

## Law no. 47 of 18 May 1992 on the Organisation and Operation of the Constitutional Court\*

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### CHAPTER I General Provisions

Article 1. - (1) The Constitutional Court is the sole authority of constitutional jurisdiction in Romania.

(2) The Constitutional Court is independent of any public authority and subject only to the Constitution and to this law.

(3) The aim of the Constitutional Court is to guarantee the supremacy of the Constitution.

Article 2. - (1) The Constitutional Court shall ensure the constitutional review of laws, of Standing Rules of Parliament, and of ordinances of the Government.

(2) Provisions of the normative acts stipulated under paragraph (1) above, which come against any of the provisions or principles set forth by the Constitution, shall be unconstitutional.

(3) In exercising its review, the Constitutional Court shall adjudicate only on points of law, and shall not be competent to modify or to supplement the legal provision under review. Likewise, the Constitutional Court shall not adjudicate on the interpretation and application of the law, but only upon whether its meaning is contrary to the Constitution.

Article 3. - (1) The Constitutional Court competence is that which is laid down by the Constitution.

(2) The Constitutional Court alone is entitled to decide upon its competence. It shall decide on the cases explicitly and strictly provided under Article 144 of the Constitution.

(3) The Constitutional Court competence, established in accordance with paragraph (2), cannot be challenged against by any public authority.

Article 4. - (1) The Judges of the Constitutional Court shall be independent in exercising their powers and irremovable during their term of office.

(2) The Judges of the Constitutional Court cannot be held legally responsible for any opinion or vote given in adopting solutions.

Article 5. - Public authorities or institutions, self-managed public companies, trading companies, or other organisations shall be bound to communicate any information, documents and deeds they hold, when so requested by the Constitutional Court for the fulfilment of its powers.

Article 6. - The seat of the Constitutional Court is in the Municipality of Bucharest.

CHAPTER II  
Organisation of the Constitutional Court

Article 7. - (1) The Constitutional Court consists of nine Judges appointed for a nine-year term of office that cannot be any further extended or renewed.

(2) Three Judges shall be appointed by the Chamber of Deputies, three by the Senate, and three by the President of Romania.

(3) The Constitutional Court shall be renewed by one third of its Judges every three years.

(4) Each Chamber of Parliament shall, by the vote of the majority of its members, on the proposal of its Standing Bureau and based on the recommendation of the Legal Committee, appoint as a Judge the person who has got the largest number of votes.

(5) Candidatures may be put forward to the Legal Committee by any of the Parliamentary Groups, Deputies and Senators. Each candidate shall present *curriculum vitae* and the pertaining documents to prove that he or she meets the requirements stipulated by the Constitution. The candidates shall be heard by the Legal Committee and by the Plenary Chamber. The report of the Legal Committee shall give a reasoned statement with reference to all candidates.

Article 8. - (1) The Constitutional Court shall carry on its activity in plenum, under the terms laid down by this law and the Rules on the Organisation and Functioning of the Constitutional Court, and the acts of the Court shall be adopted by a majority vote of the Judges, unless otherwise provided by this law.

(2) The quorum for the Plenum of the Constitutional Court shall be two-thirds of the number of the Court's Judges.

Article 9. - (1) The Constitutional Court has a President who is elected by secret ballot for a period of three years, by the majority of the Judges' votes, within five days from the Court renewal.

(2) For the election of the President, each group of Judges appointed by the Chamber of Deputies, the Senate and, respectively, by the President of Romania may put forward one single candidature. Where no candidate gets a majority of votes in the first ballot, a second one shall be taken between the first two candidates who have qualified or been selected by drawing lots, if all the candidates have got an equal number of votes. Proceedings for the election of the President shall be chaired over by the Judge who is the eldest of age.

(3) The President appoints a Judge to take over office for the duration of his absence.

Article 10. - (1) If there is a vacancy of the office, a President is elected up to the end of the period of three years provided under Article 9, paragraph (1).

(2) The election shall take place within five days from ascertaining the vacancy, according to the procedure under Article 9, paragraph (2).

