A PLEADING IN FAVOUR OF THE CONSTITUTIONAL COURT

Valentina BĂRBĂŢEANU[*]

Abstract

Most of the European countries have chosen the centralized system of constitutional review, performed by a unique authority empowered with the competence of removing from the normative ensemble those legal provisions that do not comply with the principles and rules comprised in the Basic Law. This „European model" has proved to be more appropriate than the so-called „American model" in what concerns the compatibility with the European jurisdictional mechanism. Romania has adopted the same European trend and the Constitutional Court has become a very important actor in the Romanian legal landscape. From the very beginning of its activity, it has influenced in a great measure the national normative system. It has been sometimes criticized and accused that it interferes in an excessive way in the legislative process. Due to its competence to regulate the juridical conflicts between the public authorities and its possibility to repeal laws before their promulgation, it has been many times in the centre of heavy attacks, mostly from different political forces, often driven through mass media. Nevertheless, despite of its detractors, the Constitutional Court has proven, over the years, its ability to develop the Romanian normative system. The present paper intends to display the most significant contribution of the Romanian Constitutional Court in improving various legal regulations. In the same time and much more important, using concrete examples from the Court's case-law, the paper also intends to demonstrate that the Constitutional Court of Romania has been a major factor of improving peoples' life, removing unconstitutional obstacles set in front of the unimpeded exercise of their fundamental rights and freedoms.

Keywords: *constitutional review, constitutional court, effects of decisions, human rights, legistative process.*

1. Introduction

Unprecedented authority within the Romanian landscape, the Constitutional Court has been established by the new and democratic Romanian Basic Law adopted in 1991 as an expression of the ideals of freedom of the Romanian people. During its 24 years of existence[1], the Court had a very intense and diverse activity, in accordance with its legal powers, on various areas of social, political and economic. Its decisions had different echoes in the legal environment. Some of them have been embraced with a lot of enthusiasm, while others have been, on the contrary, received with disapproval, reproaches and criticism. Most of the subjective reactions have regarded certain decisions loaded with political significance, exploited by the press in mediatical purposes and sometimes turned into media events. However, there have been left in the shadow decisions that had a great favourable impact over an important number of citizens. Due to these decisions, have been repelled from the legislation provisions of law restricting the exercise of fundamental rights or decreasing to annihilation the guarantees they were to enjoy. The Court has also eliminated discriminations between categories of people in the same legal situation and it has re-established the balance usually by raising disadvantaged category to the same standard of protection enjoyed by the other category to which the comparison was analyzed and obtaining, in the end, an equivalent legal regime applicable for all the persons entitled to.

This study aims to reveal the importance of the constitutional review performed by the Constitutional Court and to highlight the positive impact that its work has in the Romanian society. The paper shall also tries to illustrate the way that the solutions given by the Constitutional Court manage to improve the quality of life of citizens by ensuring the compliance with the requirements imposed at the constitutional level in what concerns especially the human rights guarantees. The present study intends to prove that even if the constitutional review consists in an abstract and theoretical comparison between the norm subject to verification and the constitutional referential text, nevertheless, the Constitutional Court always keeps in mind the practical finality of its decisions, being aware of the direct impact direct on the Romanian legal landscape. The study will present illustrative decisions of the Constitutional Court good influence on the ensemble of the society. Displaying such decisions is the way in which I will try to highlight the complexity of its activity and the vastness of the areas in which its decisions bring favourable consequences. In what concerns the stage of the knowledge in this field, it has to be mentioned that the constitutional review is, in general, a frequently discussed theme, but the emphasis of its positive influence has preoccupied the legal scientists in the same measure. Within the European Commission for Democracy Through Law (Venice Commission,

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

[1] The Constitutional Court has been consecrated by the Basic Law adopted in 1991, but it has started its activity in 1992, following the entrance into force of the Law no.47 of 1992 regarding its organization and functioning. The Court has rendered its first decision on the 30th of June 1992.

authority that monitor the constitutional jurisdiction of the states that are members of Council of Europe, there have been drafted various researches regarding the impact of the constitutional authorities activity on the society's life, but not from the perspective that the present paper intends to depict.

2. The emergence and necessity of the constitutional review

The emergence of the constitution in the world occurred in the context of revolutionary efforts and theories with particular relevance, like the separation of powers, rule of law, representativity and the natural rights of humans[2]. The idea of a Basic Law involved its supremacy as a feature that gives expression to its super-ordinated position not only in the legal system, but in the entire socio-political system. This is an unquestionable legal reality that needed to be ensured and guaranteed. In this context, the constitutional judicial authorities appeared and imposed themselves as true grantors of the supremacy of the constitution.

The general rule in a modern, democratic state is that a law should be issued by competent state authority, within its competence, in compliance with the normative legal acts situated above in the normative hierarchy. Due to the supremacy of the Constitution, the necessity of a check of the compliance of the law with the Basic Law became obvious. In order to achieve this goal, the legal scientists have imagined and created the concept of "constitutional review".

From a historical perspective, acceptance of constitutional review represented a dramatic change of optics, thus achieving desecration of the law, whose infallibility - dogma enshrined by Rousseau – had been imposed since the French Revolution of 1789 and was respected over the entire nineteenth century and early twentieth century, being very difficult to remove[3]. In the same way has also been exceeded the parliamentarism theory, according to which the legislator supremacy over the other branches of government has ruled out for a long time any form of judicial review of the constitutionality of legislation[4]. Abandoning the idea of a mythical sovereignty of the Parliament and of the intangibility of the law occurred in Europe after the Second World War. The first states to overcome this stage were Germany and Italy. And this is not a surprise, if we take into consideration the fact that their tragic historical experience has shown that decisions taken by popular majorities do not always constitute a sufficient guarantee for the realization of constitutional democracy if they are not accompanied by regulations meant to judicially limit the omnipotence legislature and if the law cannot be subject to an independent scrutiny in what concerns its compliance with the Constitution[5].

3. Constitutional review models

Worldwide, the constitutional review is currently provided mainly through two major types of constitutional jurisdiction: a diffuse review and a centralized one. They are basically specific to the two great systems of law that dominate the legal world, namely *common law* and the *civil law*, characteristic to the Anglo-Saxon law and the Roman-Germanic system of law.

Thus, it is, on the one hand, the so-called "American model", developed in the United States and subsequently adopted by the Anglo-Saxon countries (Australia, Canada, India, except Britain), but also by countries such as Denmark, Greece, Norway, Sweden and even Japan[6]. Its distinctive note is that the power to review the constitutionality of normative acts incumbe on all courts, regardless of their location in the hierarchy of the state's jurisdiction.

The essence of the logic underlying this so-called "judicial review" lies in the fact that when two laws are in conflict, the court has the right and, in the same time, the duty to determine which one is applicable. If the two laws have different legal force, one of which being the Constitution itself, the latter will be preferred, according to the principle *lex superior derogat legi inferiori*[7].

