EFFECTS AND LIMITS OF THE CONSTITUTIONAL COURT DECISIONS IN CRIMINAL MATTERS

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Abstract

Referring to the provisions contained in the general provisions of Law no. 47/1992 on the organization and functioning of the Constitutional Court, which states that this authority of constitutional jurisdiction, as the guarantor of the supremacy of the Constitution, ensures the control of the constitutionality of the laws, activity in which it decides only on the constitutionality of the acts on which it was notified without being able to amend or supplement the provisions under control and the provisions contained in Art. 31 of the same regulation, stating that the decision establishing the unconstitutionality of a law or ordinance or a provision of a law or an ordinance in force is final and binding, which is a resumption of the provisions found in Art. 143-147 of the Constitution of Romania, the recent practice of the Constitutional Court and the application of its decisions involve certain discussions. On the one hand, it is observed that some decisions of the Constitutional Court, accepting the exceptions of unconstitutionality, interpret the criminal legal norms under control, giving them a new meaning, and on the other hand, it is observed that sometimes, although the Constitutional Court rejeted the objections of unconstitutionality, its arguments are used to interpret the questionable criminal legal rules in judicial practice, although these decisions are not apt to be applied. In such a situation it is necessary to establish in unequivocal terms the extent of the decisions of the Constitutional Court in criminal matters and their conformity or their application with the regulations governing them.

Keywords: *constitutional court, exception of unconstitutionality, types of decisions, effects, limits.*

JEL Classification: [K14]

1. Introduction

For some time, in the doctrine and criminal justice practice we find some points of view of some theorists and practitioners who are supported by references to the Constitutional Court's decisions (hereinafter CCR), although they have not allowed the exceptions of unconstitutionality but have been rejected, but the arguments in the reasoning of the rejection solutions were those in which they found the support of the views expressed.

For example, we will point out that Article 433 of the Code of Criminal Procedure (hereafter CCP) provides "*The appeal in cassation seeks to submit to the High Court of Cassation and Justice the ruling, under the law,*

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of the conformity of the judgment under appeal with the applicable rules of law." then Article 434 CCP paragraph 1 states that *"(1) The decisions of the Courts of Appeal and of the High Court of Cassation and Justice may be appealed in cassation, as appeal courts, with the exception of decisions ordering the retrial of cases",* and the paragraph 2 states that *"(2) The following cannot be appealed with a cassation appeal: a) decisions to reject as inadmissible the request for revision; b) decisions rejecting the request for the reopening of the criminal trial in the case of judgment in absentia; c) judgments ruled in the matter of the execution of sentences; d) decisions on rehabilitation; e) the solutions ruled regarding the offenses for which the criminal action is initiated at the preliminary complaint of the injured person; f) the solutions issued following the application of the procedure for the recognition of the accusation; g) decisions ruled as a result of the admission of the agreement on the recognition of guilt ",* without including among them the decisions given in appeal by the court of appeal. At the same time, Article 436 paragraph 1 CCP *states that "(1) Can lodge an appeal in cassation:... (b) the defendant, in respect of the criminal and civil side, against decisions ordering the conviction, waiver of the application of punishment or postponement of the punishment or termination of the criminal trial",* also pointing out that decisions given in appeal by the court of appeal are not excluded from the scope of those decisions which can be appealed against in cassation. On the other hand, Article 439 paragraph 4/1 CCP states that *"If the appeal in cassation is brought against a decision provided by Article 434 paragraph (2), the President of the Court or the Deputy Judge shall return to the party, by administrative means, the appeal in cassation."*

Regarding the legal provisions set forth, the question arises as to what happens if the defendant convicted for committing the crime provided by art. 196 paragraphs 2, 3 Criminal Code (further CC), filed an appeal in cassation invoking the provisions of art. 438 paragraph 1 (1) and 7 (CCP), relating to the violation of jurisdiction by the quality of the person and the conviction for an act not provided by the criminal law (not incriminated by the current criminal code), and these cases were not invoked by the appeal, and the condition provided by art. 438 paragraph 2 CCP.

