The principle of separation and balance of State powers in the case-law of the Constitutional Court of Romania

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According to the provisions of Article 1 (4) of the Romanian Constitution, "*The State shall be organized based on the principle of the separation and balance of powers – legislative, executive, and judicial – within the framework of constitutional democracy*". The rule of law ensures the supremacy of the Constitution, the alignment of laws and of all normative acts with it, the existence of separation of public powers, which must act within the limits of the law, i.e. within the limits of a law expressing the general will.

The provisions of Article 146 of the Romanian Constitution and those of Law no. 47/1992 on the organisation and operation of the Constitutional Court establish the substantive competence of the Constitutional Court by restrictively listing the powers of the constitutional court. Among these, we have the one related to the ***settlement of legal conflicts of a constitutional nature between two or more public authorities with regard to the content or extent of their powers,*** as arising from the Constitution. Currently, according to the provisions of Article 146 (e) of the Romanian Constitution, "*The Constitutional Court has the following powers: […] e) To settle legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, the President of the either of the Chambers, the Prime Minister, or of the President of the Superior Council of Magistracy"*, and, according to Article 34 (2) of Law no. 47/1992 on the organisation and operation of the Constitutional Court[1], "*The request for settlement of such dispute shall indicate the public authorities which are in conflict, the legal texts upon which the conflict is bearing, and also include a presentation of the parties' stance and of the applicant's opinion".*

Based on the constitutional and legal texts, through its case-law, with regard to the ***concept of legal conflict of a constitutional nature between public authorities,*** the Constitutional Court has stated[2] that it entailed "*acts or concrete actions whereby one or several authorities have assumed powers, tasks or competencies that, according to the Constitution, belong to other public authorities, or the omission by certain public authorities, consisting in declining competence or in refusing to fulfil certain measures that fall under their obligations*".

The current constitutional provisions set up an important power of the Constitutional Court. Under the provisions of Article 146 (e), ***the Court settles the conflicts, without merely ascertaining them.*** Through the jurisdictional act that it issues, the Court is bound, on the one hand, to interpret the constitutional provisions applicable in the respective case and, on the other hand, to settle the conflict arisen between public authorities, by ***indicating the conduct that they must adopt in order to comply with the letter and the spirit of the Constitution.***

In order to exercise the power provided for in the Constitution, ***the Court can be referred to upon request by the President of Romania, by one of the Presidents of the two Chambers, by the Prime Minister or the President of the Superior Council of Magistracy***.

In its case-law, the Constitutional Court has established that ***the public authorities that might be involved in a legal conflict of a constitutional nature were only those expressly mentioned in Title III of the Basic Law, regardless of the level at which they carry out their powers, central (national) or local***. In the category of constitutional authorities we have *the*

[1] Republished in the Official Gazette of Romania, Part I, no. 807 of 3 December 2010.
[2] Decision no. 53 of 28 January 2005, published in the Official Gazette of Romania, Part I, no. 144 of 17 February 2005.

Parliament, consisting of the Chamber of Deputies and the Senate, exercising the Legislative power, *the President of Romania*, as a single-person public authority, and *the Government*, authorities forming the Executive power, as well as *the courts, the Public Ministry and the Superior Council of Magistracy*, components of the judiciary. Moreover, among the constitutional authorities exercising the Executive power, the Constitution mentions *the local public administration authorities*, i.e., on the one hand, the local councils and mayors, authorities ensuring local autonomy in municipalities, towns and villages, the county council or the general council of the Municipality of Bucharest, authorities coordinating the activity of local councils and, on the other hand, the Prefect, public authority representing the Government locally and managing the decentralized public services of the administrative-territorial units.

In Romania, ***the aspects related to the subject-matter of legal conflicts of a constitutional nature have been developed mostly through case-law.*** According to the decisions of the Constitutional Court, the legal conflicts of a constitutional nature between State authorities *can be positive conflicts of competence or negative conflicts of competence.* The Court found that *the opinions, value judgments or statements made by the holder of a public office with regard to other public authorities do not represent, in themselves, legal conflicts between public authorities.*

Based on these premises, we shall next present two recent cases examined by the Constitutional Court.

