

**ORIGINAL PAPER****The Contribution of the Romanian Constitutional Court to the Application and Development of the Law: Interpretive and Suppletive Jurisprudence****Alexandra Oanță (Nacu)*****Abstract**

Judicial practice of the Constitutional Court is particularly important from the point of view of law enforcement and development. This jurisprudence can be of two kinds: interpretive and suppletive jurisprudence. When certain constitutional or legal rules give rise to several interpretations, the court which performs control of constitutionality is trying to give a fair and uniform interpretation of these legal texts, in which case the interpretation becomes part of the norm (interpretative jurisprudence). The Constitutional Court of Romania has contributed to the clarification of the meaning of certain terms (public property, freedom of contract, discrimination, autonomy, etc.) and to the explanation and development of the principles of law. On the other hand, if the constitutional text is incomplete or ignores certain institutions which are absolutely necessary, it is judicially completed through court order (suppletive jurisprudence). For example, in this way, in Romania, even before there was a settlement of the constitutional review, the judgment of the Ilfov Court in the famous „trams affair” in 1912 resulted subsequently in filling, judicially, the Constitution of the 1866 with rules on the control of laws’ constitutionality. Another issue addressed in this article refers to the Constitutional Court’s jurisprudence concerning the relationship national law - Community/European law. In some cases, the Constitutional Court considered itself competent to analyse compliance of national law with the Community norms; in others, however, the Court interpreted Community law in order to be able to exercise the control of compliance. As methodology, the author has used comparative and interpretative method, aiming to achieve an overview of the jurisprudence of the Constitutional Court of Romania.

Keywords: *Constitutional Court, control, decision, exception of unconstitutionality, jurisprudence*

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General considerations

Among the institutions implemented in Romania, after the Revolution from December, with the purpose to defend the rights and freedoms of the citizens, there appeared occidental institutions too, introduced for the first time in the Romanian history: People's Advocate, Legislative Council, law constitutionality control and the Constitutional Court (Deaconu, 2013: 148; Ionescu, 2002: 249-271).

The Constitutional Court is the only constitutional jurisdiction authority in Romania, having an exclusive character of competence (Avram and Radu, 2007: 301). Representing "the guarantee of the Constitution supremacy" (art. 1, section 1, from Law no. 47/1992), the Constitutional Court "shall remain a special and specialised institution, independent from any other state institution" (Deaconu, 2013: 149), situated outside other state institutions or authorities, including outside the judicial system, as "a guarantee for the power separation in state, and, also, a further testimony of for the rule of law" (Deaconu, 2013: 149).

Unlike the control of legality on addressing the enforcement of rules, which can be a hierarchical or a judicial one, and can be done in different forms and manners at the disposal of the parties participant to that specific judicial relation, the control of normative action legality, presents a system of specific guarantees. A way in which it is manifested the later type of control, the one exercised by the Constitutional Court, "is manifested as an extension of will and significance stated by the legislator, evidence viable until the moment the legislator interferes himself" (Kerkhove and Ost, 1988: 232).

By exercising the control of law constitutionality, the Constitutional Court emits decisions that can be registered, according to the specialised authors, in two categories: interpretative jurisprudence and suppletive jurisprudence (Dănişor, 2003: 124).

Interpretative jurisprudence

When the judicial norms are susceptible for interpretations, the control body for constitutionality tries to offer a unitary and righteous interpretation of the texts, developing the so-called "*interpretative jurisprudence*". In this case, the interpretation becomes an integrant part of the norm (Dănişor, 2003: 124).