Considering that Article 434 paragraph 2 letter e CCP refers to the solutions pronounced in relation to the offenses for which the criminal action is initiated at the preliminary complaint of the injured person, a notion which undoubtedly differs from the decision, because the solutions are mentioned in Articles 396, 397, 421 CCP, and the decisions and their kind in art. 370 CCP, the distinction between the two notions generated numerous discussions in doctrine and judicial practice, the solutions proposed and disputed being contradictory (Udroiu & Nedelcu 2017).

One solution was to consider the notion of solution as being in reality the notion of decision, considering, on the one hand, that there is a lack of

legislative technique, argued by references to the notions used by the legislator in Art. 433, 434 CCP, and on the other hand, that the case law of CCR, which by analyzing the constitutionality of the exclusion contained in Article 434 paragraph 2 letter. f CCP, refers to decisions not to solutions, the authors referring to some of the constitutional court decisions in which such assessments were made is also in this respect.

One of these is Decision no. 525/2015[1] by which the CCR dismissed as ungrounded the exception of unconstitutionality with regard to the provisions of art. 434 paragraph 2 letter f CCP which stated that "*the Court finds that the lawmaker has ruled out from the judgments that can be appealed in cassation those ruled following the application of the procedure for the recognition of the accusation. Decisions ruled in the trial court following the application of this procedure are subject to the ordinary appeals procedure under Article 408 et seq. of the Code of Criminal Procedure...* "using the notion of court decisions, even where the lawmaker used the notion of solutions.

Referring to the fact that the invoked decision is one by means of which the objection of unconstitutionality was rejected and that in the practice of the CCR there are decisions whereby exceptions of unconstitutionality were admitted for the inadequate interpretation and application of the rule of law it is necessary to approach and try to first explain the issue of the typologies of CCR decisions and then the one of their observance, application and use.

2. Some benchmarks of CCR practice

With regard to the application of the more favourable criminal law until the final judgment of the case ART.5 CC provides that "(1) *Where one or more criminal laws have intervened since the commission of the offense until the final hearing of the case, the more favourable law shall apply.... ".*

With reference to these regulations, the CCR, by Decision no. 265/2014[2] admitted the objection of unconstitutionality and found that the provisions of Article 5 of the CC are constitutional insofar as they do not allow the combination of successive laws in the establishment and application of a more favourable criminal law, arguing that it does not deny the principle of the application of more favourable criminal law which is to be incident, but not by combining the provisions of successive criminal laws, otherwise, the above-mentioned willpower would be abolished, which considers the set of norms that were organically integrated into a new code, and not at all provisions or autonomous institutions (paragraph 37) and that in order to establish the lex mititor, it is necessary to proceed to a global comparison of the repressive regime of each of the criminal laws applicable to the accused following the global comparison method and not the differentiated comparison

[1] https://www.ccr.ro, para. 17-18; see also in this respect Decision no. 879/2015.
[2] Ibidem

method by choosing the rule more favourable from each of the comparative laws, because each repressive regime has its own logic and the judge cannot destroy this logic by mixing different rules from different successive criminal laws, and the judge cannot substitute the legislator and create a new ad-hoc repressive regime, made up of different rules deriving from different successive criminal laws (paragraph 41).

With regard to the continued offense, provided by Article 35 paragraph 2, the legislator established that "(1) The offense is continued when a person commits at different intervals, but in making the same resolution and against the same passive subject, actions or inactions that each represent the content of the same offense."