Facts of the case: On 31 January 2017, the Romanian Government adopted the Emergency Ordinance no. 13/2017 amending and supplementing Law no. 286/2009 on the Criminal Code and Law no. 135/2010 on the Criminal Procedure Code, which is sent for Parliament's approval and published in the Official Gazette of Romania. The declared purpose of this regulation was to put the criminal legislation in line with the decisions previously issued by the Constitutional Court, the effect thereof being, among others, to redefine certain crimes and decriminalise certain criminal facts.

The Government's act has generated a strong reaction from the public opinion (public protests with hundreds of thousands of participants throughout the country) and from certain State authorities (the President of Romania and the Superior Council of Magistracy), who claimed that, through its action, the Government has entered the Parliament's area of competence and adopted a normative act by violating the legal procedures related to assent by the competent authorities.

On the other hand, upon referral by certain natural persons, the Prosecutor's Office with the High Court of Cassation and Justice of Romania – the National Anticorruption Directorate has brought criminal proceedings *in rem* with regard to the opportunity of and circumstances in which the draft Emergency Ordinance no. 13/2017 was drawn up by the Romanian Government. The prosecution document noted that the Minister of Justice and the Prime Minister were subject to investigation for favouring the perpetrator (*aiding and abetting)*, as the purpose of the normative act adopted was to hinder the incurring of criminal liability and enforcement of certain sentences applied to certain fellow party men, friends or political sponsors convicted, indicted or subject to criminal investigations in the last few years, so that it is mandatory to verify the circuit of initiation, assent and issuance of the normative act amending the Criminal Code. Moreover, an investigation was ordered concerning the *presentation, in bad faith, of inaccurate data to the Romanian Parliament or President with regard to the activity of the Government or of a ministry*, in order to hide the commission of facts likely to affect State interests, because, the Minister of Justice and the Prime Minister have deliberately misinformed the Romanian Parliament and President as to their intention to promote normative acts amending the Criminal Code, through an emergency ordinance. Finally, the criminal proceedings also concerned an investigation into the crime of *use of its authority or influence by the person who has a leadership position in a political party* for the

purpose of obtaining for himself or for somebody else money, goods or other undue advantages, by the president of the ruling party, as he allegedly contacted the Minister of Justice and urged him to promote and adopt the normative act concerning the amendment of the crime of abuse of office, him being the main beneficiary of the Government's ordinance, as he is tried by the High Court of Justice and Cassation for precisely inciting to this crime. The criminal investigation initiated by the National Anticorruption Directorate for the commission of the three abovementioned crimes implied the hearing of the people involved in drafting the normative act (counsellors, experts, heads of departments, State secretaries and Government ministers, the President of the Legislative Council) and the seizing of documents from the Ministry of Justice.

In this context, the Constitutional Court was referred to with three claims to settle legal conflicts of a constitutional nature.

1. The applications for resolving legal conflicts of a constitutional nature between the Executive authority – the Government of Romania, on the one hand, and the Legislative authority – the Parliament of Romania, on the other hand, as well as between the Executive authority – the Government of Romania, on the one hand, and the Judicial authority – the Superior Council of Magistracy, on the other hand, submitted by the President of the Superior Council of Magistracy, and the President of Romania, respectively, settled through *Decision no. 63 of 8 February 2017, published in the Official Gazette of Romania, Part I, no. 145 of 27 February 2017.*

1. 1. The alleged conflict between the Romanian Government and the Romanian Parliament: by adopting Government Emergency Ordinance no. 13/2017, the Romanian Government has assumed a law-making competency in the field of organic laws in other situations than those allowed by the Constitution, in breach of the competency of the Romanian Parliament.

