President of Romania, the permanent voting lists include "*the Romanian citizens which have reached the age of 18 years until the day of the referendum inclusively*", the electoral law making no distinction which would allow the interpretation in accordance to which the expiry of the identity paper entails the removal of the persons who fulfil the above mentioned conditions from these lists. The Court find that only the exercise of the right to vote is conditioned by the presentation of a valid identity paper, and not the existence of such a right. The sanction provided by the law for the failure to ask for the issuance of a new identity paper, an obligation stipulated by Article 19 (2) of Emergency Ordinance no. 97/2005, republished in the Official Journal of Romania, Part I, no. 719 of 12 October 2011, is the fine, under Article 43 letter b) of the same normative act, and not the withdrawal of the right to vote or the removal form the permanent voting lists.

4.11. Also, it is not related to the request made by the Court **the number of persons "with the legal right to stay outside Romania" whose domicile is in Romania, as these persons are included in the permanent voting lists**, pursuant to the provisions of Article 2 (1) letter c) of Law no. 370/2004, quoted above, corroborated with the provisions of Article 7 (1) of the same normative act, in accordance to which "***The permanent voting lists*** *are made for each village, town and city, as appropriate,* ***and include all voters domiciling in the village, town and city for which they were made***". This legal basis is invoked by the Government in its reply which makes a distinction between Romanian citizens with the domicile in Romania and those with the domicile abroad.

4.12 In accordance with the data communicated by the Government, out of the total number of 3.052.397 which have the right to stay outside Romania, **only 469.810 Romanian citizens have the domicile abroad**, the rest up to 3.052.297 being Romanian citizens with the domicile in Romania.

4.13. In accordance with the same data communicated by the Government, out of 469.810 Romanian citizens with the domicile abroad, **only 4,475 citizens were present on the permanent voting lists on the date of 10 July 2012, and, consequently, only this number (out of the total number of 3.052.397 communicated) should be considered in order to update these lists**. The Government specifies further that this number – **4.475 citizens** – is already taken into account at subparagraph I point b) of its letter, being included in the communication of the Department for the Registration of Population and Management of Databases, namely in the total number of 34.654 persons which must be removed by the mayors and the public communal services for the registration of population from the permanent voting lists used for the national referendum of the date of 29 July 2012.

4.14. **In conclusion, the only number which, in accordance with the data communicated by the Government, may be taken into consideration for the update of the permanent electoral lists, is the last one, namely 34.564 persons**, representing: deceased persons, persons having the status of Romanian citizen with the domicile abroad, persons who lost the Romanian citizenship, persons without the right to vote, persons being psychically ill, that lost their electoral rights, persons for which the Personal Numerical Code was corrected. **Furthermore, only in respect of these persons it is shown by the Government that "*they must be removed by the mayors and the public communal services for the registration of population from the permanent voting lists used for the national referendum of the date of 29 July 2012 for the dismissal of the President of Romania*."**

II. In respect to the confirmation of the results of the referendum

1. The Court finds that the result of the referendum depends on the cumulative fulfilment of two conditions: one related to the minimum number of persons which have to take parte to the referendum in order for it to be valid (the legal participation quorum) and one related to the number of votes validly cast, which determine the result of the referendum. These conditions are provided in article 5 (2) and respectively 10 of Law no. 3/2000 on the Organization of the Referendum. In accordance to article 5 (2) of the law *"the referendum is valid if at least half plus one of the persons included in the permanent voters list participate"* and, according to Article 10, *"the dismissal of the President of Romania is approved if it meets the majority of votes of citizens included on electoral lists"*.

2. From the data communicated to the Constitutional Court by the Central Electoral Bureau, concerning the national referendum of 29 July 2012, it results the following:

	Absolute number	Percentage
a) number of persons inscribed in the voting list for referendum:	18.292.464	100.00%
b) number of participants	8.459.053	46,24%
c) number of valid votes YES	7.403.836	87,52%
d) number of valid votes NO:	943.375	11.15%
e) number of void votes:	111.842	1,32%