These regulations have been subject to constitutional review, an occasion based on which CCR, through Decision no. 368/2017[3] admitted the exception of unconstitutionality and found that the phrase "and against the same passive subject" from the provisions of Article 35 paragraph 1 CC is unconstitutional. The reasoning of the constitutional court shows that this phrase creates a difference of legal treatment within the same category of perpetrators without any objective and reasonable justification (paragraph 27), because if the condition it contains is not fulfilled, courts are required to apply the rules of the offense contest, which creates discrimination between the perpetrator and a person who commits at different intervals, in the same resolution, actions or inactions that each share the content of the same offense as in the case of the first perpetrator, but with the condition of the unity of the passive subject, although the persons in question are in similar situations, in view of the seriousness of the committed deed and the perilousness of the perpetrator. In addition to the arguments, it has been shown that while the unity of the criminal resolution is an objective, intrinsic criterion related to the cognitive process specific to the criminal behaviour, being implicitly controllable by the active subject, the unity of the passive subject is a criterion beyond the will of the perpetrator, independent by this, and, for this reason, unjustified (paragraph 23).

A much-discussed decision in all plans is Decision no. 405/2016 of the CCR[4], regarding the constitutive elements and the meaning of the crime provided by Article 246 paragraph 1969, which regulates "*The act of a civil servant who, in the exercise of his or her duties, knowingly does not perform an act or performs it in an erroneous manner that causes harm to the legal interests of a person..."* and those of Article 297, paragraph 1 CC which criticized *"The act of a civil servant who, in the exercise of his professional duties, does not perform an act or performs it in an erroneous manner and thereby causes damage or injury to the legitimate rights or interests of a*

[3] https://www.ccr.ro.
[4] Ibidem.

natural person or a legal person... ", whereby the constitutional court admitted the objection of unconstitutionality and found that the provisions of Article 246 CC 1969 and of Article 297 paragraph 1 CC are constitutional insofar as the phrase "performs in an erroneous manner" in their content is understood to be "performed by breaking the law."

In essence, the reasons for the decision were the need for the fulfilment of the service duty to be accomplished by breaking the law (paragraph 55) because only the primary lawmaker could establish the conduct that the addressee of the law is obliged to observe, otherwise they are subject to the criminal sanction, referring to the Parliament - by adopting the law, or to the Government - by adopting ordinances and emergency ordinances (paragraph 65).

Taking into account the fact that after the entry into force of the new criminal legislation in early 2014, the practice of the CCR has become very broad and, in order to avoid this section becoming an exhaustive one, we will confine ourselves to the above examples, but mentioning that such decisions are found not only in terms of material criminal law, but also with reference to criminal procedural law, of which we only recall Decision no. 625/2016 on the procedure for resolving the refusal or the prosecutor's objection contained in Article 70 CCP, Decision no. 562/2017 with reference to Article 117 CCP concerning persons entitled to refuse to give statements as witnesses, Decision no. 17/2017 on the appeal against the measure of judicial control ordered by the prosecutor, provided by Article 213 of the CCP, to which many others are added[5].

It is clear from the examination of the decisions made by the CCR in criminal matters that they are divided into two categories, namely the decisions rejecting the exceptions of unconstitutionality and those which allow such exceptions. Regarding this second category, we observe that certain decisions actually suppress certain legal norms, and others, without departing from different norms, the constitutional court states that they are unconstitutional if they are interpreted in a certain form or are unconstitutional if they are not interpreted in a certain sense that the Constitutional Court itself expressly states. Therefore, next, we intend to determine which decisions are supported by the provisions of Article 147 paragraph 4, 2nd thesis of the Romanian Constitution stating that "*From the date of publication, decisions are generally binding and have power only for the future.*", taken with some nuances in Article 31 in Law no. 47/1992.

3. Short explanations on relevant legislation

As in our legal order the Constitution is regarded as the fundamental law of the country, it has a superior juridical value to any other rule of law, representing the manifestation of the will of the Romanian people, it is natural that all normative acts that are inferior to them must be consistent with this. In

[5] See for all CCR decisions, https://www.ccr.ro.

order to comply with this requirement it is necessary that all normative acts following the Constitution be subjected to constitutional control which, according to the Constitution of Romania, is carried out by the CCR, an aspect with principle value that is contained in the very basic law, respectively in Articles 142-147, with reference to CCR.