Article 11. - (1) The President of the Constitutional Court shall have the following powers:

(a) to co-ordinate the activity of the Constitutional Court, and to assign the cases for settlement;

(b) to summon and chair over the plenary sessions of the Constitutional Court;

(c) to represent the Constitutional Court before the public authorities, or any other Romanian or foreign organisations;

(d) to ascertain the cases when a Judge's term of office has terminated, as provided in this law, and to notify the public authorities that have made the appointment about the vacancy to be filled in;

(e) to fulfil any other powers provided by the law or by the Rules on the Organisation and Functioning of the Constitutional Court.

(2) The President shall supervise the activity of the Secretary General of the Constitutional Court related to his powers of ordering payments from the budgetary funds.

**CHAPTER III**  
**Jurisdiction of the Constitutional Court**

*Section 1*  
*Common Provisions*

**Article 12. - (1)** The Constitutional Court may be referred to only for the cases explicitly and strictly provided under Article 144 of the Constitution and under the conditions specified by this law.

**(2)** Reference proceedings must be done in writing and give a statement of the grounds.

**Article 13. - (1)** According to the competence established under Article 144 of the Constitution, the Constitutional Court shall pronounce decisions, rulings and it shall issue advisory opinions, as follows:

**(A) Decisions, in cases in which:**

**(a)** it adjudicates on the constitutionality of the laws before their promulgation, upon reference made by the President of Romania, by the President of either Chamber of Parliament, by the Government, by the Supreme Court of Justice, by at least fifty Deputies or at least twenty-five Senators, as well as *ex officio*, on initiatives to revise the Constitution;

**(b)** it adjudicates on the constitutionality of the Standing Rules of the Parliament, upon reference made by either President of Chamber, by a parliamentary group, by at least fifty Deputies or at least twenty-five Senators;

**(c)** it decides on objections raised before courts of law regarding the unconstitutionality of the laws and ordinances;

**(d)** it decides on challenges regarding the constitutionality of a political party.

**(B) Rulings, in cases in which:**

**(a)** it watches over the observance of the procedure for the election of the President of Romania, and confirms the ballot returns;

**(b)** it ascertains the existence of circumstances that justify the *ad interim* in the exercise of the office of the President of Romania, and reports its findings to Parliament and to the Government;

**(c)** it watches over the observance of the procedure for the organisation and holding of a referendum, and confirms its results;

**(d)** it verifies whether the conditions are fulfilled for the exercise of the legislative initiative by the citizens.

**(C) Advisory opinions on the proposal to suspend the President of Romania from office.**

**(2)** All decisions and rulings shall be delivered in the name of the law.

**Article 14. - (1)** The Court session of judgment shall be open, unless the Plenum has decided to sit on secret session, for well-founded reasons.

**(2)** The parties shall have free access to the file deeds.

**(3)** The Constitutional Court acts and proceedings, based on which it renders decisions and rulings, or issues advisory opinions as provided under Article 13, shall not be made available for the public.

**Article 15. -** Applications filed with the Constitutional Court shall be exempt from judicial revenue fees.

**Article 16. -** Jurisdictional procedure under this law shall be supplemented by the rules of Civil Procedure, to the extent to which they are consistent with the nature of

the proceedings before the Constitutional Court. Solely the Court shall determine such consistency.

*Section 2*  
*Jurisdictional Procedure*

**1. Constitutional Review of Laws before Promulgation**

**Article 17. - (1)** The Constitutional Court shall adjudicate on the constitutionality of laws, before their promulgation, upon reference by the President of Romania, by either President of Chamber, by the Government, by the Supreme Court of Justice, by at least fifty Deputies or at least twenty-five Senators.

**(2)** With a view to exercising the right of reference to the Constitutional Court, the bill shall be communicated, five days before being presented for promulgation, to the Government and to the Supreme Court of Justice, and it shall be deposited with the Secretaries General of the Chamber of Deputies and of the Senate. If the bill has been adopted under an expeditious procedure, the time limit shall be of two days.

**(3)** The date on which the bill has been deposited with the Secretaries General of the Chambers shall be announced in the Plenary of each Chamber within twenty-four hours from the date of its being deposited. Deposit and announcement shall be made only on the days in which the Chambers of Parliament sit in full.

**(4)** Reference submitted by Members of Parliament shall be sent to the Constitutional Court on the same day when the Secretary General of the respective Chamber received it.

