REQUIREMENTS REGARDING THE QUALITY OF THE LAWS HIGHLIGHTED IN THE RECENT JURISPRUDENCE OF THE CCR

Simina POPESCU-MARIN[*]

Abstract

The quality of the laws represents a requirement that derives from the principle of legality, enshrined at the constitutional level, thus representing a reference norm in the constitutionality review. The recent jurisprudence of the CCR reveals a frequent approach consisting in examining the constitutionality of legal provisions in relation to the constitutional provisions that establish the obligation to observe the laws in the rule of law. The study proposes an analysis from the perspective of the recent jurisprudential guidelines in the matter, addressing mainly the situations in which the CCR has sanctioned the lack of precision, clarity, predictability or accessibility of some legal norms. Through the a priori constitutionality review, the prevention of the entry into force of some deficient legal provisions was achieved, the considerations of the Court being a real benchmark for the primary legislator. Through the a posteriori constitutionality review, it resulted that, in some cases, legal provisions in the field of criminal law, civil law, administrative law or labour law or in the field of legislative technique rules etc. contained deficient norms, contrary to the constitutional rules and which, through their content, created real obstacles in their understanding and application, creating difficulties for their recipients to adopt an appropriate behaviour.

The role of the CCR as guarantor of the supremacy of the Constitution is thus highlighted, with concrete consequences in terms of defending fundamental rights and freedoms, as well as ensuring loyal cooperation between public authorities and institutions.

Keywords: *quality of the laws, rule of law, legal security, constitutional review, fundamental rights and freedoms***.**

1. Introduction

Consecrating the character of the rule of law, which capitalizes on the historical idea according to which the rulers must submit to legal rules, the Romanian Constitution establishes in art. 1 one of the fundamental principles, the principle of legality, which imposes, through para. (5) the obligation to respect the Constitution, its supremacy and the laws. The obligation established by the constitutional text has an *erga omnes* character, targeting both citizens and public authorities. Thus, the "*rule of law*" becomes a legal feature of the rule of law, implying the priority of law over the state, through a series of legal and political mechanisms capable of limiting and eliminating any discretionary conduct, which must be manifests exclusively within the limits of a law that expresses the general will.

As noted in the literature, the notion of "law" has two meanings. In a broad sense (*lato sensu*), the law designates any legal act that includes binding rules, legal norms, which must be carried out voluntarily, or, in case of refusal, by the coercive force of the state. In a narrow sense (*stricto sensu*), the law is identified exclusively with the legal act adopted by the Parliament, as the only legislative authority, elaborated in accordance with the Constitution, adopted according to a pre-established procedure, clearly defined, and regulating the most important and general social relations[1].

Compliance with the law is mandatory, while a subject of law cannot be required to comply with a law that is not clear, precise and predictable, as he cannot adapt his conduct according to the normative hypothesis of the law. Therefore, the constitutional rigor requires the primary legislator, the Parliament, and the delegate, the Government, to pay special attention to the adoption of normative acts (laws, ordinances and emergency ordinances), so that their application does not allow arbitrary or abusive conducts. Normative acts that respect the criteria of clarity, precision and predictability is more necessary, as the law benefits from supremacy over the rest of the law (obviously with the exception of the Constitution). Consequently, the legal rules developed in the application and enforcement of laws would themselves be deficient if the law under which they were adopted did not comply with those requirements.

In detailing the constitutional norms, Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts[2], establishes a series of technical rules regarding the drafting style, special regulations and derogations and the avoidance

[*] PhD Candidate, Faculty of Law, „Nicolae Titulescu" University of Bucharest (e-mail: siminapopescu1@yahoo.com).

[1] See I. Muraru, E.S. Tănăsescu, *Constitutional Law and Political Institutions*, vol. II, 14th ed., C.H. Beck Publishing House, Bucharest, p. 210.

[2] Republished in the Official Gazette of Romania, Part I, no. 260 of April 21, 2010.

of parallelisms. Thus, "*the legislative text must be formulated clearly, fluently and intelligibly, without syntactic difficulties and obscure or equivocal passages. Affective terms are not used. The form and aesthetics of the expression must not prejudice the legal style, the precision and the clarity of the provisions* "(art. 8 para. 4 of the law). "The *regulation is derogatory if the legislative solutions regarding a certain determined situation contain different norms in relation to the framework regulation in the matter, the latter keeping its general character obligatory for all other cases*." (art. 15 paragraph 3 of the law) . "*In the legislative process, it is forbidden to establish the same regulations in several articles or paragraphs of the same normative act or in two or more normative acts. The reference norm is used to underline some legislative connections* "(art. 16 paragraph 1 of the law). Of particular relevance is the opinion of the Legislative Council, a specialized body of the Parliament, having role in systematizing, unifying and coordinating the entire legislation.