The duties of CCR are mentioned in art. 146 of the Constitution, and from letter d it follows that the Constitutional Court decides on the exceptions made before the courts or on commercial arbitration regarding the unconstitutionality of the laws and ordinances or of a provision of a law or ordinance on which the settlement of the case pending before these courts depends. In addition, Article 29 1 of the Law no. 47/1992 on the organization and functioning of the Constitutional Court [6] establishes that the provisions of a law or ordinance in force related to the settlement of the case at any stage of the dispute and whatever its subject matter is, as such, as it results from practice of the CCR[7], it should only refer to those legal provisions on which the settlement of the case in which this was invoked depends.

According to an opinion expressed in accordance with the relevant legal texts, the constitutional court exercises a legality check rather than an opportunity one (Ionescu 1996), which means that the CCR rules exclusively on the issues of law, and that it has to confine itself to verifying compliance with the fundamental law of the legal provisions with were presented to CCR as unconstitutional, mentioning that CCR could not rule on the social necessity of a normative regulation or its non-legal implications. At the same time, in the CCR practice[8] supported in the doctrine (Ionescu & Dumitrescu 2017), it was established that during the exercise of the control it could not emphasize the need to supplement or modify the normative acts subjected to its control of unconstitutionality. The same authors asserted that the CCR is not competent to interpret the provisions of the Constitution upon request, since this attribution was not established either by the fundamental law, or was it found in the law of organization. At the same time, it was argued that the constitutional court does not have the power to exercise constitutionality control over the way in which Parliament's Rules of Procedure are interpreted or applied, nor does the authorities have the right or the freedom to refer to CCR to rule in other cases than those listed expressly in the texts of the Constitution, because what does not fall within the competence of the constitutional court, even if it concerns the conformity with the provisions of the Constitution, falls within the sphere of administrative litigation, being the jurisdiction of the courts (Ionescu & Dumitrescu 2017).

In the case-law of CCR[9], which has been pointed out in the doctrine

[6] Republished in the Official Gazette no. 807 from December 3 (2010).
[7] See Decision no. 11 /(1994), https://www.ccr.ro.
[8] See Decision no. 317/(2006), https://www.ccr.ro.
[9] See Decision no. 56/(1994), https://www.ccr.ro.

(Ionescu & Dumitrescu 2017), it has consistently been conceded that it cannot give a further wording to the texts of law which, by constitutional control, would be considered unsatisfactory and that it cannot substitute the courts for concerns of qualification of a factual situation. In the same sense it was mentioned (Ionescu & Dumitrescu 2017) that the CCR does not have the right to assume by the decisions it rules the role of positive legislator, thus substituting the legislative function of the Parliament, which according to Art. 61 paragraph 1 of the Constitution is the only legislative authority, so the CCR can only rule on the constitutional character of the regulation that is subject to its constitutional control and which can only concern the constitutionality of legal norms, not that of individual acts[10].

In the same sense, it was also argued that the unconstitutionality decision issued by the CCR cannot have a formal abrogating effect on the legal texts found to be unconstitutional, but they can no longer be applied by ceasing their effects for the future. Since a regulatory act must be adopted and abrogated by the issuing public authority, in order for a decision of the CCR to have a repeal effect, it would have been necessary to provide it in the constitution (Ionescu & Dumitrescu 2017), but no such regulation exists.

4. Typology of the Constitutional Court's decisions

In the constitutional doctrine (Deleanu 2006) a typology of the decisions of the CCR was made, showing that among their multitude we can distinguish between the simple and the intermediate decisions, the latter, in turn, subject to a new classification.

Simple decisions were considered as those by which the CCR found legal provisions criticized for unconstitutionality as constitutional or unconstitutional.