For example, on addressing the concept of common property, the Court, after few contradictory decisions (The Constitutional Court Decisions no. 9, no. 10, no. 11, no. 12, no. 13, no. 16, no. 17, no. 18/1993 and Decision no. 38/1993), clarified the meaning of this term, through the Plenum Decision no. 1 from the 7th of September 1993, in which it was established that "the Penal Code dispositions referring to the crimes against the common property are partially abrogated, according to art.150, section (1) from the Constitution and, therefore, they are to be applied only for the goods stipulated by art.135, section (4), from the Constitution, goods that represent exclusively the object of state private property" (Constitutional Court Decision no. 35/1993)

In the acceptance established by the Romanian Constitutional Court, "the freedom of contract is the acknowledged possibility of any rightful individual to conclude an agreement, a mutuus consensus, a result of their will manifestation that converges with the other part or parts, to determine its content and to determine its object, gaining rights and assuming obligations, which have to be observed by the parties" (Constitutional Court Decision no. 365/2005).

The Constitutional Court brought its contribution to define more accurately the meaning of certain terms, along with the explanation and development of some law

principles. Consequently, through a decision from 2001, the Constitutional Court specified the content of local autonomy principle, showing that the art. 120 dispositions from Constitution “refer to the principle of local autonomy within a public administration organization, from the administrative-territorial units, and not to the existence of a decisional autonomy outside the legal framework, which is generally mandatory” (Constitutional Court decision no. 136/2001). Later on, the constitutional jurisdiction court further mentioned that “the principle of local autonomy does not exclude the obligation of the local public administration authorities to observe the general laws, applicable on the entire Romanian territory, acknowledging the existence of some specific local interests, also distinct, but which are in contradiction to the national interests” (Constitutional Court Decision no. 127/2009).

In the Constitutional Court jurisprudence, the notion of “non-discrimination”, ignored for a lot of time, has evolved significantly, passing from the expressly forbidden discriminations to the allowed discriminations, which are those special measures provisioned by the law, for the protection of certain categories or groups of people (positive discriminations) (Radu, 2008: 197).

In a restrictive interpretation given by the Constitutional Court for the principle of non-discrimination, in the period following the revolution from December 1989, it was established that “... through its content, article 16, section 1, from the Constitution, is to be correlated to the dispositions provisioned by article 4, section 2, of the fundamental law that determines the criteria for non-discrimination, which are race, nationality, ethnicity, language, religion, sex, opinion, politic affiliation, wealth and social origin” (Constitutional Court Decision no. 70/1993). As it was underlined in the doctrine (Radu, 2008: 201), if we admitted such an interpretation, it would mean that “only what it is expressly forbidden by the constitutional text as discrimination, is contrary to equality, otherwise, equality is presumed” (Tănăsescu, 1999: 30). This would be equivalent to the admitting of the fact that the principle of non-discrimination forbids not only the discrimination based on the restricted enumerated criteria from the fundamental law, other forms of discrimination based on different criteria, but has the same purposes and, nonetheless, the same effects as discrimination, being, consequently, allowed, according to the law. Nevertheless, such an interpretation provided by the Constitutional Court for the principle of non-discrimination was not accepted in the specialised literature, due to the fact that there are many other criteria of non-discrimination expressly mentioned in the international law sources, or, even if they are not mentioned in the juridical norms, put into practice, they produce the same effects as the ones expressly stated (Radu, 2008: 201).

As regarding the introduction of a new discriminatory criterion, taking into account the fact that article 6, section 5, from Law no. 202/2002 on equality of chances and treatment between women and men stipulates that there is not considered an act of discrimination “the difference of treatment based on gender when, due to the nature of the specific professional activities, or the background in which they take place, it constitutes an authentic and determined professional request, as long as the objective is legitimate and the request is proportional”, a distinction that has been extended, for the identity of reason, to other differences of treatment, based on other characteristics besides the gender, remained the duty of the constitutional judge to sentence whether the purpose expected through the introduction of the criterion was legitimate, and if the request was necessary and proportional. The judge had to consider both the effect generated by the apparently discriminatory action/fact on the individual, and the “reasonable necessity” that determined the legislator to emit such a document (the real and reasonable need that

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determined the legislator to emit the norm). For example, in the Decision no. 630 from the 3rd of October 2006, the Constitutional Court considered that the provisions from art. 12² section 3 of G.E.O. no. 95/2002, according to which there are exempted from the monthly income benefit of supplementation the people who do not meet the conditions provisioned by law for establishing of unemployment indemnity are constitutional because “the people who have a certain level income are, obviously, in a different situation than those who do not have such income, an objective and rational circumstance that justifies and imposes the instituting of a reasonable differentiated juridical treatment. Thus, if there is not granted the supplemented monthly income to the people who do not meet the terms specified by the law for the establishing of unemployment indemnity, this is a reasonable and rational measure, being accordingly to the provisions from art. 16, section 1 from the Constitution” (Constitutional Court Decision no. 630/2006).