Regarding the interpretation and application of the laws in the process of justice administration, art. 5 para. (2) of the Code of Civil Procedure states that "*No judge may refuse to judge on the grounds that the law does not provide, is unclear or incomplete*."

The topic of the fundamental principle of legality from the perspective of the quality standards of the law is highlighted by the numerous cases in which the provisions of art. 1 para. (5) of the Constitution were invoked as reference norms, both in the *a priori* and *a posteriori* constitutionality review. A brief look at the jurisprudence in the matter of the CCR in 2021 reveals over 300 cases in which the authors of the notifications of unconstitutionality invoked the violation of the provisions of art. 1 para. (5) of the Constitution, from different perspectives, for example: the unclear nature of the norms, the lack of request by the initiators of normative acts of the opinions of some bodies, such as the Legislative Council, the Economic and Social Council, the Fiscal Council, the passivity of the legislator Constitution of the legal norms found to be unconstitutional.

In cases settled by the CCR in 2021, which are to be considered as examples, in this study, the CCR sanctioned provisions contained in laws and ordinances of the Government, finding that they do not meet the quality standards of the law and they are thus contrary to the constitutional norms previously mentioned.

2. Paper content

The approach of the principle of legality in the recent jurisprudence of the CCR reveals a series of considerations on this principle based on which the CCR developed legal reasoning to support the conclusion of violation of art. 1 para. (5) of the Constitution, or, on the contrary, compliance with these constitutional norms.

The Court, in its jurisprudence, has ruled that "the supremacy of the Constitution and the obligation to comply with the law constitute an essential feature of the rule of law"[3] and that "the rule of law ensures the supremacy of the Constitution, the correlation of all laws and all normative acts with it"[4] which means that it "implies, as a matter of priority, compliance with the law, and the democratic state is par excellence a state in which the rule of law is manifested"[5]. At the same time, "the principle of security of civil legal relations constitutes a fundamental dimension of the rule of law, as it is expressly enshrined in the provisions of art. 1 para. (3) of the Constitution" [6].

The Court also stated that "the principle of legality is one of constitutional rank"[7], so that the immediate consequence of the law violation is the disregard of art. 1 para. (5) of the Constitution, which provides that the compliance with the law is mandatory. Violation of this constitutional obligation implicitly affects the principle of the rule of law, enshrined in art. 1 para. (3) of the Constitution"[8].

The Court emphasized that one of the requirements of the principle of compliance with the law is the quality of normative acts. In this regard, the Court found that "any normative act must meet certain qualitative conditions, including predictability, which presupposes that it must be sufficiently clear and precise to be enforceable; thus, the wording with sufficient precision of the normative act allows the interested persons - who can call, if necessary, on the advice of a specialist - to foresee to a reasonable extent, in the circumstances of the case, the consequences that may result from a certain act. Of course, it can be difficult to draft laws of total precision and certain

[3] See, to that effect, Decision no. 232 of 5 July 2001, Official Gazette of Romania no. 727 of 15 November 2001, Decision no. 234 of 5 July 2001, Official Gazette of Romania no. 558 of 7 September 2001, or Decision no. 53 of 25 January 2011, Official Gazette of Romania no. 90 of 3 February, 2011.

[4] Decision no. 22 of 27 January 2004, Official Gazette of Romania no. 233 of 17March 2004.

[5] Decision no. 13 din 9 February 1999, Official Gazette of Romania no. 178 of 26 April, 1999.

[6] In this sense, Decision no. 570 of 29 May 2012, Official Gazette of Romania no. 404 of 18 June 2012, Decision no. 615 of 12 June 2012, Official Gazette of Romania no. 454 of 6 July 2012, Decisions no. 980 and no. 981 of 22 November 2012, Official Gazette of Romania no. 57 and, respectively, no. 58 of 25 January 2013).

[7] See Decision no. 901 of 17 June 2009, Official Gazette of Romania no. 503 of 21 July 2009.

[8] Decision no. 783 of 26 September 2012, Official Gazette of Romania no. 684 of 3 October 2012.

flexibility may even prove desirable, which does not affect the predictability of the law"[9]

Regarding the incidence of the norms of legislative technique within the constitutionality control, the Court also showed that although they "have no constitutional value, [...] by regulating them the legislator imposed a series of mandatory criteria for the adoption of any normative act, whose compliance is necessary to ensure the systematization, unification and coordination of legislation, as well as the appropriate content and legal form for each normative act. Thus, compliance with these rules contributes to ensuring legislation that respects the principle of security of legal relations, having the necessary clarity and predictability "[10]. Therefore, "non-compliance with the norms of legislative technique determines the appearance of situations of incoherence and instability, contrary to the principle of security of legal relations in its component regarding the clarity and predictability of the law" [11].