**Article 18. - (1)** If reference has been made by one of the Presidents of the two Chambers of Parliament, by Members of Parliament, by the Government, or by the Supreme Court of Justice, the Constitutional Court shall communicate the reference act to the President of Romania, on the day of its registration.

**(2)** If reference has been made by the President of Romania, by Members of Parliament, or by the Supreme Court of Justice, the Constitutional Court shall communicate it to the Presidents of the two Chambers of Parliament and to the Government, within twenty-four hours from its registration, also specifying the date when proceedings are to take place.

**(3)** If reference has been made by the President of either Chamber of Parliament, the Constitutional Court shall communicate it to the President of the other Chamber, as well as to the Government, and if the reference has been made by the Government, the Court shall communicate it to the Presidents of the two Chambers of Parliament, the provisions under paragraph (2) being applied accordingly.

**Article 19. - (1)** The Presidents of the two Chambers of Parliament and the Government may present written viewpoints, up to the date when proceedings take place.

**(2)** Any viewpoint from the Government shall be presented only under the Prime-Minister's signature.

**Article 20. - (1)** Proceedings shall take place in the Plenum of the Constitutional Court, attended by the Court's Judges, on the basis of the reference act, deeds and viewpoints as may have been received, while taking into consideration the provisions specifically mentioned in the reference act, but also other which essentially and obviously cannot be dissociated thereof.

**(2)** Following upon deliberations, the decision shall be pronounced by a majority vote of the Judges and shall be communicated to the President of Romania. Any decision which states the unconstitutionality of a bill shall also be communicated to the Presidents of the two Chambers of Parliament, with the view to opening the procedure provided under Article 145 paragraph (1) of the Constitution.

**(3)** The decision shall be published in the Official Gazette of Romania.

(3) The day of proceedings shall be established by the President of the Court as soon as the report has been filed in.

(4) Proceedings shall take place on the basis of the report presented by the Judge-rapporteur, of the Interlocutory Order by which the Constitutional Court has been referred to, of the viewpoints presented according to paragraph (1), the evidence submitted, the parties' arguments, and with due summoning of the parties and the Public Ministry.

(5) The parties may be represented by lawyers who have the right to plead in the Supreme Court of Justice.

Article 25. - (1) The decision by which a law, an ordinance, or a provision from a law or ordinance in force has been found as unconstitutional shall be final and binding.

(2) If the objection has been admitted, the Court shall also adjudicate on the constitutionality of other provisions from the act objected to, which essentially and obviously cannot be dissociated of the provisions mentioned in the reference act.

(3) The decision shall be binding from the date of publication in the Official Gazette of Romania and shall take only prospective effects.

(4) The decisions pronounced under the conditions of paragraph (1) shall be communicated to the Chambers of Parliament and to the Government.

#### 4. Observance of the Procedure for the Election of the President of Romania

Article 26. - The Constitutional Court shall see to the observance of the procedure for the election of the President of Romania and shall confirm the ballot returns, under the conditions stipulated by the Law for the Election of the President of Romania.

Article 27. - The rulings of the Constitutional Court shall be adopted in Plenum, by a majority vote of the Court's Judges.

#### 5. Adjudication of Challenges regarding the Constitutionality of a Political Party

Article 28. - (1) The Constitutional Court shall decide over challenges regarding the constitutionality of a political party.

(2) The challenge regarding the constitutionality of a political party may be filed in by the President of either Chamber of Parliament, or by the Government. The President of the Chamber may file a challenge only on the basis of a resolution passed by a majority vote of the Members of that Chamber.

(3) The challenge must be reasoned and have the evidence on which it is grounded, attached to it.

Article 29. - (1) For the settlement of the challenge, the President of the Constitutional Court shall designate one of the Judges as rapporteur, and this one shall communicate the challenge, together with documentary evidence, to the political party in question, specifying the date up to when a memorandum for defence may be submitted to the Court, together with related evidence.

(2) The adjudication shall be carried on in the Plenum of the Constitutional Court, with due summoning of the challenging applicant, of the political party whose constitutionality is being challenged against, and of the Public Ministry, on the basis of the report presented by the Judge-rapporteur and the evidence submitted, while the decision shall be rendered by a majority vote of the Court's Judges.