Another controversial aspect that the Constitutional Court considered, was the obligation of the employer to periodically communicate to the employees the economic and financial situation of the unit to which the text from art. 40, section 2, letter d), of the Labour Code refers. By rejecting the unconstitutionality criteria from these provisions, the Constitutional Court established that these legal dispositions does not obligate the employer to communicate professional secrets or confidential information, which can prejudice the activity of the unit, and the obligation of the communication refers to the general data on the economic and financial situation of the unit, information that also have to be made public, through the periodic accountancy balance that is published in the Romanian Official Gazette, exactly for assuring the observing of the market economy principles and the requests of the loyal competition (Radu, 2015: 247).

Another issue noticed by the Constitutional Court was that the organisation of local and parliamentary elections from 2012, on the same date, due to reasons that involved the reducing of expenses, imposed by the economic crisis, and the covering of the expenses from the same budget – the state one, infringed the right to be elected, provisioned by art. 37 from the Constitution (Constitutional Court Decision no. 51/2012). The reason for the admitting of the unconstitutionality exception was that, if a candidate who had not obtained a local mandate (mayor or county council president), would have wanted to participate to the national elections for a parliamentary mandate (deputy or senator), this would have been impossible, the local and the parliamentary elections taking place on the same date (Putinei, 2012: 152-160).

Besides the extremely important role played by the Constitutional Court in the process of applying and interpretation of law, it must be underlined that there are also situations in which the Court had a reserved attitude. For example, in the specialised literature, it is generally admitted that the including of human dignity in the very first chapter of the Constitution, among the supreme values (Deleanu, 2007: 454), confers itself the significance of fundamental constitutional principle (Buta, 2013: 26). Nonetheless, the Romanian legislator manifested reticence on addressing the definition of this concept, and the attitude of the Constitutional Court to invoke it in its decision, was a precautious one: “The functions and the content of these values in our constitutional system are not too clear, owing to the fact that, on one side, they give the impression of some meta-juridical concepts, with a vague content, sometimes impossible to be transposed in clear juridical terms, and, on the other side, the Constitutional Court usually avoids to resort directly to these values, and when it does, it avoids to determine a clear content for them” (Dănişor, 2009: 50).

Another challenge for the Constitutional Court was represented by the notifications of unconstitutionality, which have as object the discriminations from the national normative documents, as compared to the provisions of the European norms. For example, the procedure to put into force the judicial decisions, is less demanding, as compared to similar procedure, stipulated in the European regulations, a reason for which the Court had to face the criticism of unconstitutionality, through which it was sustained that the national law infringes the principle of equality, because it provisions that the sentences, delivered by the Romanian courts, as enforceable, are subjected to the enforcement procedure, while the Regulation (EC) no. 805/2004 of the European Parliament and Council from the 21st of April 2004 on the establishing of a European Enforcement Order for uncontested claims, provisions that the European enforced court sentences are not subjected to enforcement. The Court rejected as unreasonably the criticism, showing that, essentially, there are similarities between the two procedures, especially on addressing the result, which means that the purpose of the order is the same, only the procedure is different, due to the extraneity element. Considering these circumstances, the Court appreciated that the instituting of different procedures is justified only for the people in different situations, respectively, those who obtain a European enforced court sentence, and those from an internal court.

An issue, for which the Constitutional Court jurisprudence is inconstant, addresses the relation national law – community/European law. In certain circumstances, the Constitutional Court considered itself competent to analyse the conformity of the national law to the community one; in others, the Court interpreted the community law, for being able to exercise this conformity control.