Through its jurisprudence, the CCR has capitalized on the jurisprudence of the ECtHR and the CJEU, which addressed the notions of "clarity of law" and "security of legal relations".

Thus, the ECtHR has ruled that the phrase "provided by law" means not only a certain legal basis in domestic law, but also the quality of the law in question: thus, it must be accessible and predictable[12]. The Court has also held, in accordance with its settled case-law, that the phrases "prescribed by law [...] relate [...] to the quality of that law: they require that it be made accessible to allows them, with the advice of wise advice, to foresee, at a reasonable level in the circumstances of the case, the consequences that could result from a certain action"[13].

The jurisprudence of the ECtHR has also established that "the principle of security of legal relations derives implicitly from the Convention for the Protection of Human Rights and Fundamental Freedoms and is one of the fundamental principles of the rule of law"[14].

The ECtHR has also ruled that "once the state adopts a solution, it must be implemented with reasonable clarity and consistency in order to avoid as far as possible legal uncertainty and uncertainty"[15]

Similarly, the case law of the CJEU has implicitly recognized the need to comply with the legitimate expectations of citizens subject to legal regulation[16].

In relation to these considerations of principle, it was concluded that compliance with the law is a "fundamental obligation in the rule of law, and any action by public authorities must be subject to this objective". Moreover, the CCR has consistently ruled that "the principle of the supremacy of the Constitution and the principle of legality are the essence of the requirements of the rule of law, within the meaning of the constitutional provisions of art. 16 para. (2), according to which "*No one is above the law*"[17].

In order to highlight in a concrete way the recent jurisprudence of the CCR has approached the principle of legality, including in terms of the quality requirements of the law, some of the cases solved in the field of criminal, civil, financial, labour law or in the area of legislative technique are to be presented.

In the area of criminal law

On the occasion of resolving the exception of unconstitutionality of the provisions of the second sentence of art. 136 (2) and art. 137 (3) of the Criminal Code[18], the Court found that the phrase "turnover", to which these provisions refer, does not meet the quality requirements of the law deriving from art. 1 para. (5) of the Constitution. In addition, in criminal matters, art. 23 para. (12) of the Basic Law enshrines the rule according to which "*No punishment may be established or applied except under the conditions and under the law*" (Decision no. 265 of 6 May 2014, published in the Official Gazette of Romania, Part I, no. 372 of May 20, 2014, paragraph 20). Thus, the principle of legality applies to criminality (*nullum crimen sine lege*), sanction (*nulla poena sine lege*) and liability (*nullum judicium sine lege*). In order to reach this solution, the Court noted that, in Title X - Meaning of some terms or

[9] In this regard, Decision no. 903 of 6 July 2010, Official Gazette of Romania no. 584 of 17 August 2010, Decision no. 743 of 2 June 2011, Official Gazette of Romania no. 579 of 16 August 2011, Decision no. 1 of 11 January 2012, Official Gazette of Romania no. 53 of 23 January 2012, or Decision no. 447 of 29 October 2013, Official Gazette of Romania no. 674 of 1 November 2013.

[10] Decision no. 26 of 18 January 2012, Decision no. 681 of 27 June 2012, Official Gazette of Romania no. 477 of 12 July 2012, Decision no. 448 of 29 October 2013, Official Gazette of Romania no. 5 of 7 January 2014.

[11] Decision no. 26 of 18 January 2012 and Decision no. 448 of 29 October 2013, previously cited.

[12] Judgment of 4 May 2000, delivered in the Rotaru v. Romania case, para. 55, Judgment of 16 February 2000, in the Amann v. Switzerland case, para. 50.

[13] Judgment of 8 June 2006, in the Lupşa v. Romania case, para. 32.

[14] Judgments of 6 December 2007, 2 July 2009, 2 November 2010, 20 October 2011 or 16 July 2013 in Beian v. Romania (no. 1), para. 39, Jordan Iordanov and Others v. Bulgaria, para. 47 , Ştefănică and Others v. Romania, para. 31, Nejdet Şahin and Perihan Şahin v. Turkey, para. 56, and Remuszko v. Poland, para. 92.

[15] Judgment of 1 December 2005 in Păduraru v. Romania, para. 92, Judgment of 6 December 2007 in Beian v. Romania (no. 1), para. 33.

[16] *E.g.* Case C-459/02 Willy Gerekens and Others. Procol Agricultural Association for the promotion of the marketing of dairy products against the Grand Duchy of Luxembourg, para. 23 and 24, or the judgment of 29 June 2010 in Case C-550/09 - Criminal proceedings against E. and F., para. 59.

[17] Decision no. 53 of 25 January 2011, precited.