The particular legal regime of Government emergency ordinances is established in Article 115 (4) to (6) of the Constitution and refers to cases where such may be issued: extraordinary situations whose regulation cannot be postponed, the Government having an obligation to give the reasons for the emergency within their content; entry into force: only after submission for debate in an urgency procedure to the Chamber that has initial competence and with a mandatory convocation of Parliament if not in session; scope of regulation: it can also be that of an organic law, but in that case approval must be given by a law which is adopted with the majority required by Article 76 (1) of the Constitution; emergency ordinances may not be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State; likewise, emergency ordinances may not be detrimental to the rights, freedoms and duties provided in the Constitution, or electoral rights, and cannot establish measures of forcible transfer of assets into public property. In view of these considerations, the Court holds that the Constitution, in addition to the legislative monopoly vested in Parliament, has established a legislative delegation in Article 115 by virtue of which the Government may issue ordinances, be they simple [Article 115 (1) to (3)] or emergency [Article 115 (4) to (6)]. Thus, the transfer of certain legislative tasks onto the executive authority is accomplished by an act of Parliament or, in exceptional cases and only under parliamentary control, by a constitutional route (paragraphs 92 and 93).

Therefore, ***the Court examined whether or not Government Emergency Ordinance no. 13/2016 has generated, in itself, a legal conflict of a constitutional nature between Parliament and Government.***

As the criticism was directed at the Government enactment as against the constitutional provisions invoked, the applicants having actually requested that the normative act should be constitutionally reviewed in terms of both legislative solution and its adoption procedure, the Constitutional Court, in line with its previous practice, has stated that the unconstitutionality of

an ordinance can only be established while conducting an a posteriori constitutional review, and not through an application to settle a legal conflict of a constitutional nature. The Constitutional Court's task to resolve legal conflicts of a constitutional nature between public authorities has not been devised by the framers as a third, distinct path, to review the constitutionality of normative acts. In order to have a legal conflict of a constitutional nature, it is necessary to have a public authority assuming powers or competencies belonging to another public authority. Or, in this case, the Government has discharged its own competence, expressly provided for in Article 115 of the Basic Law (paragraph 99).

In conclusion, ***the Court found that there was no legal conflict of a constitutional nature between the Romanian Government, on the one hand, and the Romanian Parliament, on the other hand.***

1. 2. The alleged conflict between the Romanian Government and the Superior Council of Magistracy: by adopting Government Emergency Ordinance no. 13/2017, the Government failed to observe the law-making procedure concerning the legal assents necessary to adopt a normative act, by preventing the judicial authority, represented by the Superior Council of Magistracy, to fulfil its constitutional tasks.

Traditionally, the constitutional doctrine has acknowledged the three State powers: the legislative power, which makes and amends laws, the executive power, which implements and enforces laws, and the judiciary power, which interprets and applies the law. The rule of law requires that these powers exercise their tasks independently of another, as their functions must be distinct. In other words, those who make the law should not be involved in its implementation, those who implement the law must not be involved in its creation or interpretation, and those who interpret and apply the law should not be involved in creation and modification of such law.

That being so, by virtue of the principle of separation of powers, enshrined in Article 1 (4) of the Constitution, and of the provisions of Article 61 (1), Parliament and, by legislative delegation under Article 115 of Constitution, the Government have powers to establish, amend and repeal legal norms of general application. The courts, the Public Ministry and the Superior Council of Magistracy, as components of the judicial authority under Chapter VI in Title III – Public authorities – of the Romanian Constitution, each have a constitutional assignment, that is to deliver justice, subject to Article 126 (1) of the Basic Law, which means to resolve, by applying the law, disputes between the various parties (paragraphs 109 and 110).

When drafting normative acts, "*In cases provided by law, the initiator seek the opinion of the authorities concerned in implementation thereof, depending on the scope of regulations*." Such is the case provided by Article 38 (3) of Law no. 317/2004 on the Superior Council of Magistracy, reading that: "*The Plenary of the Superior Council of Magistracy shall endorse draft normative acts that concern the activity of the judicial authority*".

