

## SHORT DIGRESSION IN THE HISTORY REFERRING TO THE CONTROL OF CONSTITUTIONALITY IN ROMANIA

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**Abstract:** This short excursion in the history of the control over the constitutionality of laws in Romania, shows us that, in the period prior to 1912, in Romania, there used to be an incipient and accidental form of control of constitutionality, exercised by the Court of Cassation. Between 1912 and 1923, it was exercised by the judges from all the courts, regardless their degree, while the Constitutions from 1923 and 1938 were stipulating that only the Court of Cassation and Justice, in joint sections, had the competence to judge the constitutionality of laws. The socialist constitutions stipulated the political control over the constitutionality of laws, exercised by the Grand National Assembly, and, in 1991, the Romanian constituent legislator implemented, for the first time in Romania, the institution of the control over the constitutionality of laws, exercised by an independent and specialised jurisdictional body, appointed by the Constitutional Court.

**Keywords:** control of constitutionality, law, court, Constitutional Court, competence.

As regarding the existence and the regulation of the control over the constitutionality of laws in Romania, according to the courts that exercised this form of control and their due competences, and the jurisprudence developed in this area, we can distinguish three stages of evolution.

I. The period anterior to 1912 is characterised by the existence of an incipient and accidental form of control over the constitutionality of laws, exercised by the Court of Cassation, through two decisions, in 1875 and 1886. Nevertheless, it cannot be called a proper control of constitutionality, especially as regarding the first decision, because it was brought forward the problem on addressing the application of laws in time, existing a conflict between a pre-constitutional law and the Constitution from 1866. The Court of Cassation from Romania, section II, through the Decision no. 110/1886, took notice that the court did not have the competence to judge the intrinsic constitutionality of a law, but only the extrinsic constitutionality<sup>1</sup>.

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<sup>1</sup> See, G. Alexianu, *Curs de drept constituțional*, Bucharest, Casa Școalelor Publishing House, 1930, vol. I, pp. 260, 310-311.

In the Romanian doctrine, it is considered that the first case when noticing the unconstitutionality of a law, dates from 1902, when the Court of Cassation refused to apply a law from 1900 that would authorise the former socmen, from the commune of Râmnicu-Vâlcea, to sell their plots of land, which they had received according to the agrarian reform from 1864, on the grounds that the law was contrary to art. 132 from the Constitution that was stipulating the principle of inalienability, for 32 years (starting with 1884), with regard to the property of the former socmen, and their descendants, who had received new plots (in the case of the just married), or the already bought public plots, or those bought from the state<sup>2</sup>, a decision that did not receive the European feedback opinions<sup>3</sup>. Nonetheless, this decision generated discussions within the country, the specialised people of this area, from that period of time, asserting that “the minister who took part to the despotic interpretation of the Constitution” should be held responsible for the countersigning of the unconstitutional law<sup>4</sup>. According to this opinion, the law was still valid, owing to the fact that the judge did not have the freedom to not put an unconstitutional law into operation, being forbidden to abolish a law, or to ignore it through a trial. The arguments that supported this opinion were that “a law cannot be abolished, on grounds of unconstitutionality, [...] as much as a decision taken by a judicial authority cannot be annulled, due to illegality”, and that “each power should be the sovereign one within its sphere of influence”<sup>5</sup>.

II. In the period 1912-1923 Romania faced the control of constitutionality, done by the courts, regardless their degrees. This type of control was yet consecrated once with a judicial precedent, the control of the courts, on addressing the constitutionality of laws, when settling an action at law, from their competence, not being expressly regulated by the Constitution from that period.

Thus, jurisprudence played the part that involved the filling of gaps in the constitutional text, in the famous “tramways business” from 1921, when the solution of the matter on trial was awarded by Ilfov Court – Section II Commercial, through the sentence from the 2<sup>nd</sup> of February 1912<sup>6</sup>. It would later end with the completion, through jurisprudence, of the Constitution from 1866, with the rules on addressing the control over the constitutionality of laws. According to art. 128,

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<sup>2</sup> *Ibidem*, p. 310, nota 169.