Intermediate decisions are considered to be those that are flexible in providing a median solution. Although it was considered that the CCR cannot rule on the way in which the law is interpreted and enforced, but only on its meaning contrary to the Constitution, and that it only decides on the constitutionality of the acts on which it has been notified, without being able to amend or supplement the provisions subject to control (aspect contained in Article 2 paragraph 3 of Law no. 47/1992), CCR practices includes decisions approximating to such a pattern, some of which are considered to be intermediary.

Intermediate decisions include the interpretative ones, whereby, without declaring the unconstitutionality, the CCR attributes criticized norms a sense that would make them compatible with the Constitution. It has been argued that these decisions do not absolutize constitutionality or unconstitutionality, but relativize it. It was considered that in order to be a conformity decision, the interpretative decision must be subject to a number of conditions, namely, to be indispensable, not to ignore or to alter the intention of the legislator deduced

[10] See Decision no. 99/2008, Decision no. 45/2008, Decision no. 10/1995, https://www.ccr.ro.

from the spirit or the environment of parliamentary debates, the interpretation must not lead to rewriting of the examined text and must be applicable from the date of its ruling under the conditions of the existing regulatory system.

Another category of intermediate decisions are the manipulative ones that transform the significance of the law in order not to leave a legal vacuum with negative consequences. They can also be found in several forms, the first of which was that of decisions to admit or partially reject the objection of unconstitutionality, since the decisions of the CCR may concern one or more regulations, but also only words, phrases, phrases, concepts, etc. Additive decisions sanction due to unconstitutionality not what the legal norm provides, but its legal omission, or its incompleteness, effectively targeting the legislator's omission, the unconstitutionality in this case referring to the aspect that is not foreseen, though it should have been. The appeals are those decisions whereby the constitutional court, by finding the incompleteness of a rule or the fact that it may become unconstitutional, indicates to the legislative body what it should do or ask it to repeal or amend that rule. The substitutive decisions are characterized by criticizing the unconstitutionality of that norm that should have regulated something else, indicating that norm that should replace the one that was subject to control in order to comply with the Constitution. The constructive decisions are those by means of which, along with the solution ruled on unconstitutionality, the CCR lists, indicates the principles to be considered in order for the regulation to be constitutional. Complementary decisions are those which derive from the Constitution those norms that complement a law attacked for unconstitutionality so that it becomes constitutional. Last but not least, we mention the integrative decisions that extend the application of regulations to situations that were not considered by their adoption.

By limiting ourselves to the above, we show that the typology of the decisions of the CCR was also the concern of other authors, who brought some nuances about the exposed categories (Selejan-Guțan 2010, Valea 2010, Cimpoieru 2009).

With regard to the typology of the decisions of the Constitutional Court and the effects of the decisions found in its practice, the doctrine expressed opinions according to which not all decisions are opposable erga omnes[11], some of them being opposed only inter partes. It has been pointed out (Ionescu & Dumitrescu 2017) that the decision establishing the unconstitutionality of a law or an ordinance or a provision of a law or ordinance in force is final and binding, being published in the Official Gazette, date from which the obligation is established and produces effects only for the future.

The issue was approached somewhat more nuanced by other authors (Drăganu 2004) who pointed out that not all decisions of the RAC always have

[11] Principle taken from the provisions of Article. 147 paragraph 4 of Constitution and Article 31 paragraph 1 of Law no. 47/1992.

general binding effects, the effects varying according to the solution contained in the decision. If the decision ruled to reject the exception, it would only be binding on the court before which the exception was invoked and for the parties to the criminal proceedings as such, in such circumstances it would be difficult to argue that such a decision has generally binding effects. On the other hand, however, a constitutional court decision granting an exception of unconstitutionality will cause erga omnes effects. The nuancing continued (Selejan-Guţan 2015, Selejan-Guţan 2010) claiming that that decisions which reject the objection of unconstitutionality would be generally binding but only in the sense that there was an obligation on the part of the authorities to continue to apply the provision the constitutionality of which was confirmed by that decision.