On the other hand, there is the "European model" characterized by the existence of a specialized jurisdiction, separate and distinct from

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[2] Marieta Safta, *Drept constitutional și instituții politice, Vol.I. Teroria general a dreptului constitutional. Drepturi și libertăți*, Editura Hamangiu, București, 2014, p.71.

[3] Louis Favoreu, *Les cours constitutionnelles*, collection „Que sais-je?", la 2-eme edition, Press Universitaires de France, Paris, 1992, p.8.

[4] Ioan Deleanu, *Justiţia constituţională*, Editura Lumina Lex, Bucureşti, 1995, p.19.

[5] Valerio Onida, „Pour le dépassement définitif de la « souveraineté » de la loi", *Les Cahiers du Conseil constitutionnel* nr. 25/2009, available on-line, on the French Constitutional Council's web site, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-25/pour-le-depassement-definitif-de-la-souverainete-de-la-loisup1-sup.51712.html

[6] Ján Klučka, „The role of the Constitutional Court with regard to the Legislator", report presented at the workshop „The Role of the Constitutional Court in the State and Society", organized by the Constitutional Court of Ukraine in cooperation with the Venice Commission and The German Foundation for International Legal Cooperation, hold in Kiev, 10-11 May 2001, published in CDL-JU (2001) 32, available at the web address http://www.venice.coe.int/docs/2001/CDL-JU(2001)032-e.pdf

[7] Ion Deleanu, *Justiţia constituţională*, Editura Lumina Lex, Bucureşti, 1995, p.38.

any other public authority. Hans Kelsen was the one who developed the concept[8].

The idea of establishing a unique authority, called, as appropriate, constitutional court, constitutional court of arbitration[9] or the constitutional council[10], endowed with the ability to centralize the entire constitutional review and to render generally binding decisions regarding the validity of a normative act was considered a viable solution, which has expanded over time all over the European continent, including Romania, and has been also adopted by some countries in South America, Asia and Africa

Both models of constitutional review have, of course, advantages and disadvantages, but each is adapted to the legal ideology dominant in the areas where it was implemented, so each meets the need of those societies. That's why both deserve to be analyzed and presented with their essential characteristics. It also helps us understand why in the particular case of Romania the centralized constitutional review is preferable to the diffuse one.

3.1. The American model of constitutional review

The constitutional review of the laws arose in the United States in response to the need to find an effective way of solving the conflicts between the Federal Constitution and the constitutions of the member states and between the federal laws and laws of the member states of the federation[11].

In the United States, the system of judicial review of the constitutionality (judicial review) was imposed and was transformed over time as a praetorian creation, since the American Constitution does not provide for such a power.

The doctrine of constitutional law is unanimous in placing the origins of this kind of review[12] in 1803 when the Supreme Court of Justice has solved the case *Madison v. Marbury*[13],

Following the current classifications, doctrine[14] has concluded that the so-called American model of constitutional review of laws is a diffuse control, characterized by de-centralization and that can be performed by any court within the judicial system. These courts solutions can be delivered, subject to censorship, to a supreme court which has, among others, task of unifying the case-law.

Courts decisions take effect only *inter partes litigantes*, declaring the unconstitutionality of a law with relative authority of *res judicata*, meaning that they are limited to those individual cases. Only Supreme Court's decisions on the constitutionality of laws, although not result in their cancellation, manage, however, to prevent their application in all member states of the American Federation, given that lower courts must respect the decisions of the Supreme Court Federal according to the rule of the binding precedents[15] that states that its decisions have absolute authority[16].

It's been noted that "the great contribution made to the American constitutional law is to entrust the interpretation and application of the Basic Law to the ordinary judiciary" and it became, over the time, so important that the constitutional law began to consist strictly in studying judicial interpretations of the Constitution[17]. Its famous the remark that "Constitution is what judges say it is"[18]. Federal states' courts' rulings and, especially, the United States Supreme Court's rulings create what is called case-law. As a result, it is considered that, at present, the federal constitutional law and the Constitution includes 22 amendments thereto, as well as constitutional conventions, and federal sentences.[19]

The North American constitutional review was perceived and adapted also by countries on the South American continent. The American system of diffuse control was maintained only in Argentina in its pure form. In contrast, in countries like Brazil, Mexico, Uruguay, Paraguay, Venezuela, Nicaragua and the Dominican Republic it has been adopted a mixed system of control, by combining the diffuse and the concentrated control[20].

[8] Hans Kelsen was te one that, based on the Austrian Basic Law of 1920, has brought the most significant contribution at the foundation of the Constitutional Court of Austria. He has also been a member of the nw stablished Court, between 1920 and 1929.

[9] Characteristic to Belgium, up until it has been transformed, in 2007, in constitutional court.

[10] As it is in France.

[11] Ioan Vida, „Bătălia pentru Curtea Constituțională", in *Liber Amicorum Ioan Muraru, Despre constituţie şi constituţionalism*, Editura Hamangiu, Bucureşti, 2006, p.241.

[12] Ioan Vida, *op.cit.*, p.241.

[13] Translated in Romanian language by M. Bălan şi B. Iancu and published in Noua Revistă de Drepturile Omului no.2/2006, p.141-161.

[14] See Dominique Rousseau, *La justice constitutionnelle en Europe*, 3e édition, Montchrestien, Paris, p.13.

[15] Louis Favoreau, Patrick Gaïa, Richard Ghevontian, Jean-Louis Mestre, Otto Pfersmann, André Roux, Guy Scoffoni, *Droit constitutionnel*, 8e édition, Dalloz, Paris, 2005, p.207-210.

[16] See Alain A. Levasseur, „Izvoarele dreptului", in *Dreptul Statelor Unite ale Americii*, coordinated by Alain A. Levasseur, Editura Scrisul Românesc, Craiova, 1999, p.21-22.

[17] Mario G. Losano, *Marile sisteme juridice. Introducere în dreptul european şi extraeuropean*, Editura All Beck, Bucureşti, 2005, p.87.

[18] Louis Henkin, „John Marshall Globalized" în *Proceedings of the American Philosophical Society*, Philadelphia, Vol.148, nr.1/2004, p.63, available at http://www.amphilsoc.org/sites/default/files/proceedings/480105.pdf

[19] Mario G. Losano, *op.cit.*, p.88.

[20] Ioan Leş, "Controlul constituționalității legilor în America Latină", in *Acta Universitatis Lucian Blaga* nr.1-2/2003, p.105.

3.2. The European model of constitutional justice

In Europe, the idea of the superiority of the Constitution has been introduced throughout the American branch, being popularized through the writings of Alexis de Tocqueville[21]. The European model of constitutional review was outlined for the first time by Georg Jellinek, who, in 1885, published "A Constitutional Court for Austria", sketching the idea of controlling the constitutionality of laws by a distinct and specialized court, separate from any other state authorities. His idea was supported by the ascending of the rule of law era, which requires both individuals and state authorities to respect the rules on which the society is based. Hans Kelsen is the one who has completed the nascent theory of Jellinek, defining and explaining the new concept of review of constitutionality. The essence of his theory was illustrated by the image of the pyramid of the legal system, dominated by the Basic Law, *das Grundnorm*. The model he promoted countered the main drawback of the American model, consisting in the relative value of the US courts' judgments, which have only *inter partes litigantes* effects. In his famous work, *„La garantie juridictionnelle de la Constitution"* (1928), the Austrian scientist argues that the legal system's integrity can be ensured only if the supremacy of the Constitution is guaranteed through an authority similar to a court.