[18] Decision no. 708 of 28 October 2021, Official Gazette of Romania no. 1160 of 7 December 2021.

expressions in the criminal law, of the General Part of the Criminal Code, the definition of the phrase "turnover" is not found. Therefore, the criminal law in force does not establish the meaning of the phrase "turnover" in relation to which the court determines the amount corresponding to a fine day in the case of setting a fine for a for-profit legal entity. Even if the definitions of "turnover" are established by extra-criminal, tax and competition law, they have limited applicability and their translation in criminal matters is contrary to the principle of legality.

At the same time, the Court found that the criminal rule criticized is deficient in terms of determining / withholding, from a temporal point of view, the turnover of the for-profit legal entity in relation to which the court determines the amount corresponding to a fine day. In these circumstances, the Court found that the provisions of the second sentence of art. 137 (3), as regards the phrase "turnover", do not comply with the constitutional requirements regarding the quality of the law, respectively do not meet the conditions of clarity, precision and predictability, being contrary to the provisions of art. 1 para. (5) of the Constitution.

In solving the exception of unconstitutionality of art. 346 para. (3) letter b) of the Code of Criminal Procedure[19], in connection with the invocation of the violation of art. 1 para. (5) of the Constitution, the Constitutional Court addressed the issue of passivity of the legislator, who did not act in the sense of reconciling the provisions declared unconstitutional with the provisions of the Constitution, as established by the Court by a previous decision (Decision no. 22 of January 18, 2018, published in the Official Gazette of Romania, Part I, no. 177 of February 26, 2018).

The Court emphasized that the passivity of the legislator may lead to inconsistencies and instability, contrary to the principle of security of legal relations in its component regarding the clarity and predictability of the law (see, Decision no. 392 of 6 June 2017, published in Official Gazette of Romania, Part I, no. 504 of June 30, 2017, para. 51, 56 and 57, and Decision no. 163 of May 26, 2020, published in the Official Gazette of Romania, Part I, Part I, no. 729 of August 12, 2020). However, the Constitutional Court does not have the power to fulfil the normative defect invoked by the authors, in the sense of pronouncing a new decision of unconstitutionality, as it would exceed its legal attributions, acting in the exclusive sphere of competence of the legislator, so that the exception of unconstitutionality of the provisions of art. 346 para. (3) letter b) of the Code of Criminal Procedure was rejected as inadmissible.

During the *a priori* constitutional review, before the promulgation of the law[20], the Court found that the amendment of art. 369 of Law no. 286/2009 on the Criminal Code, which regulates the crime of inciting violence, hatred or discrimination, lacks clarity, precision and predictability, which represents a problematic aspect and from the perspective of Article 7 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as from the perspective of other fundamental requirements of the rule of law, this wording being the premise of arbitrary interpretations and applications. However, the consequences of the application of criminal law are among the most serious, so that the establishment of guarantees against arbitrariness by regulating clear and predictable rules is mandatory.

Thus, by amending the provisions of art. 369 of the Criminal Code, the legislator is limited to completing the scope of dangers on which the active subject of the crime incites the public (adding violence) and the scope of passive subjects of the crime (adding the person who is part of the a certain category/group), without limiting the existence of the material element of the crime of incitement to violence, hatred or discrimination to certain criteria, so without operating an express circumstance of the grounds that may lead to violence, hatred or discrimination.

The lack of circumstances regarding the material element and the immediate prosecution of the crime of incitement to violence, hatred or discrimination make it difficult and sometimes impossible to delimit criminal liability from other forms of legal liability, with the consequence of opening criminal investigation proceedings, prosecution and conviction of persons inciting the public, by any means, to violence, hatred or discrimination against a particular person or against a person on the grounds that he or she belongs to a certain category of person, regardless of the reason for the discrimination or the extent of the harm.

In these circumstances, emphasizing that in exercising the power to legislate in criminal matters, the legislator must take into account the principle according to which the criminalization of a deed must intervene as a last resort in protecting a social value, guided by the principle of *ultima ratio*, and its action has to be supported by a certain degree of intensity, gravity of the deed, which would justify the criminal sanction. The Court found that the criticized provisions, by allowing the configuration of the material element of the objective side of the offense of inciting violence, hatred or discrimination through the activity of bodies other than the legislature (Parliament), pursuant to art. 73 para. 1) of the Constitution, or the Government,

[19] Decision no. 637 of 19 October 2021, Official Gazette of Romania no. 1155 of 6 December 2021.
[20] Decision no. 561 of 15 September 2021, Official Gazette of Romania no. 1076 of 10 November 2021.

based on the legislative delegation provided by art.115 of the Constitution, are lacking in clarity, precision and predictability and contravene the principle of legality of incrimination, provided by art. 1 of the Criminal Code and art. 7 of the Convention for the Protection of Human rights and Fundamental Freedoms, and, consequently, the provisions of art. 1 para. (5) of the Constitution, which refers to the quality of the law, as well as of art. 23 of the Constitution, regarding individual freedom.