3. From the examination of the documents transmitted by the Central Electoral Bureau it results that the referendum was carried out in compliance with the provisions stipulated by law, no breaches or incidents having such nature as to lead to the fulfilment or non-fulfilment of the turnout quorum, or respectively the modification of the results of the referendum, being registered.
4. The examination of the objections and of the preliminary requests made in the framework of this procedure did not show differences in respect to the data registered by the Central Electoral Bureau, nor breaches or incidents having such nature as to lead to the fulfilment or non-fulfilment of the turnout quorum, or respectively the modification of the results of the referendum.
5. The letter of the Government of Romania of 20 August 2012, analyzed above, reveals a difference of minus 34.654 persons in respect to the number of persons registered on the permanent voting lists transmitted by the Central Electoral Bureau, persons in respect of which it is shown that they must be removed by the mayors and the public communal services for the registration of population from the permanent voting lists used for the national referendum of the date of 29 July 2012.
6. With reference to this data communicated by the Government, the Constitutional Court finds that it has no competences in the procedure of the update of the permanent voting lists, and, consequently, it cannot operate modifications in the voting lists. What the Court can acknowledge, in accordance with its competence, is only whether the difference between the data transmitted may lead to the fulfilment or non-fulfilment of the turnout quorum, respectively the modification of the results of the referendum. From the comparison of the data communicated by the Central Electoral Bureau, and respectively by the Government, it is obvious that no such situation arises.
7. Consequently, having in mind that at the national referendum of 29 July 2012, out of the total of 18.292.464 persons registered in the permanent voting lists, 8.459.053 persons took part in the vote, which constitutes les than half plus one of the number of persons registered in the permanent voting lists, on the basis of the provisions of article 146 letter i) of the Constitution, of Article 11 (1) letter B. c), of Article 46 (1) and of article 47 of Law no. 47/1992 on the Organization and Functioning of the Constitutional Court, as well as of Article 5 (2) and Article (3) of Law no. 3/2000 on the Organization of the Referendum, with subsequent amendments and completions,

With the majority of votes stipulated by article 47 (1) of Law no. 47/1992,

The Constitutional Court
In the name of the law

Decides:

1. Acknowledges that the procedure for the organization of the national referendum of 29 July 2012 for the dismissal of the President of Romania, Mr. Traian Băsescu, was observed.
2. Confirms the results of the national referendum of 29 July 2012 communicated by the Central Electoral Bureau and acknowledges that out of the total of 18.292.464 persons registered in the permanent voting lists, 8.459.053 persons took part in the vote (46.24%) out of which 7.403.836 (87.52%) have answered “YES” to the questions “Do you agree with the dismissal of the President of Romania?”, wile 943.375 (11.15%) have answered “NO”
3. Acknowledges that the referendum did not meet the participation of at least half plus one of the number of persons included in the permanent voting lists, which was needed for the referendum to be valid according to the provisions of article 5 (2) of Law no. 3/2000 on the Organization of the Referendum.
4. On the date of the publishing of this decision in the Official Journal, Part I, the ad interim exercise of the position of President of Romania by Mr. George-Crin Laurențiu Antonescu ceases.

5. On the date of the publishing of this decision in the Official Journal, Part I, Mr. Traian Băsescu resumes the exercise of the constitutional and legal attributions as President of Romania.
The present ruling shall be presented to the Chamber of Deputies and to the Senate, convened in joint sitting.

The ruling is final and binding *erga omnes* and shall be published in the Official Journal of Romania, Part I, and in the press.
The debate took place on 21 August 2012 and they were attended by: Augustin Zegrean, president, Aspazia Cojocaru, Acsinte Gaspar, Petre Lazaroiu, judge Mircea Stefan Minea, Iulia Antoanella Motoc, Ion Predescu, Puskas Valentin Zoltan and Tudorel Toader, judges.

PRESIDENT OF THE CONSTITUTIONAL COURT
AUGUSTIN ZEGREAN

Chief Magistrate-Assistent,
Marieta Safta

Dissenting opinion

The disagreement expressed in relation to the ruling on the invalidation of the results of national referendum of 29 July 2012 is grounded on the fact that this ruling was adopted by reference to the provisions of Article 2 (1) letter c) of Law no. 370/2004 for the election of the President of Romania, a solution anticipated by the "corrigendum" of 6 August 2012, concerning the Ruling of the Constitutional Court no 3. of 2 august 2012[3], **a "corrigendum" for the adoption of which we were not consulted,** a course of action without precedent in the constitutional jurisprudence.
In this respect, we underline the fact that, on the one hand, by Ruling no. 3 of 2 August 2012, the Constitutional Court held that Romanian citizens **with domicile or residence abroad** "*have the right to vote freely abroad and are registered on the supplementary voting lists*" and "*the reasons for which these citizens are not registered in the permanent voting lists is the fact that they do no the have their domicile in the country, so that their number cannot influence the legal turnout quoru,, namely the majority of persons registered on the permanent voting lists*", while, on the other hand, the completing corrigendum refers to the "*voting lists including Romanian citizens having the right to vote which have reached the age of 18 years an until the day of the elections inclusively*", so irrespective of the domicile.
The solution adopted equally runs contrary to the those held by subparagraph 2 of the Ruling no. 4 of 14 August 2012, ruling by which, with a majority of vote, the Court held the following "*the completion made by the judge-rapporteur does not influence and cannot influence the ruling which the Court shall adopt in accordance with Article 47 (1) of Law no. 47/1992*".
On the other hand in its jurisprudence concerning the organization and conduct of the referendum "*the Court found that the Romanian citizens who exercise their right of vote in the polling stations situated abroad are registered on the supplementary voting lists*[4]".
In accordance with Article 25 (2^2) of Law no 3/2000 on the Organization of the Referendum "*in the interest of a correct conduct of the referendum, the Central Electoral Bureau delivers decisions in the application of the law, that are published in the Official Journal of Romania, Part I"*
On the basis of this text, the Central Electoral Bureau adopted Decision no. 34H of 28 July 2012, published in the Official Journal of Romania, part I, no.531 of 31 July 2012, by which it established that *"in the case of the national referendum for the dismissal of the President of*