<sup>3</sup> G. Cognac, *O Anterioritate română: controlul constituționalității legilor în România de la începutul secolului XX până în 1938*, p. 10, paper presented on the occasion of the Romanian-French constitutional days, 6<sup>th</sup> edition, Bucharest, 2000, available at the address <http://www.ccr.ro/events/2000/ro/Conac.pdf>.

<sup>4</sup> A. Degré, *Scieri juridice*, vol. III – *Materii de drept comercial, drept public, constituțional și administrativ*, Bucharest, Gutenberg Publishing House, 1901, pp. 454, 455, 456.

<sup>5</sup> *Ibidem*, p. 457.

<sup>6</sup> For the entire text of the decision, see Șt. Deaconu, *Apariția controlului de constituționalitate a legilor – experiența americană, situația în România*, in “Analele Universității București”, no. III/2005, pp. 111-122.

within the Constitution from 1866, the courts were competent to control the constitutionality of laws. Hence, in case of contradiction between a law, or a legal provision, and a constitutional disposition, the judge had the obligation to award priority to the constitutional text, which represented the supreme legislative norm, which all the other juridical norms were subordinated to<sup>7</sup>.

In the case pending before Ilfov Court – Section II Commercial, the Company of Tramways from Bucharest requested the ceasing of their interdiction to build the tramway lines and the paying of damages for the caused prejudices. In the motivation of the request, it was mentioned the fact that the Parliament, through the so-called interpretative law from the 18<sup>th</sup> of December 1911 (laws for which it was admitted, exceptionally, the retroactive effect), imposed new statuses for the society, and if the shareholders had not agreed with the new conditions as regarding the constituting of the company, their right of owners of shares would have become a right of litigious damages. The Company of Tramways from Bucharest invoked, before Ilfov Court, the unconstitutionality of the wrong interpretative law, on the ground that it infringed art. 19 from the Constitution, on addressing the property, respectively, the infringement of the power separations in state. The court declared itself competent to control the constitutionality of laws, invoking the following arguments<sup>8</sup>:

- the affirmation of the separation of powers in a state, the delimitation of each power, the distinction between the attributions of the legislative power and the prerogatives of the judicial power;

- the constitutional laws also have the status of laws, therefore, their enforcement in the litigations between the parties, fall in the competence of the judicial power too, along with the application of the ordinary laws. The logical consequence is that, in case of contradiction between the laws, the court can decide which law should be preferred, not being necessary a formal text that would grant the court the competence to sentence the constitutionality of the laws, in the trials from its competence, but, on the contrary, there would be needed a formal text that would impede the exercising of this competence;

- if the law, referred to before the court, were to be contrary to the expressed dispositions of the Constitution, the judge would have to impose his will, though their authority, both in front of the legislator, and the judge;

- art. 108 from the Penal Code (that provisioned the punishment of the magistrates that would have stopped or suspended the enforcement of a law) also stipulated punishments for the judges that would interfere with the attributions of the legislative power, but not for those who, because they had to decide between the application of a constitutional dispositions, and the application of an ordinary

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<sup>7</sup> C. Avram, Gh. Bică, I. Bitoleanu, I. Vlad, R. Radu, E. Paraschiv, *Introducere în istoria dreptului*, Fundația România de Măine Publishing House, Bucharest, 2007, p. 15.

<sup>8</sup> See K. Benke, *Provocări ale controlului de constituționalitate: trecut și viitor*, pp. 2-3, available at the address [http://www.ccr.ro/ccrold/events/conferinta/benke\\_vechi.pdf](http://www.ccr.ro/ccrold/events/conferinta/benke_vechi.pdf).

law, between which there is an obvious contradiction, giving priority, according to the fundamental principles, to the constitutional dispositions, to the detriment of the ordinary law;

– art. 77, from the Law on the judicial organisation, provisioned that the judges, before holding their position, should take an oath that they would observe the Constitution and the laws of the country, from here also resulting the intention of the ordinary legislator that, based on the principle of separation of powers, to formally acknowledge, to the judicial power, the plenitude of the attributions when applying both the Constitution and the laws (regardless their degree) and, consequently, to decide, in case of conflict, between them.