Solving the exception of unconstitutionality of the provisions of art. 11 para. (3) of the GEO no. 78/2016 for the organization and functioning of the Directorate for the Investigation of Organized Crime and Terrorism[21], as well as for amending and supplementing some normative acts, Constitutional Court highlighted that the imprecise formulation of the special norm of criminal procedural law, which establishes rules regarding the competence to carry out criminal prosecution, affects the right to a fair trial, enshrined in art. 21 para. (3) of the Constitution and of art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The criticized legal provisions according to which "*In case he orders the disjunction during the criminal investigation, the prosecutor from the Directorate for the Investigation of Organized Crime and Terrorism Crimes may continue to carry out the criminal investigation in the disjointed case as well*." introduce the arbitrary in the application of the criminal procedural provisions that regulate the competence of the criminal investigation bodies. The criticized norm leaves at the disposal of the prosecutor within the Directorate for the Investigation of Organized Crime and Terrorism the assumption or not on the competence to carry out the criminal investigation in each case that falls within the hypothesis of the criticized norm. Therefore, according to the criticized text, the subjective assessment of the prosecutor from the Directorate for the Investigation of Organized Crime and Terrorism regarding the maintenance of the disjointed case for resolution or its referral to the competent prosecutor's office according to the provisions of the Code of Criminal Procedure, lead to the conclusion that the legal provisions subject to control are unpredictable. The defendant in question, even using the services of a lawyer, is not able to understand the manner in which the settlement of the criminal case in which he has the aforementioned quality will be carried out. The lack of predictability of the criticized text of law determines the violation of the right to a fair trial, as it is regulated in art. 21 para. (3) of the Constitution and art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the constitutional requirements of art. 1 para. (5).

An identical solution was pronounced by the Court regarding a similar legislative solution contained in the provisions of art. 13 para. (5) of the GEO no. 43/2002[22].

Solving the exception of unconstitutionality of the provisions of art. 52 para. (3) of the Code of Criminal Procedure[23], according to which "Final decisions of courts other than criminal ones on a preliminary issue in criminal proceedings have the authority before the criminal court, except for the circumstances regarding the existence of the crime.", the Court found that the phrase "except for the circumstances regarding the existence of the crime " is contrary to the provisions of art. 1 (3) and (5) of the Constitution, the provisions of art. 6 of the Convention and the provisions of art. 21 (3) of the Constitution on the right to a fair trial. In essence, the Court held that the phrase "except for the circumstances regarding the existence of the crime" in the provisions of art. 52 para. (3) of the Code of Criminal Procedure allows the criminal court to resume the trial on some aspects of the criminal case settled, definitively, by other courts and, thus, to become a court of judicial control over the final decisions of other courts on matters relating to the existence of the crime. In this way, the criminal court can pronounce opposite solutions to the final ones, affecting the principle of *res judicata*, which is a guarantee of the right to a fair trial. In relation to the quality standards of the law, the mentioned phrase lacks clarity, precision and predictability, because the scope of its incidence cannot be determined, correctly and uniformly, by the courts, when solving criminal cases, and, even more, by the other recipients of the law, even if they would benefit from specialized advice.

In the area of civil law

Resolving the objection of unconstitutionality of the Law on Consumer Protection against Excessive Interest[24], the Court sanctioned the defective manner in which the legislator used the technique of reference rules, which would have created the risk that the interpreter of the law would become a legislator himself, as he would establish the rule that he considers most appropriate, which is obviously inadmissible.

In essence, noting that the components of the definition of the Effective Annual Interest Rate resulting from the Consumer Protection Act against excessive interest cannot be harmonized, the Court found this definition unclear ("Effective Annual

[21] Decision no. 280 of 8 June 2021, Official Gazette of Romania no. 977 of 13 October 2021.
[22] Decision no. 231 of 6 April 2021, Official Gazette of Romania no. 613 of 22 June 2021.
[23] Decision no.102 of 17 February 2021, Official Gazette of Romania no. 357 of 7 April 2021.
[24] Decision no. 69 of 28 January 2021, Official Gazette of Romania no. 492 of 12 May 2021.

Interest Rate is the difference between the total cost of credit and the amount actually borrowed") and noted that the inaccuracy of the definition given makes it impossible for the recipients of the law, especially financial institutions, to understand the provisions of substantive law contained therein, in particular those concerning the prohibition of inserting excessive interest in contracts. Consequently, because the law subject to control imposed obligations that do not have an intelligible content, the Court found a violation of art. 1 para. (5) of the Constitution, in the component regarding the quality of the law.