(3) The Parliament Chamber that filed the challenge, may be represented by a specially designated person, and the Government, by the Ministry of Justice. The political party may also be represented by a lawyer who has the right to plead in the Supreme Court of Justice.

(4) The decision of the Court shall not be subject to any appeal, and it shall be published in the Official Gazette of Romania.

Article 30. - (1) A political party may be declared unconstitutional in the cases provided under Article 37 paragraph (2) of the Constitution.

**Article 36. - (1)** Prior to referring a bill or legislative proposal to the Parliament in order to initiate the legislative procedure for the revision of the Constitution, such shall be presented to the Constitutional Court, and that one is bound to adjudicate on its constitutionality within ten days.

**(2)** The decision of the Constitutional Court shall be rendered in the Plenum, by a vote of two-thirds of the Court's Judges, and shall be communicated to those who initiated the bill or legislative proposal or, as the case may be, to their representative. The decision shall be published in the Official Gazette of Romania.

**(3)** The bill or, as the case may be, legislative proposal shall be presented to the Court, accompanied by an opinion issued by the Legislative Council.

**(4)** The bill or legislative proposal may be submitted to the Parliament only together with the decision of the Constitutional Court, communicated in accordance with paragraph (2) above.

#### **CHAPTER IV** **Judges of the Constitutional Court**

**Article 37. - (1)** Judges of the Constitutional Court must have a degree in Law, high professional competence and at least eighteen-years of experience in the legal area or in academic activities in Law.

**(2)** The office of Judge shall be incompatible with any other public or private office, except that of academic professorial activity in Law.

**Article 38. -** The appointment of Judges, under this law, may be effected only with the candidate's prior consent made in writing. In case a candidate holds an office which is incompatible with that of Judge of the Constitutional Court, or is a member of a political party, this consent must comprise the candidate's commitment to resign from that office, or from the political party whose member he or she is, on the date of appointment.

**Article 39. - (1)** Judges of the Constitutional Court shall take, before the President of Romania and the Presidents of the two Chambers of Parliament, the following oath:

"I hereby swear to uphold and safeguard the Constitution, to fulfil in good faith and without bias my duties as a Judge of the Constitutional Court. So help me God!"

**(2)** The oath shall be taken individually. A Judge of the Constitutional Court shall exercise office from the date of taking the oath.

**Article 40. -** Judges of the Constitutional Court shall be bound:

**(a)** to fulfil the office assigned to them with impartiality and respect for the Constitution;

**(b)** to keep the secrecy of deliberations and votes, and to withhold from taking any public stand or giving any legal advice in matters falling within the jurisdiction of the Constitutional Court;

**(c)** to express their affirmative or negative vote in adopting the acts of the Constitutional Court, any abstention from the vote being disallowed;

**(d)** to inform the President of the Constitutional Court about any activity that might entail incompatibility with the exercise of their office;

**(e)** not to allow the use of their office for purposes of commercial publicity or propaganda of any kind whatsoever;

**(f)** to refrain from any activity or conduct which is contrary to the independence or dignity of their office.

**Article 41. -** The Plenum of the Constitutional Court shall have exclusive competence to establish the Judges' breaches of duties, sanctions, and the manner of application thereof.

**Article 42. - (1)** A Judge of the Constitutional Court may not be arrested or prosecuted against for a criminal offence or misdemeanour, without approval of the Standing Bureau of the Chamber of Deputies, the Senate, or the President of Romania,

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as the case may be, upon request of the Prosecutor General of the Prosecutor's Office attached to the Supreme Court of Justice.

(2) Legal competence for the trial of criminal offences committed by the a Judge of the Constitutional Court shall belong to the Supreme Court of Justice, Criminal Division.

(3) A Judge of the Constitutional Court shall be suspended from his office, *de jure*, as of the date of indictment for a criminal offence. In the case of a final conviction, that Judge shall be excluded *de jure*, otherwise, if acquitted, suspension shall cease.

Article 43. - (1) The office of Judge of the Constitutional Court shall cease:

(a) at the expiration of the period of appointment, or in case of resignation, disfranchisement, exclusion *de jure*, or death;

(b) in situations of incompatibility, or of incapacity to exercise the office of a Judge for more than six months;

(c) in case of violation of the provisions under Article 16, paragraph (3) or Article 37, paragraph (3) of the Constitution, or for a serious violation of the obligations provided under Article 40.