For example, through Decision no. 59 from the 17th of January 2007, the Constitutional Court declared itself competent to verify the compatibility of the internal law, with the community law, showing that, provided that the stipulations of the law subjected to control, are to be correlated to those of the Economic Community Treaty, the Romanian law can be compatible to the original community law. In another case law, the author of the unconstitutionality exception was requesting the control to coordinate the internal law to the European law, for the uniformity of the juridical practice on that matter. The Court showed that the referring norm in the control of constitutionality has to be the Constitution itself, and decided that the national courts were the ones that could, in such a situation, to address to the European Union Court of Justice, for the assurance that the community legislation was enforced effectively and homogenously (Constitutional Court Decision no. 558/2007). Contradicting this last decision, the Court, through the Decision no. 1031 from the 13th of November 2007, established that it was competent to verify the conformity of a national regulation, to the community law, based on art. 148, section (2) from the Constitution. Going even further with the inconstancy of its decisions, in an ulterior case, sentencing the Decision no. 558 from the 7th of June 2007, the Court showed that the establishing of the national legislation concordance to the community one, was not a constitutionality issue, but an aspect that regarded the enforcement of the law, by the instance, reason for which, such an aspect, did not represent the competence of the Constitutional Court. Thus, the Court showed that the instances were the ones requested, in such a situation, to address to the European Union Court of Justice, for ensuring the effective and homogenous enforcement of the community legislation, nonetheless rejecting the act of apprehension of the European Union Court of Justice, remembering only that “there are not met the legal conditions” (Constitutional Court Decision no. 392 and 394/2008).

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Without considering the conformity of the national text to the community one, in Decision no. 604 from the 20th of May 2008, the constitutional instance subjected for analysis the margin that the community legislation granted to each state member, establishing the unconstitutionality of the analysed national norm, for the reason that the national legislator infringed the Constitution, by not using the entire margin on the disposal. A similar decision is Decision no. 1258 from the 8th of October 2009, in which the Court admitted the unconstitutionality exception from the provisions of Law no. 298/2008 on the concealing of data generated or processed by service providers of the public electronic communications or the public communication networks, along with the modification of Law no 506/2006 on the personal information processing and the protection of private life in the electronic communications sector, a law through which there were transposed the provisions of some mandatory European documents. The unconstitutionality exception was admitted due to the fact that the imprecise formulation of the transposing norms could infringe the right to personal, family and private life, and the secret of mailing.

In the development of its jurisprudence, on the compatibility of the national legislation to the European one, through the Decision no. 668 from the 18th of May 2011, the Court showed that the use of a European law norm, on addressing the control of constitutionality, as norm interposed with the reference one – the Constitution – implies, as stipulated in art. 148, section (2) and (4) from the Romanian Constitution, the observing of two cumulative conditions: on one side, the European norm to be clear enough, precise and unambiguous in itself, or its meaning to be clearly, precisely and unambiguously established by the European Union Court of Justice and, on the other side, “the norm ought to be circumscribed to a certain level of constitutional relevance”, meaning that its normative content to indicate the possible infringement, by the national law, of the Constitution – “the only direct norm for reference within the control of constitutionality” (Benke, 2013: 13). Therefore, we consider that the constitutional court established that the European norm is just an indicator for the control of constitutionality, the landmark norm remaining the Constitution. By imposing the two conditions, the Court showed that it understands the fact that it comes to its decision, bearing in mind the enounced terms, to apply the sentences of the European Union Court of Justice within the control of constitutionality, or to formulate preliminary questions for establishing the content of the European norm, within the judicial dialogue, by the national and European constitutional court.

In its later decisions, the Court invoked the mandatory documents of the European Union (Constitutional Court Decision no. 383/2011). Thus, through Decision no. 871 from the 25th of June 2010, the Court considered the European Union Fundamental Rights Charter as a juridical document distinctive from the other international treaties, meaning that it is integrated in art. 148 from the Constitution and affirmed that, its dispositions are mainly applicable in the constitutional control as much as it assures, guarantees and develops the constitutional provisions on the fundamental rights, in other words, to the extent to which the level of protection that it provides in the human rights field, is at least at the level of the constitutional norms.