Taking into account the arguments put forward, and analysing the data of the case law, Ilfov Court sentenced that the law adopted by the Parliament in 1911 is falsely interpretative, the ordinary legislator diverting from the mission of the courts, through the emitting of that law, and infringing, the provisions from art. 14 and 36 of the Constitution<sup>9</sup>. Moreover, through the sentence from the 2<sup>nd</sup> of February 1912, the same court also showed that the mentioned law is unconstitutional, due to the fact that it allowed the expropriation of the company from its patrimony, and the shareholders from the property of their actions, besides the cases in which the law was admitting the expropriation and, more than that, without granting the expropriates a just and prior indemnity.

By exercising the means of appeal against Ilfov Court, the Court of Cassation also gave a sentence with regard to some controversial aspects. Thus, through its decision from the 16<sup>th</sup> of March 1912, admirably drawn up<sup>10</sup>, taken with the majority of votes, the Court of Cassation reaffirmed the competence of the courts to control the constitutionality of the laws<sup>11</sup>. Yet, this decision raised some voices amongst the magistrates, juristconsults and authors of specialised literature, from those times. Consequently, Professor George Alexianu criticised the decision of the Court, showing that, if strictly approaching this issue, the Court of Cassation did not have the right to exercise that control, owing to the fact that, in such a manner, the judicial power had an advantage, unlike the other powers. Moreover, Alexianu considered that the Supreme Court sacrificed the text of the ordinary law and the organisation of the state. At the opposite pole, there were C.C. Dissescu and Constantin Stere, who approved the decision sentenced by the Court of Cassation, appreciating that all the legal texts that were contrary to the Constitution, were null.

The consequence of this episode from “the tramways business”, was the fact that the legislative power was later more cautious when emitting laws that regarded

<sup>9</sup> According to these constitutional texts, “Nobody is to be removed, against their will, from the courts designated by the law”, meaning that “The judicial power is exercised by Courts and Tribunals”, see I. Muraru, Gh. Iancu, *Constituțiile române. Texte. Note. Prezentare comparativă*, Bucharest, Regia Autonomă Monitorul Oficial Publishing House, 1995, p. 98.

<sup>10</sup> L. Duguit, *Les transformations du droit public*, Paris, Librairie A. Colin, 1913, p. 101.

<sup>11</sup> See G. Alexianu, *op. cit.*, pp. 315-317.

the observing of the constitutional dispositions. In their turn, the courts made a habit from analysing the constitutionality of laws. Through another decision made by the Court of Cassation, section III, no. 194/1913, sentenced in the trial of the tramways, on the merits, there was reconfirmed the competence of the courts to control the constitutionality of the laws<sup>12</sup>. Later, the Supreme Court, in joint sections, would sentence rather easily on the constitutionality of some dispositions of the Decree-law nr. 1420/1920 on the relations between the landlords and the tenants, and on the 7<sup>th</sup> of September 1922, still in joint sections, on the constitutionality of art. 36 within the Agrarian Law from 1921. Such a position was adopted after the Union from 1918, by the courts from Basarabia and Bucovina too, which included, very fast, in their practise the control of constitutionality<sup>13</sup>.

**III.** In the period of time between 1923-1947, in Romania, there was a control of constitutionality exercised only by the Court of Cassation, in joint sections. This form of control was expressly consecrated by the Constitution from 1923, provisioning that: “Only the Court of Cassation, in joint sections, has the right to sentence the constitutionality of the laws, and to declare inapplicable the ones that are contrary to the Constitution. The sentencing over constitutionality is limited only to the pending trial” (art. 103)<sup>14</sup>. Despite this regulation, there were cases (two decisions sentenced by the Court of Cassation, on the 24<sup>th</sup> of September 1925, and the 10<sup>th</sup> of December 1925) in which the constitutionality of laws was last sentenced, after the trial had passed through all the degrees of jurisdiction, with one exception, that when the claimant accepted that the pending trial to be suspended, for deciding, prior to it, on the question of constitutionality<sup>15</sup>. Therefore, the control of constitutionality, instituted by the Constitution from 1923, was an *a posteriori* control, and a concentrated one, realised through the Court of Cassation in joint sections, which replaced the system of the vague control, provide by the courts, of all the degrees. Under the provision of the Constitution from 1923, just one law was declared unconstitutional, the law of pensions from the 31<sup>st</sup> of January 1924, which was suspending the pensions from the joined territories, until the creation of a new regime of the pensions, because it infringed art. 137 from the Constitution, which was stipulating that “there shall be revised all the registers and the laws that exist in the different parts of the Romanian State, in order to align them to the present Constitution, and to ensure the legislative union. By then, they shall remain in force”<sup>16</sup>.