The creation of a constitutional court that would centralize the review of constitutionality had, in Kelsen's view, the advantage of avoiding divergent constitutional interpretations that the American system can generate. To this end, decisions finding an unconstitutionality passed by a unique constitutional court have the effect of nullifying the validity of the law not only in specific, individual cases, but in all cases where that law is applicable[22].

Establishment of a unique Constitutional Court that renders generally binding decisions, with the consequence of elimination from the normative system of the law stated as unconstitutional, has been adopted by most European countries whose legal systems are built on Roman-Germanic legal system.

The suggested model has imposed in the European space due to the fact that it managed to avoid two American model's features that were completely incompatible with the specificity of the states whose legal system belongs to the Roman-Germanic family of law. Firstly, it is about the risk that different courts would issue different solutions, even divergent, on the same provision of law, given the fact that in the Roman-Germanic system the judicial precedent does not represent a source of law that the lower courts should be obliged to follow. The second problem avoided thanks to the model kelsenian regards the fact that decisions on the constitutionality of a normative act have only effects *inter partes litigantes* in the American system. This means that even if a legal provision was declared unconstitutional by a specific instance, in a particular process, the same provision of law may be applied subsequently freely in any other case.

The Kelsenian traditional model of constitutional justice necessarily involves a jurisdictional authority that is distinct and separate from the ordinary courts' system, with a different composition and functioning using a special procedure. It has the power to verify the compliance with the Constitution of the laws passed by the Parliament and repeal them if it finds that there is a discrepancy between the legislative texts and the Supreme Law.

The renowned professor Louis Favoreu offered to this type of authority an enlightening definition: "a constitutional court is a jurisdiction created especially and exclusively to settle constitutional disputes, outside the ordinary judicial apparatus and independent of any other public powers"[23].

Moreover, it was noticed that the consequences of the totalitarian regimes that marked the history of Europe in the first half of the twentieth century created the premises of a more acute awareness in what concerns the need for an appropriate means of control over the acts and actions of representative bodies - including parliamentary assemblies and their legislative work - to ensure the rights enshrined in the Basic Laws[24].

However, there were also views hostile to the establishment of constitutional justice, be coming - as in Italy - from members of the pro-fascist or communist political formations[25], be determined by the existence of traditions relating to the exercise of constitutional review by courts as part of the judicial authority, as in the case of Romania.

The reasoning for adoption of such a centralized review, different from the American diffuse type of review, has got its foundation in

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[21] Alexis de Tocqueville, *Despre democraţie în America*, vol.1, Editura Humanitas, Bucureşti, 1996.

22 Hans Kelsen, *Doctrina pură a dreptului*, Editura Humanitas, Bucureşti, 2000, p.327.

23 Louis Favoreu, *Les cours constitutionnelles*, collection „Que sais-je?", la 2eme edition, Press Universitaires de France, Paris, 1992, p.3.

24 National Report for the XVth Congress of the European Constitutional Courts Conference, presented by Italy, published in *Justiţia constituţională. Funcţii şi raporturi cu celelalte autorităţi publice – Drept constituţional comparat*, Editura Universul Juridic, Bucureşti, 2012, (cited, as in what follows, *brevitatis causa*, Ialy's Report for the XVth Congress of E.C.C.C.), p.316.

[25] According to Alessandro Pizzorusso, Palmiro Togliatti, one of the communist leaders in the 50', was describing the Constitutional Court as some kind of juridical and political *monstrum* (see Alessandro Pizzorusso, „Présentation de la Cour constitutionnelle italienne", in *Les Cahiers du Conseil constitutionnel* nr.6/1999, p.24.

several theoretical and practical considerations[26]. Thus, it has been taken into account the absence of the rule of binding precedent in the legal Roman-Germanic system, dominant in Europe, which would not permit the correct implementation of the American model. That is because it would have generated contradictory interpretation of the Constitution by the courts, which would have led to the destabilizing the constitutional order and severely harm the principle of legal certainty, which is a principle of special importance in countries of civil law tradition.

There has been also considered the discussion about the so-called "democratic objection ", which casts doubt over the right of judges that form any court to annul a law, which is the product of a democratic legislator, carrying the legitimacy and representativeness endorsed by the people. On the contrary, from this point of view, the judges are not designated based on a popular vote. Seen from this angle, the option for the centralized review, exercised by a specialized court whose members are selected in a relatively democratic way[27], avoids the risks that a brutal transplanting of the American model would have produced in the European system[28]. It was said, however, that the European model is a way to review the constitutionality of laws ultimately deriving also from the American model, but in a certain style, appropriate to the requirements of the family of Continental law[29].

So in most European countries, the authorities of constitutional review are not part of the judiciary, in the strict sense.

Their position in the constitutional edifice of the state is distinct from the ordinary or administrative courts. In most cases, they are *sui generis* courts, located, within the state's organization, outside the other three traditional powers - legislative, executive and judicial. Only in isolated cases they are part of the judicial authority, Germany being one of the most illustrative examples[30].

4. Constitutional review in Romania – General and historical benchmarks

Originar Constituent power in Romania has opted, in 1991, for the European model of verifying the constitutionality of laws and it has organized by the Basic Law adopted on that date, an effective way of monitoring the compliance with supremacy of the Constitution. This task was entrusted to the Constitutional Court, authority placed outside the judicial system and, in the same time, distinct and independent from any other public authority[31].

Constitutional Court's Law[32] establishes, in Article 1, the exclusive nature of constitutional jurisdiction, meaning that it is the sole authority of constitutional jurisdiction in Romania, which ensures the supremacy of the Constitution[33].

According to Article 147 paragraph (4) of the Constitution, revised in 2003, decisions shall be published in the Official Gazette of Romania and, following its publication, they are generally binding. The constitutional text states further that they take effect only for the future.

As a result of generally binding decisions of the Constitutional Court, issued under Article 146 d) of the Constitution, whereby the unconstitutionality of a law or Government ordinance was found unconstitutional cannot be applied any longer, ceasing its legal effects for the future.

In order to emphasize the strength of its decisions, the Court held that no other public authority may challenge the considerations of principle resulting from the jurisprudence of the Constitutional Court and all will be required to properly apply, given that compliance with decisions of the Constitutional Court is an essential component of rule of law principle[34].

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[26] For details regarding the failure of the transplant of the American model in European states, see Louis Favoreau, *Les cours constitutionnelle*, p.8-9, şi Ion Deleanu, *Justiţa constituţională*, p.21 and next.