By analysing the national legislation consistency to the European one, the Constitutional Court also used the dispositions of Decision 2006/928/EC of the European Commission, from the 13th of December 2006, to establish a cooperation and verification mechanism for the progress registered by Romania, to reach certain specific landmark objectives, specific in the area of the judicial system reform, and the fight against

corruption, in order to formulate the ratiocination. Thus, if analysing the constitutionality of Law for the modification and completion of Law no. 317/2004 on the status of judges and prosecutors, and Law no. 317/2004 on addressing the Superior Council of Magistracy for the disciplinary liability of the judges, the Court showed that the national legislator has the obligation to reach the necessary equilibrium between the independence and the responsibility of judges, with the observing of constitutional dispositions and the commitments that Romania made through the treaties that it adhered, respectively those assumed through the above mentioned decision (Constitutional Court Decision no. 2/2012). Moreover, by making an analysis whether the legal dispositions that establish the lawyers' interdiction to exercise their profession in a certain court or prosecutor's office, where the spouse, the relative or the in-law, up until the third degree, and including, exercise their profession of judge or prosecutor, regardless the section, direction, job or the office in which they carried out their activity, are constitutional, the Court showed that they were not necessary, as long as the provisions from the civil and penal codes that refer to abstention and recusation are sufficient to satisfy the exigencies of Decision 2006/928/EC that refer to the existence, in all the states members, of an impartial, independent and efficient juridical and administrative system, endowed with sufficient means, among others, to fight against corruption. Furthermore, the founding of an agency for integrity with responsibilities in the verification of patrimony, incompatibilities and the potential conflicts of interest, along with the capacity to make mandatory decisions that might lead to the application of dissuasive sanctions, does not justify the instituting of such interdictions. Consequently, the Court concluded that this interdiction was not necessary in a democratic society (Constitutional Court Decision no. 1519/2011).

The above mentioned decisions show that the norms of the mandatory European law are an extremely important indicator for the Court, in accomplishing its attributions on the constitutionality of national laws, but not a decisive one in establishing the constitutionality or the unconstitutionality of the criticised legal norms (Benke, 2013: 14).

In the Constitutional Court jurisprudence, another important and relevant stage for the manner in which this instance interprets the provisions of the normative documents, was in the economic crisis that imposed certain budgetary restrictions, reason for which the Court validated some of the measures for balancing the state budget: respectively, the spreading out of some payments provisioned in enforceable titles, having as object the granting of salary rights for the staff working in the budgetary institutions (Constitutional Court Decisions no. 188/2010 and no. 1533/2011), the temporary reduction of the money due of the staff paid from the public funds (Constitutional Court Decisions no. 872/2010, no. 874/2010, no. 1655/2012 and no. 1658/2010), the elimination of public service pensions of some categories of public employees (Decision no. 871/2011). Yet, it must be emphasized that the economic and financial difficulties could not justify the elimination of public service pensions of the magistrates, account counsellors or the reduction of contributory pensions, the regulations through which there were instituted such measures being declared unconstitutional (Constitutional Court Decisions no. 873/2010, no.297/2012, no.872/2010 and no. 874/2010). These decisions of the Constitutional Court, referring to the decreasing of the wage quantum and the elimination of the public service pensions are in concordance to the recent jurisprudence of the European Court on Human Rights (ECHR Decisions from the 6th of December 2011 and the 7th of February 2012).