In the area of labour law

Examining the criticism of the authors of the exception regarding the lack of clarity and predictability of the regulation of art. 111, of art. 120, of art. 121, of art. 122 para. (1), of art. 123 and of art. 229 para. (4) of Law no. 53/2003 - Labour Code[25], claiming that the courts are not unitary in interpreting the notions of "work" and "additional work", the Court held that art. 111 of Law no. 53/2003 - The Labour Code defines "working time" as any period during which the employee performs work, is available to the employer and performs his duties and responsibilities, according to the provisions of the individual employment contract, the applicable collective labour agreement and/or legislation in force. A similar regulation is found in the content of art. 2 point 1 of Directive 2003/88/EC, according to which working time "means any period during which the worker is at work, at the employer's disposal and carries out his activity or functions in accordance with national laws and practices".

In relation to these legal landmarks, the Court found that both the parties to the employment relationship and the courts have sufficient information to establish unequivocally the meaning of the texts of the law subject to constitutional review and to foresee the consequences of applying these legal rules. Consequently, the arguments of the authors of the exception concerning the unconstitutionality of the criticized rules were unfounded.

Examining the exception of unconstitutionality of some provisions contained in the Law no. 153/2017 on the remuneration of staff paid from public funds[26], the Court found that there was a legislative parallelism concerning the remuneration of staff in performance in concert institutions. Thus, Court noticed that two separate regulations on separate categories of staff from the occupational family "culture" include the same legislative solution. Thus, the phrase "other institutions of performances or concerts" is regulated both in point I and in point II of Chapter I of annex no. 3 to the Framework Law no. 153/2017. However, the two points, I and II, establish different values in terms of the basic salary for the year 2022 and different coefficients, (point I regulating higher values), which highlights the legislator's option to establish distinct categories of staff in the budget sector employed in performance and concert institutions, in respect of which the pay rules are different.

Due to its lack of clarity, precision and predictability, the phrase "other institutions of performances or concerts" contained in point I of Chapter I of Annex No. III to Framework Law no. 153/2017 created the normative premise that the establishment of basic salaries for staff in the budget sector employed in "other performance or concert institutions" to involve arbitrary procedures, which may lead, contrary to art. 16 of the Constitution, to establish equal legal treatment for different objective situations or different legal treatment for identical situations.

Thus, the Court found that the phrase "other institutions of performances or concerts" contained in point I of Chapter I of Annex no. III to the Framework Law no. 153/2017 violates art. 1 para. (5) of the Constitution in the component regarding the quality of the law, the recipients of the norm not having the objective possibility to adapt their conduct to the hypothesis of the analyzed legal norm.

Within the *a priori* constitutional review over the Law on some temporary measures regarding the competition for admission to the National Institute of Magistracy, the initial professional training of judges and prosecutors, the graduation exam of the National Institute of Magistracy, the internship and capacity examination of judges and prosecutors trainees, as well as in the competition for admission to the magistracy[27], the Constitutional Court sanctioned as unpredictable the legal provision contained in art. 18 of the law which does not establish the criteria and possibly the cases in which the person does not benefit from a "good reputation" and consequently, he/she cannot access the position of judge/ prosecutor.

Resolving the objection of unconstitutionality of the Law amending and supplementing Law no. 303/2004 on the status of judges and prosecutors and amending Law no. 304/2004 on the organization of the judiciary[28], the Court sanctioned legislative inconsistency consisting in regulating the conditions regarding the effective seniority of 7 years in the position of prosecutor or judge for the appointment in the position of prosecutor of the Directorate for the

[25] Decision no. 730 of 2 November 2021, Official Gazette of Romania no. 1153 of 3 December 2021.
[26] Decision no. 413 of 10 June 2021, Official Gazette of Romania no. 687 of 12 July 2021.
[27] Decision no. 187 of 17 March 2021, Official Gazette of Romania no. 478 of 7 May 2021.
[28] Decision no. 514 of 14 July 2021, Official Gazette of Romania no. 728 of 26 July 2021.

Investigation of Organized Crime and Terrorism Crimes or of the National Anticorruption Directorate, which are organised under the Prosecutor's Office attached to the High Court of Cassation and Justice. The Court stated that the benchmark for regulating the seniority required for access to the position of prosecutor in the specialized directorates is the one established by law for promotion to the position of prosecutor at the Prosecutor's Office attached to the High Court of Cassation and Justice, namely 10 years of effective seniority, so that in no case can the standard of appointment be inferior to that of promotion to the aforesaid level.

The criticized text of the law departed from this legal orientation, which proved that it created an element of legislative inconsistency and did not integrate into all legislation. Hence, as it did not meet the quality requirements of the law, it violates the art. 1 para. 5 of the Constitution.