[27] Constitutional judges are usually appointed by political bodies (Parliament, Government, Chief of the State) for a limited term.

[28] Tania Groppi, "The relationship between constitutional courts, legislators and judicial power in the European system of judicial review. towards a de-centralysed system as an alternative to judicial activism?", report for the Conference "Judicial activism and restraint theory and practice of constitutional rights", held in Batumi, Georgia, 13-14th of July 2010, organized by the European Commission for Democracy Through Law (Venice Commission) and the Constitutional court of Georgia, published in CDL-JU(2010)012, Strasbourg, available on-line http://www.venice.coe.int/docs/2010/CDL-JU(2010)012-e.asp?MenuL=RUS, p.11.

[29] Ioan Muraru, Marian Vlădoiu Nasty, Andrei Muraru, Silviu-Gabriel Barbu, *Contencios constituţional*, Editura Hamangiu, Bucureşti, 2009, p.10.

[30] Michel Melchior, Andre Alen şi Frank Meersschaut, General Report on the XIIth Congress of the Constitutional Courts in Europe, Bruxelles, 14-16 mai 2002, *The Relations Between the Constitutional Courts and the Other National Courts, Including the Interference In This Area Of the Action of the European Courts*, Vanden Broele Publishers, Brugges, 2002, p.73.

[31] Mihai Constantinescu, Ion Deleanu, Antonie Iorgovan, Ioan Muraru, Florin Bucur Vasilescu, Ioan Vida, *Constituţia României comentată şi adnotată*, Editura Regia Autonomă „Monitorul Oficial", Bucureşti, 1992, p.304.

[32] Legea nr.47 of 1992 regarding the organization and functioning of the Constitutional Court, republished in the Oficial Monitor of Romania, Part I, no.807 of 3rd of December 2010.

[33] In the legal doctrine were formulated opinions supporting the introduction in Romania of a constitutional review of American type exercised by the judiciary and not by "an authority deeply politicized" (Ioan Alexandru, „Obiectivele şi scopul revizuirii Constituţiei: consolidarea democraţiei", în *Revista de Drept Public* nr.1/2013, p.63).

[34] Decision no.1039/5.12. 2012, M.Of., Part I, no.61/29.01.2013.

Decisions on finding unconstitutional a law or an ordinance have to be followed by a reaction of the legislature. This means that the Parliament or, where the case be, the Government have to intervene and modify or repeal the normative act declared as unconstitutional. If such action is not taken or delays, the Constitutional Court's decision shall take effect, according to Article 147 paragraph (1) of the Constitution. According to the constitutional text, the provisions of laws and ordinances in force, as well as the regulations declared unconstitutional, cease their legal effects within 45 days starting from the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government shall not bring in line the unconstitutional provisions with the Basic Law. During this period, the provisions declared unconstitutional are suspended as of right.

Reaching this final legislative solution was a difficult task for the Constituent power. During the debates that took place over the project of the new, democratic Romanian Constitution, have been launched many ideas referring to the way the constitutional justice should be configured. These debates could be summarized into four main ideas, namely: a) elimination of the institution, without any other option; b) elimination of the institution and entrusting the review of constitutionality to the ordinary courts; c) entrusting the control of the constitutionality to a commission; d) acceptance of the constitutionality of laws exercised by a distinct authority council, constitutional court or tribunal. Following stormy, contradictory discussions, finally, the Constituent Assembly approved the proposal as Title V to be labeled "Constitutional Court". It's been said that entrusting the constitutionality of laws to the Supreme Court of Justice would have result in the transformation of the judicial body into a political one.

The current Constitutional Court of Romania is the result of the conjunction of the advantages chosen on the basis of the experience of other countries with traditions in the constitutional matter and it has the prospect of an organizational and functional integration, in an efficient and sustainable manner, in the European legal structures, according to the covenants, treaties and conventions to which Romania is a party. Connection to the European institutions clearly derives from the rules concerning the designation of judges and the way the role and the functions of the Constitutional Court are provided.

5. The role of constitutional courts in the democratic states

These authorities reveals their role in defending democratic values guaranteed by the Constitution, acting as a "civilizing factor"[35], and also contribute to higher levels of protection offered by the legal provisions to the fundamental human rights and freedoms

The supremacy of the constitutional norms is the central idea on which the constitutional review mechanism is set. Recognising the prevalence of the Basic Law on all legislation is a huge step towards a genuine democracy[36].

There are two major categories of constitutional review that can be found in most states that have a similar type of control. It is, firstly, the preventive constitutional review, which is also called *a priori* review and regards the laws before they come into force. Such preventive control is exercised by most of the constitutional authorities[37]. The consequence of this *a priori* constitutional review consists in the fact that the normative act declared contrary to the Basic Law will not enter into force, thus avoiding the introduction of unconstitutional legal provisions into the legal system.

There is also a repressive constitutional review, targeting the normative acts that are already in force. It can be both abstract and concrete. This distinction is linked to the origin of the question of constitutionality. Thus, we talk about an abstract review where the compliance with the Constitution has been questioned in the absence of an actual conflict, usually by a political subject, as Members of Parliament, the Head of State or Government, or another high authority as the attorney general, the president of the Supreme Court or the Ombudsman. On the contrary, the so-called concrete constitutional review has its roots in a proceeding before a court. A question of constitutionality (referred, in the Romanian legal system, exception of unconstitutionality) can be raised when the interests of justice so require.

The right to petition the Constitutional Court is conferred to the parties in a judicial trial as an expression of the right of access to a court and the right to a fair trial, but also as a proof of principle of the rule of law. This is because the purpose which is intended to be achieved is a final judicial decision rendered on the basis of legal regulations whose constitutionality is beyond any doubt and, in the same time, the elimination of all legal provisions that

[35] Ioan Muraru, „Există un garant al supremației Constituției române?", in *Revista română de drept privat* nr.1/2011, p.131.

[36] Theoretical and historical details on the development of the concept of constitutional supremacy and the mechanisms of ensuring it were detailed by Professor Ioan Deleanu, in *Instituții și proceduri constituționale în dreptul român și în dreptul comparat*, Editura C.H. Beck, București, 2006, p.227-257.

[37] Until the constitutional amendment of 2008, the French Constitutional Council was often considered representative for this type of control, given that it only checked the constitutionality of laws before their promulgation by the President of the French Republic.

contradict texts or principles enshrined in the Constitution[38].

In addition to reviewing the constitutionality of legislation, constitutional justice authorities are responsible for exercising a range of powers which highlight the important role they play in ensuring the supremacy of the Constitution. Many constitutional courts are called upon to resolve legal disputes of a constitutional nature between public authorities. Such a task is particularly significant in the case of the federal and regional states[39]. There are also states that have granted constitutional court jurisdiction to resolve disputes between central and local or regional authorities[40]. In Romania, this power is limited to conflicts arising between central authorities[41]. Inspired by the experience of other countries in the problems caused by this type of conflict, the constituent power has amended the Romanian Basic Law in 2003 and enlarged the powers of the Constitutional Court. Since then, the authority of constitutional justice in Romania was asked to resolve such conflicts in some of the most difficult moments of social and political life. It has been said from this perspective that this task often requires involvement in sensitive areas, in conflicts hard to be refereed and deals with egos difficult to satisfy[42].