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The suppletive jurisprudence

In case the constitutional text is incomplete or ignores extremely necessary institutions, it is completed through the jurisprudential manner, the so-called suppletive jurisprudence (Dănișor, 2003: 125). In this way, the French constitutional Council introduced, by prolonging through interpretation the existent texts, new fundamental rights: from the free communication of thoughts and opinions it was taken the freedom of information communication (Décision du Conseil constitutionnel no. 64-27 L du 17 mars 1964), the pluralism as a constitutional value principle, implying, in its turn, the right of the public “to dispose of a sufficient number of publications with different tendencies and characters” and to know “the people who real manage the press companies and the financing conditions of the newspapers” (Décision du Conseil constitutionnel no. 84-181 DC du 11 octobre 1984).

In Romania, such a case in which jurisprudence substituted the deficiency of the constitutional text, was the celebre “tram business” from 1912, which was awarded a solution on the main issue of the matter on trial by Ilfov Court – Section II Commercial, through the sentence delivered on the 2nd of February 1912 (Deaconu, 2005: 111-122). It was later solved with the completion, jurisprudentially, of the 1866 Constitution, with the rules on law constitutionality control. According to art. 128 from the 1866 Constitution, the courts were competent to control the constitutionality of laws. Thus, in case of contradiction between a law, or a legal provision and a constitutional disposition, the judge was obligated to prioritise the constitutional text, which was representing the supreme legislative norm, to which all the other juridical norms were subordinated (Avram, Bică, Bitoleanu, Vlad, Radu and Paraschiv, 2007: 218).

In the matter on trial at Ilfov Court – Section II Commercial, Bucharest Tram Company requested the ceasing in impeding the building of tram lines and the granting of damages for the caused prejudice. In the motivation of the request, it was shown that the Parliament, through the so-called interpretative law from the 18th of December 1911 (laws for which it is admitted, exceptionally, the retroactive principle), imposed new statutes to the society, and, in case the shareholders of the company did not meet the new conditions on the constituting of the society, their right to the shares owning became litigious right of damages. Bucharest Trams Company invoked, before Ilfov Court, the unconstitutionality of false interpretative law, respectively the infringement of separation of powers principle. The instance declared itself competent for applying the control of law constitutionality, invoking the following arguments (Benke, 2013: 2-3): the affirmation of separation of powers in state, the delimitation of each power’s role, the distinction between the attributions of the legislative power and the prerogatives of the judicial power; constitutional laws also have the statute of laws, therefore, their applicability in the litigations between parties falls in the competency of judicial power, along with the applicability of ordinary laws. The logical consequence is that, in case of contrariety between the laws, the courts can decide which law is preferred, without being necessary a formal text through which the tribunal is granted the sentencing of law constitutionality, in the cases of its competence, but, on the contrary, to be required a formal text that would stop the exercising of this competence; if the law, invoked before the court, is contrary to the expressed dispositions of the Constitution, the judge is to apply primarily the constitutional dispositions, which should be imposed, through their authority, both to the legislator and the judge; art. 108 from the Penal Code (which was stipulating the punishment of the magistrates that would have stopped or suspended the enforcement of a law) provisioned, in the same time, punishments for the judges that would interfere to

the attributions of the legislative power, and not for those who, having to make a decision between the application of a constitutional disposition and that of an ordinary law, between which there is an obvious contradiction, gives priority, according to the fundamental principles, to the constitutional dispositions, to the detriment of the ordinary law; art. 77 from the Law on the juridical organisation provisioned that the judge, before being appointed to the position, had to swear that he would observe the Constitution and the laws of the country, from this fact resulting the intention of the ordinary judge that, based on the principle of powers separation, to recognise, formally, the judicial power plenitude of attributions to apply the constitution, along with the laws (regardless their degree) and, consequently, to decide, in case of conflict, between them.

Considering the invoked arguments and analysing the data of the case, Ilfov Court sentenced that the law adopted by the Parliament in 1911 was falsely interpretative, the ordinary legislator substituting to the mission of the courts for emitting these laws, and, in this way, infringing the provisions of art. 14 and art. 36 from the Constitution (Muraru and Iancu, 1995: 86-87). Moreover, through the sentence from the 2nd of February 1912, the same court also showed that the mentioned law was unconstitutional, owing to the fact that it did not allow the expropriation of the company from its patrimony, and its shareholders from the property of their shares, besides the cases in which the law admitted the expropriation and, furthermore, without granting a just and previous indemnity to the expropriated.