In the area of financial law

Resolving the objection of unconstitutionality of the provisions of art. I points 1-6, 8 and 9 of the Law for the approval of the GEO no. 135/2020 budgetary measures[29], by reference to the provisions of art. 1 para. (5) of the Constitution, the CCR approached an issue concerning the emergence of a regulatory vacuum: the abrogation by the law approving an emergency ordinance of a provision contained in the emergency ordinance (art. 42 of the GEO no. 135/2020) by which the Government modifies the value of the point of pension, in the sense of regulating a value lower than the one initially established by the Parliament.

Regarding this aspect, the Court specified that the abrogation of art. 42 of the GEO no. 135/2020 determines a state of legal insecurity, contrary to art. 1 para. (5) of the Constitution which enshrines the "legal security of the person, a concept that is defined as a complex of guarantees of a nature or with constitutional values inherent in the rule of law, in view of which the legislator has a constitutional obligation to ensure both natural and legal stability and the capitalization in optimal conditions of fundamental rights and freedoms". This abrogation would have created a legislative vacuum, since the abrogation of the Government amendment does not reinstate the initial rule of law.

In terms of legislative technique

Resolving the objection of unconstitutionality of the Law for amending and supplementing Law no. 24/2000 on the norms of legislative technique for drafting normative acts and amending Law no. 202/1998 on the organization of the Official Gazette of Romania[30], the CCR observed the existence of a legislative parallelism with regarding the operation of republishing the normative acts. Consequently, the Court found the violation of art. 1 para. (5) of the Constitution in its dimension regarding the quality of the law.

On the occasion of solving the exception of unconstitutionality of Law no. 161/2019 for amending and supplementing the GEO no. 24/2008 on access to its own file and exposing the Security[31], the CCR made a distinct analysis in relation to art. 1 para. (5) of the Constitution regarding the statement of reasons of the law, as an instrument of presentation and motivation, imposed by art. 30 para. (1) letter a) of Law no. 24/2000 on the norms of legislative technique for the elaboration of normative acts.

The Court stated that, in principle, it did not have the power to control the wording of the statement of reasons of the various laws adopted. The statement of reasons of the law has no constitutional significance. The fact that the statement of reasons is not sufficiently precise or does not clarify all the content aspects of the rule does not in itself lead to the conclusion that the rule itself is unconstitutional for that reason,

The unclear / imprecise / unpredictable character of a normative text cannot be a direct consequence of the incomplete / unclear / discordant character of the statement of reasons of the law. Therefore, the quality requirements of the law and the wording of the statement of reasons of the law are two different issues between which no causal relationship can be established. Instead, there is a functional relationship between them, in the sense that the statement of reasons of the law can help to better understand the normative provisions, especially the technical ones, which, by their nature, have a more difficult language to access. However, it is not the role of the Constitutional Court to analyze the consistency of this functional relationship in the light of the wording of the explanatory memorandum.

3. Conclusions

Given the multiple legal implications, the issue of the quality of normative acts from the perspective of constitutional requirements remains a permanent topic for the attention of state authorities, especially those involved in the complex legislative process (*e.g.* Parliament, Government, Legislative Council), of the authorities with a role in the interpretation and application of the law (the HCCJ and the other courts), as well as of the CCR, in its capacity as guarantor of the supremacy of the Constitution. Undoubtedly, the

[29] Decision no. 1 of 13 January 2021, Official Gazette of Romania no. 77 of 25 January 2021.
[30] Decision no. 78 of 10 February 2021, Official Gazette of Romania no. 186 of 24 February 2021.
[31] Decision no. 794 of 23 November 2021, Official Gazette of Romania no. 1198 of 17 December 2021.

supremacy of the Constitution and the laws is an essential feature of the democratic rule of law, which must be ensured by effective mechanisms for the correlation of all normative acts with the Basic Law.

The examples selected in the study show how problems related to aspects of legislative technique that have constitutional relevance, can be solved, so that, permanently, the supremacy of the Constitution subsists. Hence the importance and usefulness of the constitutional review mechanism exercised by the CCR, given that, as has been pointed out, legislative inaccuracy generates the violation of fundamental rights and freedoms. Or, in a state governed by the rule of law, such a situation is inadmissible, being absolutely necessary to correct it. "Errors in drafting normative acts must not be perpetuated in the sense of becoming a precedent in the legislative activity themselves"[32]

Highlighting the cases in which the Constitutional Court sanctioned the violation of the quality requirements of the law, as they derive from the provisions of art. 1 para. (5) and art. 23 para. (12) of the Constitution, as well as from the jurisprudence of the CCR, the ECtHR and the CJEU is, at the same time, an argument in support of upholding the principle of constitutional loyalty, circumscribed by art. 1 para. 5) of the Constitution, corroborated with the principle of good faith provided in art. 57 of the Constitution, considering that within the state activity, the proper functioning of public authorities, the principles of separation and balance of power, without any institutional blockages is essential.