The paper will further on illustrate some of the relevant decisions of the Constitutional Court that prove its good influence over the ensemble of the society.

6. The positive effects on the legislative system of the *a priori* constitutional review performed by the Constitutional Court of Romania

The effects of decisions rendered by the Constitutional Court that find the unconstitutionality of a law adopted, but not yet promulgated by the President are regulated in Article 147 paragraph (2) of the Constitution which requires Parliament to put the law in line with the decision of the Court. The weird formulation of the fore mentioned constitutional text has to be remarked. It states that Parliament must reconcile the law with those stated by the Constitutional Court and not with the Constitution. This can be seen as a way the constituent legislator understood to emphasize the importance of constitutional review performed by the Constitutional Court[43].

In the form before the amendment of the Constitution, the text allowed the Parliament to ignore the Court's findings and to pass the law in the same form, with a majority of at least two thirds of the members of each Chambers. However, most times, even before this moment, Parliament took into account the Constitutional Court's solutions and corrected the vices of unconstitutionality and sent the law to the President of Romania for promulgation only after that. Therefore, the corrective purpose pursued when performing the a priori review has been reached. In this manner, the Court prevents the entry into force of certain provisions contrary to the Constitution, removing the risk of introducing such provisions in the active fund of legislation.

Thus, for instance, performing the a priori review with regard to the law on war veterans and certain rights of the invalids and war widows, the Court upheld the complaint and found, regarding the recognition of war veteran quality for those residents of the Romanian provinces temporarily occupied during 1940-1945 who were compulsorily incorporated in the Hungarian army, that it was unconstitutional the imposed condition according to which they should have not fought against the Romanian army. In this regard, the Court held that the persons concerned have been compulsory incorporated in the Hungarian army since they were living in a temporarily occupied territory under the Vienna dictatorship Treaty of 1940, which currently is null and void.

In this situation, the Romanian state was unable at that time to dispose enlisting or mobilizing them, and if, today, these historic circumstances would represent an obstacle for those people in obtaining a deserved benefit for their prejudices and disabilities, it would mean that it would be recognize the legal effects of an act which is null and void. Therefore, the Court concluded that the exemption of the fore mentioned persons constitutes discrimination, since nobody can be held responsible for an unenforceable obligation. However, the Court also found that some provisions of the law were unconstitutional regarding the definition of 'war

[38] Valentina Bărbăţeanu, "Aspecte particulare referitoare la reiterarea excepţiei de neconstituţionalitate", în *Buletinul Curţii Constituţionale* nr.2/2011, p.103.

[39] This was the case in Austria (Article 138 of the Basic Law), Germany (Article 93(1)(1)(4) and (4)(b) of the Basic Law) or Italy (Article 37 of the Law no. 87 of 11th of March 1953).

[40] This is the case of the Constitutional Court of Bulgaria (Article 149(1)(3) of the Basic Law), of Czech Republic (art.87(1)(c) of the Basic Law) or Hungary (Article 1(f) of the Court's Law).

[41] Article 147 lit.e) of the Romanian Basic Law establish the Constitutional Court's jurisdiction to resolve legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, President of one of the Parliament's chambers, the Prime Minister or the President of the Superior Council of Magistracy.

[42] See, in this regard, Mihai Constantinescu, Ioan Muraru, *op.cit.*, p.323.

[43] The solution chosen by the constituent legislator has been criticized in legal doctrine, because, in fact, the text found to be unconstitutional should be put in accordance with the Constitution and not with the Court's decision. See, in this regard, Ion Deleanu, *Instituţii şi proceduri constituţionale,* footnote no.1, p.895.

veteran', considering that the Parliament should correlate them, in order to ensure observance of the principle of equality of citizens.

The law was brought into line with those stipulated by the decision of the Constitutional Court and became after promulgation Law no.44 of 1994. The cited provisions of Article 2, letter b) were drafted in a manner that ensures equal legal treatment, stating that veterans are also considered those persons who participated in the first or second world war and were inhabitants of Romanian provinces temporarily occupied during 1940-1945, who were incorporated or compulsorily mobilized and fought in the other states' armies, if they have retained or regained Romanian citizenship and residence in Romania.

The beneficial role of the Constitutional Court was indirectly materialized, due to the fact that the law examined was changed and a was inserted a new provision thanks to which that avoid the creation of a discriminatory situation within the same categories of people, namely the War Veterans.

7. Decisions rendered by the Constitutional Court of Romania in the *a posteriori* review of constitutionality which had beneficial consequences on improving peoples' life

It is an undeniable reality that the Romanian legal system was strongly transformed following the finding by the Constitutional Court of inconsistency between the provisions and principles of the Basic Law and various laws or ordinances - or just certain provisions thereof - followed by fulfilment by Parliament or, where appropriate, the Government the obligation to draw up amendments to the normative content of the latter and bring the criticized texts in accordance with the requirements imposed by the Constitution.

The study will present further the way some normative acts were amended as a result of the decisions rendered by the Constitutional Court in the *a posteriori* review of constitutionality. This is aimed to demonstrate the contribution of the constitutional court to improving overall legislative ensemble and in special of those norms that have a good influence on everyday life and also on those that govern important institutions in society and are indispensable in ensuring the proper functioning of justice and the effectiveness of the rule of law principle, in a democratic and social Romanian state, so characterized in the very first article of the Basic Law.

7.1. In what concerns the protection of fundamental rights during the criminal proceedings

7.1.1. Personal liberty, guaranteed by Article 23 of the Basic Law, has been one of the areas of particular importance, referring to which, especially in the early years after the fall of the communist regime, the Constitutional Court was asked to clarify and establish standards to be met in order to ensure that, under the rules of criminal proceedings, there won't be any harm of the intangible values vital in a constitutional democracy, inextricably linked to the human being.

Thus, the Court held[44] that the deprivation of freedom is a serious act regardless the phase of the judicial trial where it occurs. Therefore, it should not apply a different treatment depending on the fact that the criminal process is in the pre-trial proceedings or it is in the trial phase, in front of a judge. This is the essence of the provisions of article 23 of the Constitution, which regulate the conditions under which it may be order the arrest of a person, without distinguishing between a certain stage of the trial. Therefore, constitutional provisions guaranteeing individual freedom have to be observed whenever the freedom of a person is at stake, as any custody measure seriously affects the personal liberty.

7.1.2.The court ruled[45] that the principle of State liability for damages caused by judicial errors in criminal cases should be applied to all victims of such errors. As such, the Court noted that the legislature does not have the power to restrict the State's responsibility only to some judicial errors. It has extended the scope of the legal criticized text, stating that the victims are entitled to compensation not only if it has been established by final judgment that the person has not committed the act alleged or that the offense does not exist, but also if after a retrial, was discharged of accusation for any of the reasons set out in the Code of criminal procedure.