(2) The cessation of the term of office, according to sub-paragraph (a), shall be ascertained by the President of the Constitutional Court, otherwise the termination of the office shall be decided in the Plenum, by a majority vote of the Court's Judges.

Article 44. - (1) Three months before expiration of the term of office of any of the Judges, the President of the Constitutional Court shall notify the President of the Chamber of Parliament which has appointed the respective Judge or, as the case may be, the President of Romania, calling for the appointment of another one; appointment shall be made at least one month before the end of the term of office held by the preceding Judge.

(2) If the office has ceased before the expiration of the period for which the Judge was appointed, and the remaining period is in excess of six months, the President shall notify the public authority provided under paragraph (1) above, within three days from the date on which the term of office has ceased, for the appointment of a new Judge. The term of office of the Judge thus appointed shall end at the expiration of the term held by the Judge replaced.

(3) If the period for which a new Judge has been appointed, according to paragraph (2), is less than three years, this one may be appointed for a full term of office of nine years, when the Constitutional Court is renewed.

Article 45. - (1) Once a Judge's term of office has ended pursuant to the expiration of the period for which it was granted, that one shall have the right to be reinstated to the position previously held, if his or her appointment to the Constitutional Court was made under such reservation.

(2) If a Judge was holding a position as Magistrate, reservation is mandatory.

(3) Throughout the period of reservation, positions as provided under paragraphs (1) and (2) above may be occupied only by persons employed under a labour contract for limited duration.

Article 46. - The President of the Constitutional Court shall be equal to the President of the Supreme Court of Justice, and the Judges of the Constitutional Court, to the Vice-President of the Supreme Court of Justice.

#### CHAPTER V Specialised and Administrative Staff

Article 47. - Repealed\*

Article 48. - Repealed\*\*



\* The Article has been repealed through article 6 paragraph (2) of the Law no. 124 of 13 July 2000 on the structure of the Constitutional Court's personnel, published in the Official Gazette of Romania, Part I, no.331 of 17 July 2000.

\*\* Idem

**CHAPTER VI**  
**Sanctions, Final and Transitory Provisions**

**Article 49. - (1)** The Constitutional Court shall have its own budget, which is an integral part of the State budget.

**(2)** The draft budget shall be approved, with the Ministry of Finances' advisory opinion, by the Plenum of the Constitutional Court, and it shall be forwarded to the Government in order to be distinctly included in the Draft Bill on the State Budget submitted to the legislature. If any disagreement should arise as against the draft Budget submitted by the Government, the Constitutional Court shall take such into Parliament for reconciliation.

**Article 50. - (1)** The first Constitutional Court shall be set up within ten days from the publication of this law in the Official Gazette of Romania.

**(2)** To this effect, each Chamber of Parliament shall appoint three Judges for a period of three, six, and nine years, while keeping with provisions under Article 7 paragraph (4). The Judges shall be appointed in the order resulting from the number of votes each candidate has obtained. Likewise, the President of Romania shall appoint three Judges, one each for every such period.

**(3)** Within three days from establishment, the Court shall elect its President, and within ten days, it shall adopt its Standing Rules on Organisation and Functioning.

**Article 51. -** Where the Constitutional Court finds that an objection of unconstitutionality has been groundless and raised in bad faith, for purposes of delaying the settlement of the case, it may impose sanctions on the party which invoked the objection, by a fine amounting from 10,000 up to 100,000 Lei.

**Article 52. -** Refusal by any public authority or any other organisation to send the information, documents, and deeds that it holds, when so requested by the Constitutional Court, shall be sanctioned with a fine of 10,000 lei for each day of delay.

**Article 53. - (1)** Fines as provided under Article 51 and Article 52 shall be applied by the President of the Constitutional Court or by the Presiding Judge, through a grounded Interlocutory Order.

**(2)** Complaint may be lodged against the Interlocutory Order, within thirty days from its communication, and it shall be settled by the body which applied such fine. The Interlocutory Order shall be final and directly enforceable. The monies which is paid for the fine shall be entered as revenue to the State budget.

**Article 54. -** In the year 1992, funds for the work of the Constitutional Court shall be provided by the Government out of the budgetary reserve at its disposal.