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<sup>12</sup> *Ibidem*, p. 317.

<sup>13</sup> M. Criste, *Controlul constituționalității legilor în România, aspecte istorice și instituționale*, Bucharest, Lumina Lex Publishing House, 2002, p. 68.

<sup>14</sup> Also see C. Avram, Gh. Bică, I. Bitoleanu, I. Vlad, R. Radu, E. Paraschiv, *op. cit.*, p. 54.

<sup>15</sup> G. Alexianu, *Dreptul constituțional*, Bucharest, Librăria Socec & CO Publishing House, 1929, pp. 238, 239, 241.

<sup>16</sup> Court of Cassation, joint sections, Decision from the 19<sup>th</sup> of November 1925. *Apud* G. Alexianu, *op. cit.*, pp. 238, 239, 241.

Until 1948, the courts were controlling the extrinsic constitutionality of the law, therefore the monopole exercised by the Court of Cassation was visible only as regarding the intrinsic constitutionality of the law<sup>17</sup>.

As concerning the beforehand control on the constitutionality of laws, the Romanian judicial doctrine unanimously admits that it was exercised, in a certain manner, by the Legislative Council, founded on art. 76 of the Constitution from 1923. Although the text from art. 76 of the Constitution did not give expressed competence to the Legislative Council, to exercise the previous control on the constitutionality of the bills of general regulations, some of the specialised authors, and even the Legislative Council, in one of its approvals, admitted that this body had the competence to sentence with regard to the constitutionality of the bills, according to the consultative approvals<sup>18</sup>.

The Constitution from 1938 did not bring any modification relating to the control over the constitutionality of laws. According to art. 75, section 1, from the Constitution, “only the Court of Cassation and Justice, in joined section, has the right to sentence the constitutionality of the laws, and to declare inapplicable the ones that are in disagreement with the Constitution. The sentence on addressing the unconstitutionality of the laws is limited only to the pending trial”. Moreover, as regarding the previous control (*a priori*), a significant part was attributed to the Legislative Council, art. 72 of the Constitution from 1938 stipulating the mandatory consulting of the Legislative Council, for all the bills, both before and after their amending in the Commissions of the Legislative Assemblies, excepting those on the budgetary credits. Nonetheless, the bills could be discussed without the approval of the Legislative Council, if it was not within the period established through its internal law<sup>19</sup>.

**IV.** Between 1958 and 1989, in Romania, there was not a proper control on the constitutionality of laws, but a political control on the constitutionality of laws, exercised by the Grand National Assembly.

According to the Constitution from 1948, the Grand National Assembly (GNA) was declared “the supreme body of the state power” and the only legislative authority of the country; its competences were widely-spread, also including the modification of the Constitution, and the Presidium of GNA had, amongst its attribution, the interpretation of the laws voted by GNA, such is “the exercising of any attribution, granted by the law”<sup>20</sup>.

The Constitution from 1952 consecrated the Grand National Assembly (GNA) as the supreme and unique legislative body of the Romanian Popular Republic, having as attribution, among others, the modification of Constitution and

<sup>17</sup> See D. Valea, *Sistemul de control al constituționalității din România*, Bucharest, Universul Juridic Publishing House, 2010, p. 121.

<sup>18</sup> I. Deleanu, *Justiția constituțională*, Bucharest, Lumina Lex Publishing House, 1995, pp. 144-146.

<sup>19</sup> *Ibidem*, pp. 170-171.

<sup>20</sup> Art. 39 of the Constitution from 1948.

the general control, for its enforcement<sup>21</sup>. It has to be underlined that, in the competence of the GNA Presidium was also falling the interpretation of the laws in force, along with the annulment of the decisions and the dispositions of the government, when they were not under the provisions of the laws. The Presidium of the Grand National Assembly was transformed through Law no 1/1961, into the Council of State, the new supreme body of the state power, with a permanent activity, and also subordinated to the Grand National Assembly.