As such, it is noted here that the effect of binding decisions is viewed in terms of the obligations that the two types of decisions create by adopting them. If the decision to reject the objection of unconstitutionality requires that all subjects of society continue to apply the criminal code temporarily under the sign of unconstitutionality, the admission decision will result in the non-application of the rule that will be legally suspended for a period of 45 days, Article 147, paragraph 1, of the Constitution, so that, after the expiry of that time, it becomes inapplicable, with the obligation of the legislative body to intervene in order to comply it with the Constitution.

In other opinions (Valea 2010), by reviewing the effects of the CCR decisions on exceptions of unconstitutionality under the non-reviewed Constitution[12], it was argued that nowadays unequivocally the decisions of the constitutional court have erga omnes effects, without any distinction being made between the decisions by means of which the exceptions of unconstitutionality were accepted or rejected.

In the same vein (Cimpoieru 2009), other authors have pointed out that, in the absence of any distinction, the erga omnes obligation of CCR decisions involves all the legal subjects irrespective of the quality in which they manifest themselves in society, not agreeing with limiting the effects according to the type of decisions of the constitutional court, concluding that while until review such doctrinal debates were explained in the presence of regulatory imperfections, they now have only a speculative character.

Regarding this issue, I am of the opinion that, by reference to the examples drawn from the judicial theory and practice and to the persistence of legal imperfections, the discussion is more than actual. Thus, we point to a discrepancy between constitutional regulation and the law on the organization of the CCR, in the sense that Art. 147 para. 4 of the Constitution stipulates that "*Constitutional Court decisions shall be published in the Official Gazette of Romania. From the date of publication, decisions are generally binding and*

[12] Constitution of (1991), published in the Official Gazette no. 233 of November 21, (1991), which came into force following its approval by the national referendum of December 8, (1991).

have power only for the future.", whereas similar regulations contained in Article 31 paragraph 1 of the Law no. 47/1992 provide that "*A decision declaring the unconstitutionality of a law or of an ordinance or of a provision of a law or of an ordinance in force is final and binding*.", pointing out that only the decisions by which the exception of unconstitutionality would be admitted would enjoy the erga omnes effects.

Regarding the distinction which, the constitutional law itself, obviously makes, it is clear that not all decisions of the constitutional court enjoy the erga omnes effects. Taking into account what is actually happening if an exception of unconstitutionality is admitted, or when such an exception is rejected, we have the strongest arguments on that side. In the case of an admission decision, it brings changes to the plan in the norms declared unconstitutional, in the sense that in one form or another, they are no longer applicable, whereas in the case of a rejection decision, such changes do not arise, and the rules criticized in terms of unconstitutionality, remain in effect.

As such, if in the case of the first categories of decisions we witness a real "change of legislation" that the subjects of society have to apply in the new form for the future, in the case of the other categories the subjects of the society apply the legislation as it existed before after the CCR ruling, the conduct of the subjects being only the one to respect the law in its original form. As a consequence, it can be argued that in the latter case the only obligation, if it can be said, is to respect the law, but it does not come from the effects of the constitutional court's decision but from a fundamental principle at the constitutional level, found in Art. 1 paragraph 5 of the Constitution, where it is proclaimed that "*(5) In Romania, the observance of the Constitution, of its supremacy and of the laws is obligatory*.", which somewhat relieves us of part of the discussions that would arise from the application of the principle *specialia generalibus derogant* in relation to the constitutional provisions and those contained in the law regulating the organization of the RCC. In another form we could say that when the Constitutional Court rejects an exception of unconstitutionality, we will continue to apply the unchanged legislation, but not as a result of its decision, but as an effect of the constitutional principle.