Through its case-law, the Court has circumscribed the term "*normative acts that concern the activity of judicial authority*", based on which the legal and constitutional obligation of the competent authorities to seek the opinion of the Superior Council of Magistracy can be determined. The draft legislation that requires an opinion from the Council are normative acts concerning the tenure of judges and prosecutors (also comprising regulations as to their rights and duties, incompatibilities and interdictions, appointment, promotion, suspension and termination of the office as a judge or prosecutor, delegation, secondment and transfer of judges and prosecutors, liability etc.) currently regulated under Law no. 303/2004, judicial organisation (the organisation, competencies, management of the courts and of the Public Ministry, respectively; organisation and functioning of the National Institute of Magistracy; the auxiliary departments in courts and prosecutor's offices attached therewith; budget of the courts and prosecutor's offices etc.) currently regulated under Law no. 304/2004, as well as the organisation and functioning of the Superior Council of Magistracy, whose legal basis is Law no. 317/2004 (paragraph 104).

The Court held that any other interpretation of the wording of normative acts that concern the activity of the judicial authority would lead to an expansion of competencies in the Superior Council of Magistracy that is not based on clear, predictable criteria, and is thus arbitrary. To take the view articulated by the authors of the objection of unconstitutionality, that failure to submit to the Council a normative act amending the Criminal Code contravened its constitutional role to guarantee judicial independence, would implicitly mean to accept the idea that seeking opinions from the Superior Council of Magistracy is compulsory for the drafting of all legislation. The Superior Council of Magistracy, as part of the judicial authority, in accordance with the Basic Law, whose role is to guarantee judicial independence, cannot be transformed into an advisory body to Parliament, the primary legislative authority [or to the Government, as a delegated legislative authority - auth.n.] without so affecting constitutional values such as the rule of law or the principle of separation and balance of powers within the framework of a constitutional democracy (paragraph 105).

Having regard to its settled case-law, *the Constitutional Court held that the Government had no constitutional or legal obligation to seek the opinion of the Superior Council of Magistracy on other questions than those concerning the activity of the judicial authority, and that the Superior Council of Magistracy had no legal empowerment to issue such an opini*on.

In view of all these considerations, ***the Court found that the adoption of Government Emergency Ordinance no. 13/2017 has not generated a legal conflict of a constitutional nature between the Romanian Government, on the one hand, and the Supreme Council of Magistracy, on the other hand, whereas the Government did not prevent the Council to accomplish one of its constitutional tasks, but acted intra vires, in exercising its own competence bestowed under the provisions of Article 115 of the Basic Law.***

2. The application for resolving the legal conflict of a constitutional nature between the Government of Romania and the Public Ministry – The Prosecutor's Office attached to the High Court of Cassation and Justice – the National Anticorruption Directorate, as submitted by the President of the Romanian Senate (settled through Decision no. 68 of 27 February 2017, published in the Official Gazette of Romania, Part I, no. 181 of 14 March 2017), **generated by the review of the circumstances, legality and appropriateness of adopting Government Emergency Ordinance no. 13/2017, following the assuming, by the Public Ministry – the National Anticorruption Directorate, of the power to conduct a criminal investigation in a field exceeding the legal framework, in violation of the Government's prerogative of adopting normative acts.**

In order to decide with regard to the existence of such a conflict, the Court has first established the framework and limits of the constitutional and legal competencies of the opposing authorities, on the one hand, and has established the facts of the case that represented the source of the conflict, on the other hand.

As regards the review of the Government's compliance with the procedure for the adoption of an ordinance and of its normative content, in terms of legality, according to the Romanian constitutional system, by virtue of their regulatory quality as primary legislation, thus equivalent to the law, Government ordinances are subject to the constitutional review enshrined by Article 146 (d) of the Constitution. Such a review is aimed at issues of extrinsic constitutionality, i.e. the procedure for the adoption of the act, and issues of intrinsic constitutionality, i.e. the normative content of the act. In other words, the possibility to check into the aspects concerning the legality of Government ordinances has been envisaged exclusively in relation to the Basic Law, and so, only the Constitutional Court can conduct their review, as no other public authority has the material competence in this field.