Thanks to these decisions, the ordinary courts could consider the possibility of granting compensation for miscarriages of justice also to other persons than those provided by legal texts that were subject to constitutional review.

In the labour law field, the Court found[46] that restricting the possibility for teachers to perform tasks to other higher education institutions infringed the right to work enshrined at the constitutional and international level. The legal criticized text[47] provided that a teacher having the basic job in an educational public or private institution could teach by association in different other institutions of higher

[44] Decision no.60/25.05.1994, M.Of., Part I no.57/28.03.1995, Decision no.279 /01.07.1997, M.Of., Part I no.50/04.02.1998, Decision no.60/25.05.1994, final through Decision no.20/15.02.1995, M.Of., Part I no.5728.03.1995, Decision no.546/04.12.1997, M.Of., Part I no.98/02.03.1998, Decision no.924.01.2000, M.Of., Part I no.221/19.05.2000, Decision no.10/24.01.2000, M.Of., Part I no.213/16.05.2000.

[45] Decision no.45/10.03.1998, M.Of., Part I no.182/18.03.1998.

[46] Decizia no.114/15.11.1994, M.Of., Part I no.354/21.12.1994.

[47] Article 32 paragraph (1) of the Law no.88/1993 on higher education accreditation and recognition of diplomas.

education up to a maximum equivalent of a teaching loads determined in accordance with legal provisions.

The Court noted that the restriction led to discrimination between teachers and the rest of the employees for whom the right to work is not limited by law, contrary to the provisions of Article 16 of the Constitution which proclaims that citizens are equal before law and public authorities, without any privilege or discrimination.

Similarly, the Court held[48] that limiting teachers' activity at mostly two didactic loads[49] infringes the constitutional provisions of Article 38 paragraph (1) of the Constitution, which establishes that the right to work and choosing profession and the place of work cannot be restricted. The Court also took into account, in this respect, Article 6 paragraph 1 of the International Covenant on Economic, Social and Cultural Rights[50], according to which "The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right". The Court held, *inter alia*, that limitation of teachers' right to work would not provide a higher quality education, since the professional qualification of the teacher, his or her teaching experience and the seriousness with which every teacher achieves its mission define the performance framework of the university professor, not the number of working loads conferred.

7.1.3. Romanian Constitutional Court found contrary to the Constitution[51] the text[52] which recognized the benefit of certain rights previously earned but whose effects took place later. The Court noticed that there is a discrimination in what concerns the recognition of the benefit of those rights only for people who are still in active jobs or activities characterized by difficult conditions, not in favour also for those who previously worked in the same conditions but they ceased their employment through retirement or other reasons before the entry into force of the normative act that provided those rights. The Court emphasized that the text was unconstitutional not because it recognized the benefit of those rights, but because it recognized them only for certain categories of citizens, and not for the others who really were in the same situation.

7.1.4. In a similar manner, the Court stated[53] that it does not challenge the legitimacy of the bonus offered to the staff in the primary education for simultaneous teaching, but the constitutional legitimacy of granting this bonus only to this category of teachers. The Court held that the normative text subject to the constitutional review created a difference in what concerns the legal treatment between teachers in primary and secondary schools, meaning that more benefits ware granted only to the first simultaneous teaching staff. Or, both categories of professors teach simultaneously under the same nervous consumption, neuropsychological overuse and psychological effort. In those circumstances, the Court held that although both categories of staff provide teaching activity under simultaneous system, legal treatment on rewarding this mental effort is different. The Court stated that the differentiation depending on the level of education, primary or secondary, does not represent an objective criterion justifying the differentiated legal treatment applied.

The Court found that the legislature has chosen an incorrect criterion in granting this bonus, which created a situation of discrimination towards teachers in secondary education that provides simultaneous teaching. As such, it upheld the objection of unconstitutionality and found that the wording *'primary education'* comprised in some legal provisions on the remuneration of teachers and auxiliary staff in education is unconstitutional. On the same occasion, the Court felt the need to bring some clarification about the effects of the decision, stressing that the public authorities involved, including the courts, are called upon to carry out an interpretation and application of this law in accordance with the effects of the Court's decision regarding the bonus of simultaneous teaching under Law no.63 of 2011, from the date of publication of the decision, entitled teachers will benefit from the future payment of the bonus of simultaneous teaching. Thus the Court has ensured that discriminatory situation will not produce negative consequences, even if the Parliament would not intervene to remove inequality found by the Court.

7.2. The role played by the Constitutional Court in reconfiguring the relationship between the state's public property and private property following the communist regime and in increasing the guarantees granted by the new democratic Basic Law to the private property

7.2.1. The Constitutional Court was called to decide over the constitutionality of the provisions of Article 8 paragraph 3 of Decree Law no.118 of 1990 on granting specific rights to the persons persecuted

[48] Decision no.30/10.02.1998, M.Of., Part I, no.113/16.03.1998.

[49] Provisions of Article 93 par.(4) of Law no.128 of 1997 on teaching staff, M.Of., Part I, no.158/16.07.1997, currently revoked by Article 361 of the National Education Law no.1 of 2011, M.Of., Part I, no.18/10.01. 2011.

[50] Ratified by Romania by Decree no.212 of 1974, published in the Oficial Bulletin of Socialist Republic of Romania no.146/20.11.1974.

[51] Decision nr.87/01.06.1999, M.Of., Part I, no.352/26.07.1999.

[52] Article 2 par.1 of Law-Decree no.68 of 1990 for the removal of inequities in staff salaries, M.Of., Part I, no.24/09.02.1990.

[53] Decision no.1615/20.12.2011, M.Of., Part I, no.99/08.02.2012.

for political reasons by the dictatorship with effect from 6 March 1945 and to those deported abroad or in prison. The Court found[54] that there was no objective and reasonable justification for setting a deadline for submission of applications by the rights holders, while for applications from spouses of the deceased and those submitted by Romanian citizens living abroad was not set any deadline.

7.2.2.By another decision[55] the Court found the unconstitutionality of the provisions of Article 1 paragraph 2 of Law No.9 of 1998 on compensation offered to the Romanian citizens for the assets passed into the Bulgarian State ownership after applying the Bulgarian Treaty between Romania and Bulgaria, signed at Craiova on the 7th of September 1940. It noticed that the fore mentioned legal provisions are contrary to Article 42 of the Constitution that guarantees the right to inheritance, to the extent that limits the scope of persons entitled to indemnification only to former owners and their legal heirs, excluding the testamentary heirs. In deciding so, the Court observed that Article 42 of the Constitution does not make any distinction between legal and testamentary inheritance.