Being convinced that, by its case-law[13], the CCR has stated, in principle, that the mandatory force accompanying judicial acts, including its decisions undoubtedly attaches not only to the system but also to the considerations on which it is based, in the sense that both the recitals and the provisions of its decisions are generally binding and imposed with the same force on all subjects of law, I am of the opinion that in the case of a decision by which the constitutional court rejects an exception of unconstitutionality,

[13] See, in this respect, the Decision of the Constitutional Court Plenum no. 1/1995 on the binding character of its decisions made during the public constitutionality control in Official Gazette No 16 of January 26, (1995); Decision no. 1.415/2009 and Decision no. 414/2010, both on https://www.ccr.ro.

neither the system nor the recitals have erga omnes effects. On the other hand, by reviewing the case law of the CCR, I found that it referred to the effect of its decisions in their entirety only when it accepted the exceptions of unconstitutionality and not when it rejected them. In such a situation, I consider that the decisions by which the Constitutional Court rejects exceptions of unconstitutionality all share the same value as any other opinion of a court called upon to rule on a matter deduced from the judgment found in its decisions or expressed in the doctrine.

As far as the decisions of the CCR that are part of the intermediate category are concerned, we consider that they have erga omnes effects as well as the simple ones, and there is no deference between them in this regard.

The opinion is based on the fact that the law enforcement activity by a jurisdictional body, and the CCR is undoubtedly such a body, is based on the interpretation of the norms to be enforced, activity which, as evidenced in the doctrine (Cimpoieru 2009), takes place between two poles of which the first is the "right" and the second is the "practical case" to be solved, which can also be applied in the judicial activity of controlling the constitutionality of laws, where the rule of law is represented by the "constitution" and the specific case of "law", with the particularity that there is a relationship between the two normative acts. It has also been argued that in order for a genuine constitutionality control called "control on the merits" exist, we should not refer to the constitution and law as to only two legal texts, because in this case only the external aspect of control would be considered, but also to their meaning, to their sense, because when we affirm that a law conforms to the constitution it means that its meaning does not contradict the meaning of the constitution. It has been pointed out in this way that the constitutional judge during the constitutionality control of laws operates with a double interpretation of both of the Constitution and of the law in order to understand their meaning or sense in order to establish the constitutionality report. Taking into account the idea that in the case of constitutionality control the law compares with the constitution from a dual perspective, both external and internal, it was mentioned that in the case of external constitutionality, the constitutional judge verifies the law formally, that is, the observance of the constitutional procedures by him, while internal constitutionality presupposes that the Constitutional Court verifies the conformity of the content of the law with the constitution, or as we have already shown, not only the text itself must be in accordance with the fundamental law, but also the interpretation that derives from it or which the law subjects usually assign to it.

Conclusions

Although sometimes, as stated in the doctrine (Deleanu 2006), the CCR jurisprudence would appear to be an "excess of competence", yet such fact cannot be imputed to it because, during the constitutional control, the

constitutional court is a "negative legislator", an activity in which, in order to make the transition from text to subtext, the interpretation of terms or concepts is necessary and inevitable. On the other hand, we must not forget that Article 142 1 of the Constitution states that "*the Constitutional Court is the guarantor of the supremacy of the Constitution*.", or how can a subject of law, a judicial body answer for the observance of the Constitution if it is lacking the most important instruments or means, which consist in comparing questionable texts in terms of constitutionality, with the Constitution itself, having as its basis the interpretation of their content and meaning.

Taking into account the provisions of Article 3 2 of the Law no. 47/1992, which state that "*In the exercise of the powers of the Constitutional Court, it is the only one entitled to decide on its competence"* and to the relevant legislation or the case law of the Constitutional Court, which does not show with certainty that the decisions by which it rejected the exceptions of unconstitutionality would have other effects, I consider that the system or its considerations do not bind the subjects of law to observe and apply them obligatorily, except that the legal norm subject to the unconstitutionality discussion, being in compliance with the Constitution, continues to apply the way it is. At the same time, I appreciate that the other category of decisions by which the exceptions of unconstitutionality are admitted, either through the incompatibility of the legal norms with the constitutional ones regarded as text, or the lack of conformity is due to the misapplication caused by the inappropriate interpretation, are binding on all the subjects of law.

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