[3] Published in the Official Journal of Romania, Part I, no 546 of 3 August 2012;

[4] The Ruling no. 4 of 23 May 2007 on the objection concerning the compliance with the procedure for the organization and conduct of the national referendum of 19 May 2007 for the dismissal of the President of Romania, Mr. Traian Băsescu, published in the Official Journal of Romania, Part I, no 389 of 8 June 2007

Romania the provisions of title I of Law no. 35/2008 for the Election of the Chamber of Deputies and of the Senate and for the modification and completion of Law no. 67/2004 for the Election of the Authorities of the Local Public Administration, of Law of the Local Public Administration no. 215/2001 and of Law no. 393/2004 on the Status of the Local Elected Officials, with subsequent amendments and completions, are applicable, to the extent to which Law no 3/2000 on the Organization of the Referendum, with subsequent amendments and completions, does not provide otherwise".

Article 26 (2) of Law no. 35/2008 provides that the permanent voting lists "*are made for each locality and include all citizens having the right to vote who domicile in the locality for which they were made*".

In accordance with Article 27 (2) of the same law, the Romanian citizens with the domicile abroad which can prove this by the passport with the notation regarding the establishment of the domicile abroad, the Romanian citizens who show that they have the residence abroad by the presentation of the simple passport or of the identity card, together with the document issued by the foreign authorities proving the residence abroad, are included in the supplementary voting lists.

The permanent voting lists are defined by the provisions of Article 7 (1) of Law no. 370 /2004 for the Election of the President of Romania, in which it is held that these *are made for each village, town and city, as appropriate, **and include all voters domiciling in the village, town and city for which they were made***".

For the purposes of the law, a fact (their domicile) overlaps with the law (they have the domicile), the reason for which the Romanian citizens with the domicile or residence abroad cannot be included in the permanent voting lists, but can exercise their right to vote being included in the supplementary voting lists. Consequently the inclusion in the permanent voting lists of the 1.101.809 Romanian citizens with the domicile or residence abroad, to which a part of the other 1.468.369 citizens in the same situation are added, of which some are minors, is of such nature as to affect the result of the referendum.

The solution is promoted also by the Guidelines on elections adopted by the Venice Commission at its 51st session (Venice, 5-6 July 2002), which provide at article I1.2. that "*a supplementary list may be a means of providing the right to vote to persons who have changed their domicile*".

We believe that the permanent voting lists cannot include also the 512.379 **Romanian citizens having the right to vote whose identity papers have expired**, without being renewed until the day of the vote. This is because for the purposes of Article 2 letter d) of Law no. 370/2004 for the Election of the President of Romania, the identity papers must be valid on the day of the vote. In the opposite case, keeping these persons on the permanent voting lists is of such nature as to consecrate a new category, of those who cannot exercise their right to vote, a category of persons who objectively shall be absent. In the eventuality in which the right to vote is exercised on the basis of a provisional identity card, the respective persons shall be registered also on the supplementary voting lists.

Given the above, the number of 18.292.464 persons registered in the permanent voting lists, the number taken into account in the adoption of the ruling does not reflect the structure and dimension of the current electoral body.

Proceeding from the continuous decrease of the population of Romania, of the statistical data officially provided, from the necessity **to remove from the lists the deceased,** the persons who have lost the citizenship or electoral rights, considering that in the permanent voting lists cannot be included Romanian citizens with the domicile or residence abroad nor those whose identity papers are not valid, we find that the final data are of such nature as to lead to the validation of the results of the referendum

Judge,	Judge	Judge
Ion Predescu	Acsinte Gaspar	Tudorel Toader