Where a normative act has been found at variance with the superior law, the Constitution, its legal effects will be terminated, but the sanction imposed is aimed only at removing the act in question from the body of active law, without representing the basis for the

legal responsibility of the persons involved in the legislative procedure or in the decision-making process. In that regard, the Constitution explicitly states in its Article 72 (1) – Parliamentary immunity, that "*No Deputy or Senator shall be held legally responsible for votes [...] expressed in the exercise of their office*." This immunity, which covers the legislative decision-making process, will apply mutatis mutandis to members of the Government in their activity as delegated legislator. Thus, the transfer of powers under the legislative delegation is concurrent with a transfer of the guarantees provided by the Constitution for the discharge of legislative duties in unimpeded freedom. It follows that no government minister can be held accountable for their political opinions or actions carried out in the preparation or adoption of a normative act with the force of law.

As regards the control over the Government's compliance with the procedure for the adoption of an ordinance and of its normative content, in terms of appropriateness, the Court held that an act of primary regulation (whether a law, simple ordinance or emergency ordinance of the Government), as a legal act of authority, was the exclusive expression of the will of the legislature, whose decision to legislate at a certain point in time is based on the need to have regulations in a specific area of the social relations.

The Court held that the assessment of the appropriateness of the adoption of an emergency ordinance, in terms of the decision to enact such legislation, constituted an exclusive task for the delegated legislator, which could be censored only under the conditions expressly provided for by the Constitution, i.e. only through parliamentary control exercised according to Article 115 (5) of the Constitution. So, it is only for the Parliament to decide the fate of the Government's normative act by adopting a law for its approval or rejection, as the case may be. Having regard to the constitutional provisions invoked, the Court found that no other public authority except for the legislative could control the Governmet's normative act in terms of the appropriateness thereof.

With regard to the constitutional and legal powers of the Public Ministry, Article 131 of the Constitution provides that "*(1) In the judicial activity, the Public Ministry shall represent the general interests of society, and defend legal order, as well as the citizens' rights and freedoms*", and the provisions of Law no. 304/2004 expressly enumerate the prosecutors' tasks, which are mainly to carry out criminal prosecution in cases and under the conditions provided for by law, to direct and supervise the criminal investigation activity of the criminal police, to refer to the courts for the trial of criminal cases, to exercise legal remedies against judicial decisions, as provided by law.

In order to decide whether a conflict exists or not, the Court has first determined the framework and the legal and constitutional limits of the competencies vested in the conflicting authorities and then ***established the facts depending on the concrete details of the case***. To this purpose, the Court has examined the notifications in the case-file no. 46/P/2017, lodged with the Section for Combating the Offences Assimilated to those of Corruption within the National Anticorruption Directorate, as well as the procedural acts in the file issued by the prosecuting authority, namely the prosecutor in charge with the case.

In view of the alleged facts and of those being retained in the prosecutor's order, ***the Court considered that all that has been presented as material elements constitutive of the imputed offences was nothing more than a personal judgment or criticism by the authors of the denunciation with regard to the legality and appropriateness of the measure adopted by the Government***. Thus, the circumstances of the adoption of the normative act, the contradictory public stance taken by the Minister of Justice and by the Prime Minister, followed by the adoption of Government Emergency Ordinance no. 13/2017 amending and supplementing Law no. 286/2009 on the Criminal Code and Law no. 135/2010 on the Criminal Procedure Code, "without having consulted with the Legislative Council, without waiting for the opinion from the Superior Council of Magistracy, without being included on the agenda of the Cabinet's meeting on 31 January 2017" are certainly issues that concern the legality and appropriateness of the adoption of the impugned act, but that cannot fall into the prosecutors'

scope of competence, or be subjected to criminal investigations. Moreover, the claim that "legislative changes are not justified, since the arguments [...] about prison overcrowding and a possible conviction under a «pilot judgment» against Romania, rendered by the ECHR, are not true" appears to be targeted against the failure to give reasons for the urgency and the extraordinary situation at the origin of those regulations, therefore a question of constitutionality of the normative act concerned.