The Court also held that the petition of unconstitutionality was based on the infringement of the principle of equality enshrined in the provisions of Article 16 of the Constitution whose meaning is that the application of differentiated legal treatment was justified only by the existence of different situations. In the light of the situation analyzed in the case, the quality of legal or testamentary heir do not place them in different situations, such as to require the establishment of a differentiated legal treatment

7.3. In the field of regulations regarding certain professions and various other fields

7.3.1. A decision that resulted in the extension of the benefit of social measures also on other categories of people than those for which it was originally dedicated to was the one in which the Court upheld the objection of unconstitutionality of the provisions of Article 15 of Law No. 80 of 1995 regarding the military employees[56], which provided that only women active military personnel are entitled to maternity leave and childcare leave, and excluded the men military personnel from such a benefit. The Constitutional Court decided that the complete elimination of certain categories of persons from the benefit of a form of insurance provided by law for all categories of insured persons violates the principle of equality. In this regard, the Court held that, despite their special status, military personnel in activity is no different from other categories of social insurance policy holders, so the establishment of a different legal treatment, which deprives them of the benefit of a form of social insurance provided by law for all insured persons is discriminatory due to the fact that the criticized legal text recognize the right to parental leave only for women in active military personnel, to the exclusion of the other parent, all military setting.

7.3.2. The Court admitted the exception of unconstitutionality of the provisions that repealed the text comprised in Law no.146 of 1997 according to which actions and claims that aimed to obtain moral compensation for damages perpetrated to the honour, dignity or reputation of individuals were exempt from judicial tax[57].

The regulation represented a legal defence of the fore mentioned attributes of the human personality - provided in Article 1 paragraph (3) of the Constitution as the supreme values in a state governed by the rule of law. Thus was ensured the access to justice, without imposing the condition of payment of judicial stamp duty to the persons aggrieved by uttering insults, slanders or disparagement committed in any way, directly or indirect, by any means of mass communication.

7.4. The Constitutional Court rendered some useful decisions in the field of social security law

7.4.1. One of the decisions with the strongest positive impact on a large number o people was Decision no.872 of the 25th of June 2010 that stated that the intention to diminish by 15% the amount of pensions in the context of measures to ensure budget balance due to the economic crisis was contrary to the Constitution. The Court noted that the right to obtain the pension for retirement has been pre-constituted, far back as the active life of the individual who has been required by law to contribute to the state social insurance budget based on a percentage of revenue levels. The state has got the correlative obligation to pay the individual, in his or her passive life, a pension whose amount is governed by the principle of contribution. The purpose of the pension is to compensate during the passive period of the life the insured contributions made by the individual to the state's budget of social security under the principle of contribution and to ensure the livelihood of those who have acquired this right under the law, depending on the contributory period, retirement age etc.

Amounts of money paid as a contribution to social security entitle the person who earned any incomes and has paid its contribution to the state's social insurance budget to benefit from a pension that reflects the income received during the active period of life. Pension amount established according

[54] Decision no.148/08.05.2001, M.Of., Part I, no.592/20.09.2001.
[55] Decision no.312/19.11.2002, M.Of., Part I, no.81/07.02.2003.
[56] Decision no.90/10.02.2005, M.Of., Part I, no.245/24.03.2005.
[57] Decision no.778/12.05.2009, M.Of. no.465/06.07.2009.

to the principle of contribution, is a consolidated right, so reducing it cannot be accepted even temporarily.

The Court also found that provisions which decrease by 15% allowances for the companions of the people who have been retired because of serious disability degree and establishment of a pension point lower than the existing one are also contrary to the Constitution, because the state does not fulfill its constitutional obligation to take adequate social protection.

7.4.2. The Court declared unconstitutional the legal provisions that provided that the state allowance was given only to those children attending the form of general compulsory state education[58]. The Court noted that the Ministry of Education had not approved the payment of state allowance for children attending private schools since those schools were not included in the records of the National Commission for Evaluation and Accreditation of Pre-university Education. The Court noted that the of the child to get the allowance is granted under the provisions of Article 49 paragraph 2 of the Constitution, which does not provides, in defining the subjects of the right to state allowance, any other condition beside the one that the beneficiaries have to be children.

The Court held that the consecration of children's right to special protection in the form of allowances granted by the State without any discrimination corresponds to the general principles underlying the Romanian State, provided for in Article 1 paragraph (2) of the Constitution, and the provisions on protection of children contained in the Universal Declaration of Human Rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and other pacts and treaties to which Romania is a party.

8. Conclusions

The analysis carried out in the pages of this paper highlights the complex role that the Constitutional Court currently fulfils in the process of creating and enriching the legislative system. Its powers, as they were detailed and developed in practice manage to significantly influence the whole legislation.

The overall conclusion would be that the constitutional case-law has, undoubtedly, a visibly positive effect not only on normative regulations and the legal system in general, but also on the lives of every citizen, through the multitude of ways in which it can intervene and modulate and harmonize rules and legal provisions with the values and principles comprised in the Basic Law.

Based on an the analysis of the relevant case-law of the Constitutional Court of Romania, this study is geared towards highlighting not only its potential to strengthen the guarantees provided for the full enjoyment of the fundamental human rights and freedom, but also its ability to improve citizens' standard of life.

It was stated in the doctrine that constitutional review performed by specialized authorities is a creative activity. That is because the constitutional judges have got a much greater flexibility than the judges from the ordinary courts in what concerns the possibility to enrich the meaning of the law by the means of interpretation, released from the constraints imposed by the rigid application of law[59].

Indeed, the evolution of the concept of authorities of constitutional review towards revealing their role and the impact on the juridical life of the state of the solutions they pronounce led to their transformation from "negative legislators", as they were initially characterized by Hans Kelsen, into "positive legislators" or, at least, "co-legislators"[60]. In fact, the Romanian Constitutional Court held that its position of guarantor of the supremacy of the Constitution obliges it to take an active attitude[61].

From the case-law of the Constitutional Court of Romania, as shown in the present paper, follows another useful according to which the constitutional review performed by the Constitutional Court plays both a preventive and stimulating role in the normative drafting process.

The fact that the primary regulation (laws, as acts of Parliament, and government ordinances, simple or of emergency) may be subject to censorship of the Constitutional Court, is undeniably a factor of accountability of the legislature, which is forced to adopt regulations that, in the event of checking their constitutionality, prove to be consistent with the rules and principles comprised in the Basic Law.

The prospect of sanctioning infringements of constitutional requirements, either in terms of the form or content of the regulation manages to keep the legislature aware of the risk of gradual loss of credibility generated by drafting of laws declared unconstitutional by the Constitutional Court. Consecutively, the constitutional review urges the legislature to increase the quality of its creative activity and stimulates enactment of rules drafted in accordance with the Basic Law. In this way, the solutions pronounced by the Constitutional Court

[58] Decision nr.277/21.03.2006, M.Of., Part I, no.348/18.04.2006, regarding Article1 par.(2) and Article 5 par.(1) of Law no.61/1993 on state allowance for children.

[59] Mario Cappelletti, cited by Louis Favoreu in *op.cit.*, 463.

[60] Ion Deleanu, *Justiţia constituţională*, p.47.