Therefore, an effective constitutional review control mechanism to check the quality of laws, and to correct possible deviations, makes that the general desire to have good and fair laws a become a reality, for the benefit of all participants in state life.

Of course, there are no perfect laws, and "the relationship between what should be allowed in a democratic society and what should be forbidden is ordered by the common good."[33]

References

- Valer Dorneanu and Claudia-Margareta Krupenschi, *Constitution Day Tribute Volume, Messages and Reflections on the 30th Anniversary*, Hamangiu Publishing House, Bucharest, 2022;
- I. Muraru, E.S. Tănăsescu (coord.), *Romanian Constitution, Commentary on articles*, 3rd ed., C.H. Beck Publishing House, Bucharest, 2022;
- I. Muraru, E.S. Tănăsescu, *Constitutional Law and Political Institutions*, 15th ed., vol. I-II, C.H. Beck Publishing House, Bucharest, 2017;
- T. Toader, M. Safta, *Romanian Constitution: decisions of the Constitutional Court, ECHR decisions, CJEU decisions, related legislation*, 4th ed., Hamangiu Publishing House, Bucharest, 2021;
- CCR Decision no. 17 of 21 January 2015, Official Gazette of Romania no. 79 of 30 January 2015;
- CCR Decision no. 1 of 11 January 2012, Official Gazette of Romania no. 53 of 23 January 2012;
- CCR Decision no. 1 of 10 January 2014, Official Gazette of Romania no. 123 of 19 January 2014;
- CCR Decision no. 903 of 6 July 2010, Official Gazette of Romania no. 584 of 17 August 2010;
- CCR Decision no. 743 of 2 June 2011, Official Gazette of Romania no. 579 of 16 August 2011;
- CCR Decision no. 708 of 28 October 2021, Official Gazette of Romania no. 1160 of 7 December 2021;
- CCR Decision no. 637 of 19 October 2021, Official Gazette of Romania no. 1155 of 6 December 2021;
- CCR Decision no. 561 of 15 September 2021, Official Gazette of Romania no. 1076 of 10 November 2021;
- CCR Decision no. 514 of 14 July 2021, Official Gazette of Romania no. 728 of 26 July 2021;
- CCR Decision no. 380 of 8 June 2021, Official Gazette of Romania no. 977 of 13 October 2021;
- CCR Decision no.242 of 8 April 2021, Official Gazette of Romania no. 677 of 8 July 2021;
- CCR Decision no. 233 of 7 April 2021, Official Gazette of Romania no. 508 of 17 May 2021;
- CCR Decision no. 231 of 6 April 2021, Official Gazette of Romania no. 613 of 22 June 2021;
- CCR Decision no. 102 of 17 February 2021, Official Gazette of Romania no. 357 of 7 April 2021;
- CCR Decision no. 794 of 23 November 2021, Official Gazette of Romania no. 1198 of 17 December 2021;
- CCR Decision no. 432 of 17 June 2021, Official Gazette of Romania no. 905 of 21 September 2021;
- CCR Decision no. 70 of 3 February 2021, Official Gazette of Romania no. 269 of 17 March 2021;
- CCR Decision no. 69 of 28 January 2021, Official Gazette of Romania no. 492 of 12 May 2021;
- CCR Decision no. 730 of 2 November 2021, Official Gazette of Romania no. 1153 of 3 December 2021;
- CCR Decision no. 413 of 10 June 2021, Official Gazette of Romania no. 687 of 12 July 2021;
- CCR Decision no. 187 of 17 March 2021, Official Gazette of Romania no. 478 of 7 May 2021;
- CCR Decision no. 842 of 9 December 2021, Official Gazette of Romania no. 14 of 5 January 2022;
- CCR Decision no. 449 of 24 June 2021, Official Gazette of Romania no. 689 of 12 July 2021;

[32] Decision no. 390 of 2 July 2014, Official Gazette of Romania, no. 532 of 17 July 2014, para. 32.

[33] See Marian Enache and Ştefan Deaconu, *Adopting the 1991 Constitution and Revising 2003, in the Constitution Day Tribute Volume, Messages and Reflections on the 30th Anniversary*, Coordinators Valer Dorneanu and Claudia-Margareta Krupenschi, Hamangiu Publishing House, 2022, p. 59.

- CCR Decision no. 117 of 23 February 2021, Official Gazette of Romania no. 601 of 16 June 2021;
- CCR Decision no. 1 of 13 January 2021, Official Gazette of Romania no. 77 of 25 January 2021;
- CCR Decision no. 78 of 10 February 2021, Official Gazette of Romania no. 186 of 24 February 2021;
- www.ccr.ro (CCR);
- www.hudoc.echr.coe.int (ECtHR jurisprudence).