Thus, while analysing the legal classification of the alleged facts, as configured by the prosecutor in his order for the initiation of prosecution in rem, the Court held that, with regard to the offence of favouring the perpetrator, provided under Article 269 of the Criminal Code, such offence could not be committed by adopting a normative act. No doubt that a normative act of clemency (pardon) or decriminalization of certain offences will be in favour of those persons who have committed the criminal acts that fall under that particular normative act, but this aspect cannot be converted into the "aiding the perpetrator" as the material element of the crime of favouring the perpetrator (*aiding and abetting*). Normative acts of clemency or decriminalization always represent the will of the legislature, whose choice is justified by certain social, legal, economic needs, in relation to a certain point in the evolution of society. It is obvious that, because of their normative character, laws and Government ordinances are of general applicability and extend their effects to indeterminate numbers of persons covered by the hypothesis. In this logic, it becomes possible to enlarge their sphere so as to include the people who adopted such acts, or relatives, friends, acquaintances. But then it would mean that the legislator, primary or delegated, could not ever adopt normative acts without so being criminally charged and penalised, because of the more lenient norms that would always be in favour of certain perpetrators. Or, the Court held that it was this precise general nature of a normative act, its applicability to an indefinite number of legal subjects what distinguishes a normative, from an individual act, only the latter being likely to produce benefits, advantages, aid, as meant by the criminal law. For the same reasons, the allegation concerning *the use of its authority or influence, by the person who has a leadership position within a political party, for the purpose of obtaining, for himself/herself or for somebody else, undue advantages* cannot be upheld either, as the "advantage" in the incriminating text refers to other situations than to a "benefit" that someone might gain as a result of a normative act being adopted, therefore this cannot be possibly held as a constitutive element of the objective side of an offence.

With regard to the crime of *presenting in bad faith inaccurate data to Parliament or the President of Romania on the activity of the Government or a ministry*, in order to conceal actions that could harm the interests of the State, the Court held that this norm applied when the presentation, by Government members, of inaccurate data was the result of fulfilling a legal obligation towards those entitled to request such data, i.e. the Parliament, the President of Romania, respectively. However, when compared to the facts described in the denunciation and retained in the prosecutor's order for the initiation of the prosecution proceedings, the Court finds that "inaccurate data" actually refers to a failure to communicate intentions that, in the view of the denunciators, as well as of the judicial body, has been converted into "misinformation". There is no statutory or constitutional norm requiring the Government to inform the President of Romania about the "intention" to include normative acts due for adoption on the agenda of Cabinet meetings or to inform Parliament about the "intention" to adopt emergency ordinances.

Therefore, ***the Court concluded that it was unacceptable that the primary or delegated legislative authority (MPs or government ministers) should come under the criminal law by the mere fact of having adopted, or participated in the decision-making process of the adoption of a normative act, whilst fulfilling its constitutional tasks***. By virtue of the immunity attached to the act of decision-making in the legislative area, which is applicable mutatis mutandis to the members of the Government as well, no MP or minister can be held accountable for their political opinions or actions carried out with a view to the preparation of adoption of a normative act with the force of law. Exemption from legal responsibility for the

legislative activity is a guarantee in the exercise of the office, against pressure or abuse that a person holding a position as MP or government minister may be faced with, whereas immunity will ensure his/her independence, freedom and security in the exercise of rights and obligations under the Constitution and laws.