[61] See Decision no.1615/20.12.2011.

tend to impregnate all branches of law with the values and principles enshrined in the Constitution[62].

When rendering unconstitutional a law before promulgation thereof, Parliament is bound, according to Article 147 para. (2) of the Basic Law, to redraft the law, or provisions thereof, in a manner consistent with the finding of the Court.

The solutions of the Constitutional Court have effect both on the provisions of existing legislation as a whole and also on future regulations. In this regard, the scholars stressed the influence that the case-law of the Constitutional Court has on the future rulemaking process[63], given the fact that decisions on the constitutionality of existing rules have a certain impact even on the content of legal provisions that have not been yet developed.

References:

- Ioan Alexandru, „Obiectivele şi scopul revizuirii Constituţiei: consolidarea democraţiei", in *Revista de Drept Public* no.1/2013;
- Valentina Bărbăţeanu, "Aspecte particulare referitoare la reiterarea excepţiei de neconstituţionalitate", in *Buletinul Curţii Constituţionale* no.2/2011;
- Mihai Constantinescu, Ion Deleanu, Antonie Iorgovan, Ioan Muraru, Florin Bucur Vasilescu, Ioan Vida, *Constituţia României comentată şi adnotată*, Editura Regia Autonomă „Monitorul Oficial", Bucureşti, 1992;
- Ion Deleanu, *Justiţia constituţională*, Editura Lumina Lex, Bucureşti, 1995;
- Ioan Deleanu, in *Instituţii şi proceduri constituţionale în dreptul român şi în dreptul comparat*, Editura C.H. Beck, Bucureşti, 2006;
- Arthur Dyèvre, „La place des courts constitutionnelles dans la production des normes: l'étude de l'activité normative du Conseil Constitutionnel et de la Court Constitutitonnelle Fédérale (Bundesverfassungsgericht)", in *Annuaire international de justice constitutionnelle*, *2005*, Economica, Presses Universitaires D'Aix/Marseilles, 2006;
- Louis Favoreu, *Les cours constitutionnelles*, collection „Que sais-je?", la 2-eme edition, Press Universitaires de France, Paris, 1992;
- Louis Favoreau, Patrick Gaïa, Richard Ghevontian, Jean-Louis Mestre, Otto Pfersmann, André Roux, Guy Scoffoni, *Droit constitutionnel*, 8e édition, Dalloz, Paris, 2005;
- Tania Groppi, "The relationship between constitutional courts, legislators and judicial power in the European system of judicial review. towards a de-centralysed system as an alternative to judicial activism?", report for the Conference "Judicial activism and restraint theory and practice of constitutional rights", held in Batumi, Georgia, 13-14th of July 2010, organized by the European Commission for Democracy Through Law (Venice Commission) and the Constitutional court of Georgia, published in CDL-JU(2010)012, Strasbourg, available on-line http://www.venice.coe.int/ docs/2010/CDL-JU(2010)012-e.asp?MenuL=RUS;
- Louis Henkin, „John Marshall Globalized" în *Proceedings of the American Philosophical Society*, Philadelphia, Vol.148, nr.1/2004, p.63, disponibil la adresa de internet http://www.amphilsoc.org/ sites/default/files/proceedings/480105.pdf, consultată ultima dată la 15 octombrie 2013;
- Hans Kelsen, *Doctrina pură a dreptului*, Editura Humanitas, Bucureşti, 2000;
- Ján Klučka, „The role of the Constitutional Court with regard to the Legislator", report presented at the workshop „The Role of the Constitutional Court in the State and Society", organized by the Constitutional Court of Ukraine in cooperation with the Venice Commission and The German Foundation for International Legal Cooperation, hold in Kiev, 10-11 May 2001, published in CDL-JU (2001) 32, available at the web address http://www.venice.coe.int/docs/2001/CDL-JU(2001)032-e.pdf;
- Alain A. Levasseur, „Izvoarele dreptului", in *Dreptul Statelor Unite ale Americii*, coordinated by Alain A. Levasseur, Editura Scrisul Românesc, Craiova, 1999;
- Mario G. Losano, *Marile sisteme juridice. Introducere în dreptul european şi extraeuropean*, Editura All Beck, Bucureşti, 2005;
- Ioan Leş, "Controlul constituţionalităţii legilor în America Latină", in Acta Universitatis Lucian Blaga nr.1-2/2003;
- Michel Melchior, Andre Alen şi Frank Meersschaut, General Report on the XIIth Congress of the Constitutional Courts in Europe, Bruxelles, 14-16 mai 2002, The Relations Between the Constitutional Courts and the Other National Courts, Including the Interference In This Area Of the Action of the European Courts, Vanden Broele Publishers, Brugges, 2002;
- Ioan Muraru, Marian Vlădoiu Nasty, Andrei Muraru, Silviu-Gabriel Barbu, *Contencios constituţional*, Editura Hamangiu, Bucureşti, 2009;
- Ioan Muraru, „Există un garant al supremației Constituției române?", in Revista română de drept privat nr.1/2011;

[62] Louis Favoreau was the one who noted the progressive constitutionalization of all branches of law („L'apport du Conseil constitutionnel au droit public", *Pouvoirs* nr.13/1980, p.17).

[63] Arthur Dyèvre, „La place des courts constitutionnelles dans la production des normes: l'étude de l'activité normative du Conseil Constitutionnel et de la Court Constitutitonnelle Fédérale (Bundesverfassungsgericht)", in *Annuaire international de justice constitutionnelle*, *2005*, Economica, Presses Universitaires D'Aix/Marseilles, 2006, p.5.

- Valerio Onida, „Pour le dépassement définitif de la « souveraineté » de la loi", Les Cahiers du Conseil constitutionnel nr. 25/2009, available on-line, on the French Constitutional Council's web site, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/nouveaux-cahiers-du-conseil/cahier-n-25/pour-le-depassement-definitif-de-la-souverainete-de-la-loisup1-sup.51712.html;
- Alessandro Pizzorusso, „Présentation de la Cour constitutionnelle italienne", in *Les Cahiers du Conseil constitutionnel* nr.6/1999;
- Dominique Rousseau, La justice constitutionnelle en Europe, 3e édition, Montchrestien, Paris;
- Marieta Safta, Drept constitutional și instituții politice, Vol.I. Teroria general a dreptului constitutional. Drepturi și libertăți, Editura Hamangiu, București, 2014;
- Alexis de Tocqueville, Despre democraţie în America, vol.1, Editura Humanitas, Bucureşti, 1996;
- Ioan Vida, „Bătălia pentru Curtea Constituțională", in Liber Amicorum Ioan Muraru, Despre constituţie şi constituţionalism, Editura Hamangiu, București, 2006;
- National Report for the XVth Congress of the European Constitutional Courts Conference, presented by Italy, published in Justiția constituțională. Funcţii şi raporturi cu celelalte autorităţi publice – Drept constituţional comparat, Editura Universul Juridic, Bucureşti, 2012.