By exercising its remedy at law against Ilfov Court, the Court of Cassation sentenced on these controversial aspects. Thus, through its decision from the 16th of March 1912, admirably drafted (Duguit, 1913: 101), made with the majority of votes, the Court of Cassation reaffirmed the competency of the courts to control the constitutionality of laws (Alexianu, 1930: 315-317). This decision generated reactions among the magistrates, advisers and author of specialised literature, from that period of tie. Therefore, professor George Alexianu criticised the decision of the Court, showing that, strictly talking, the Court of Cassation did not have the right to exercise this control, because, in that way, the judicial power had an advantage, as confronted to the other powers. Moreover, Alexianu considered that the supreme instance sacrificed the text of the ordinary law, only to be able to support a superior principle, absolutely necessary for the functionality and the organisation of the state. On the opposite side, there was C.C. Dissescu and Constantin Stere, who approved the sentence of the Court of Cassation, appreciating that all the legal texts that are contrary to the constitution, are null.

As a consequence of this episode from the “tram business”, the legislative power proved to be more cautious later, on addressing the emitting of laws on the observing of the constitutional dispositions. In their turn, the courts became used to analyse the constitutionality of laws. Through a decision of the Court of Cassation, section III, no. 194/1913, also sentenced in the tram action at law, on the matter on trial, it was reconfirmed the competence of the courts to control the constitutionality of laws (Alexianu, 1930: 317). Later on, the supreme court, in joined sessions, was to sentence, without any problems, on the constitutionality of some dispositions of Decree-Law no. 1420/1920 on the relations between landlords and tenants, and, on the 7th of September 1922, in joined sessions too, on the constitutionality of art. 36 from the Agrarian Law from 1921. Such a position was adopted after the Great Union from 1918, by the courts from Bessarabia and Bucovina, which included very rapidly, in their practice, the control of constitutionality (Criste, 2002: 68).

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Conclusions

In the view of the *a posteriori* control of constitutional challenge, for the primary regulation normative documents, in the interpretation that was given through sentences on appeal, in the interest of the law (Constitutional Court Decisions no. 854/2011 and no. 515/2012), it ought to be underlined that the role of the Romanian Constitutional Court, in applying and developing the law, lies in an “expressed application of the living law doctrine” (Benke, 2013: 12), the Court considering to be worth mentioning this constitutional exigency, provisioned by art. 1, section (5) from the Fundamental Law, according to which, in Romania, the observing of the Constitution, and its supremacy, is mandatory. From the perspective of the relating to the constitutional provisions, the Constitutional Court verifies the constitutionality of the laws, applicable in the interpretation consecrated in the appeals for the interest of the law. To admit a contrary belief, is to be in opposition to the reason for which the Constitutional Court functions, which would mean the denying of its constitutional role, by accepting a legal text that could be enforced under certain limitations that might collide with the Fundamental Law (Constitutional Court Decision no. 515/2012).

Considering that, in the Romanian constitutional system, there is not regulated a mechanism to verify the sentences, on addressing their observing of the Constitution and the decisions of the Constitutional Court, as in the case of other states, it is represented by the constitutionality complaint, **de lege ferenda**, w considered that the Romanian legislator should expressly attribute such a competence to the Constitutional Court. On one side, such a procedure would prevent the judicial power from not acting within the competences delimited by the Constitution, and would avoid the breaking out of a constitutional juridical conflict, between the judicial power and the legislative one (Constitutional Court Decisions no. 838/2009 and no. 1222/2008). On the other side, there cannot be conceived a juridical means through which the constitutional instance would fully exercise its role of guarantor of the Constitution supremacy (Constitutional Court Decision no. 302/2012). And, equally essential, the *ex post* control of the sentences is as much desirable as there are cases in which the instances refuse the application of the Constitutional Court decisions, by pronouncing sentences contrary to them.

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