In the context of the analysis conducted, the Court held as relevant for adjudicating on this case the reasoning stated in the *Report on "The relationship between political and criminal ministerial responsibility", adopted by the European Commission for Democracy through Law (the Venice Commission) at its 94th Plenary Session, held in Venice, 8-9 March 2013* (CDLAD(2013)001). Thus, "on a general level the Venice Commission considers that the basic standard should be that criminal procedures should not be used to sanction political disagreement. Government ministers are politically responsible for their political actions, and this is the democratically correct way to ensure accountability within the political system. Criminal procedures should be reserved for criminal acts". The document also states that "It is important for democracy that government ministers have room for maneuver to pursue the policies that they are elected to do, with a wide margin of error, without the threat of criminal sanctions hanging over them. In a well-functioning democracy, ministers are held responsible for their policies by political means, not be resorting to criminal law [...]" (paragraphs 76 and 79).

Taking into account the Order of 1 February 2017, by which the National Anticorruption Directorate ordered the initiation of criminal proceedings and procedural acts were carried out with regard to offences reported in the denunciation, it appears manifest that the Public Ministry, as part of the judicial authority, has considered itself competent to check into the appropriateness, compliance with legislative procedure, and, implicitely, the legality of the Government's adoption of its emergency ordinance. Such a conduct amounts to ***a serious violation of the principle of separation of powers guaranteed by Article 1 (4) of the Constitution, because the Public Ministry has not only exceeded its tasks under the Constitution and the law, but also arrogated powers and duties that belong to the legislature or to the Constitutional Court***.

In this light, the Court found that by checking into the circumstances of adoption of Government Emergency Ordinance no. 13/2017 amending and supplementing Law no. 286/2009 on the Criminal Code and Law no. 135/2010 on the Criminal Procedure Code, ***the Public Ministry – The Prosecutor's Office attached to the High Court of Cassation and Justice – the National Anticorruption Directorate has arrogated the powers of conducting a criminal investigation in an area which exceeds the legal framework, and that could lead to an institutional blockage from the viewpoint of constitutional provisions on the separation and balance of powers***. As long as the initiation of criminal proceedings involves a criminal inquiry and investigation activities into how the Government has fulfilled its duties as a delegated legislator, the action taken by the Public Ministry ceases to be legitimate, and appears as an abuse, having overstepped the competence established by the legal framework in force. But more than this, the action of the Public Ministry puts pressure on members of the Government and so affects the well-functioning of this authority in terms of the lawmaking process, with the consequence of deterring/intimidating the delegated legislator in the exercise of their constitutional powers. By its conduct, the Public Ministry – the Prosecutor's Office attached to the High Court of Cassation and Justice – *the National Anticorruption Directorate has acted ultra vires, and arrogated a jurisdiction it does not possess – that is checking into the adoption of a normative act in terms of legality and appropriateness*, which thus affected the proper functioning of an authority, and the legal remedy lies in Article 146 (e) of the Constitution, providing that resolution of legal conflicts of a constitutional nature between public authorities is vested in the Constitutional Court.

Therefore, **the Court found that there has been a legal conflict of a constitutional nature between the Public Ministry – the Prosecutor's Office attached to the High Court**

of Cassation and Justice – the National Anticorruption Directorate, on the one hand, and the Romanian Government, on the other hand.

In conclusion, we consider that, by fulfilling its power to settle legal conflicts of a constitutional nature between public authorities, the Constitutional Court fulfils its role as guarantor for the observance of the Constitution and, implicitely, as guarantor for ensuring a loyal cooperation between public authorities. The Court acts like a mediator between State powers, by regulating the constitutional relationships between the public authorities and their incumbent powers, in compliance with the principles of separation and checks and balances, and by correcting the "activist", usurping tendencies of certain public authorities or the *ultra vires* divergencies from the letter and spirit of the constitutional norms of others. The principle of separation of powers, underlying the Constitutional Court's solutions in the cases referred to it is not just a mere proclamation at constitutional level, but it entered the public, social and political consciousness and it represents one of the pillars of the rule of law underlying the organisation and operation of State authorities.