The Constitution from 1965 indorsed the Grand National Assembly (GNA) with extremely complex attributions, among which there was expressly stipulated the adopting and the modification of the Constitution, along with the exercising of the general control, for the enforcement of the Constitution (the constitutionalisation of laws)<sup>22</sup>.

V. The period following immediately after the Romanian revolution from 1989 brought, among other institutions meant for the defending of democracy, the legality and equality of the citizens before the law, along with the guarantee for the defending of their rights and fundamental freedoms, the control over the constitutionality of laws, and the Constitutional Court<sup>23</sup>.

In October 1990, after the collapse of the communist regime, but before the adopting of a new democratic Constitution, the Plenum of the Supreme Court of Justice, was noticed on addressing the unconstitutionality of a decree from 1950, considering that it has the competence to analyse its constitutionality. The justification of such a competence was mentioned in the principle on the separation of powers in state, provisioned in the Decree-law no. 92/1990, and in the competence of the courts to interpret the laws that they had to apply. Yet, the request was rejected, on procedural grounds, as Plenum of the Supreme Court of Justice considered, such a request could be introduced by the general prosecutor, not by the parties<sup>24</sup>.

The Constitution from 1991 provisioned, for the first time in the constitutional history of Romania, the creation of a Constitutional Court, as an only authority on the constitutional jurisdiction in Romania, having an exclusive character of competence<sup>25</sup>.

The Constitutional Court carries out its activity in the plenum, which is a jurisdiction body and one that ensures the progress of the Court activity. In the exercising of its attributions, the Constitutional Court adopts decisions, judgements and gives approvals.

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<sup>21</sup> C. Avram, Gh. Bică, I. Bitoleanu, I. Vlad, R. Radu, E. Paraschiv, *op. cit.*, p. 76.

<sup>22</sup> *Ibidem*, p. 79.

<sup>23</sup> For details on the attributions of the Constitutional Court and the institution responsible with the control of constitutionality, see Șt. Deaconu, *Necesitatea reformării Curții Constituționale a României prin revizuirea Constituției – o viziune izvorâtă din practica Curții Constituționale în cei 20 de ani de existență*, available at the address [http://www.icj.ro/S\\_Deaconu.pdf](http://www.icj.ro/S_Deaconu.pdf). Also see C. Ionescu, *Regimul politic în România*, Bucharest, All Beck Publishing House, 2002, pp. 249-271.

<sup>24</sup> See M. Criste, *Instituții constituționale contemporane*, Timișoara, De Vest Publishing House, 2010, p. 69.

<sup>25</sup> C. Avram, R. Radu, *Regimuri politice contemporane: Democrațiile*, Craiova, Aius Publishing House, 2007, p. 87.

The specialised literature identified three stages of evolution in the activity of the Constitutional Court of Romania, according to the competences that it was attributed, and the developed jurisprudence<sup>26</sup>:

– the period that followed immediately after the Romanian Revolution from December 1989 (1992-2003), in which the main task of the Constitutional Court was “to adapt concepts and laws, which had existed before the adopting of the Constitution, to the new constitutional realities”<sup>27</sup>;

– the period between 2004-2009, in which the competences of the Constitutional Court were extended after the revision of the Constitution in 2003 – through the Law on the revision of the Romanian Constitution no. 429/2003<sup>28</sup>, in which there is made the transition towards the adhering to the European Union, along with the debut of the global economic crisis;

- the third stage (2010 to the present days) is marked by the relation national law – European law, by the consequences of the economic crisis, along with the consolidation of the role and the attributions of the Court in the system of the Romanian constitutional law.

Between 1992-2003, according to art. 144 of the Constitution from 1991 [at present art.146, after the revision and the republication of the Constitution from 2003], the Court had the competence to exercise the next procedures, for the control of the constitutionality<sup>29</sup>:

– An *a priori* control of constitutionality (also called the noticing of unconstitutionality or objection of unconstitutionality) – it is a previous control, aiming at adopted laws, which have not been promulgated, along with the initiatives for the revision of the Constitution;

– An *a posteriori* control of constitutionality (also called exception of unconstitutionality) – which is a type of control exercised on a norm already in force, on the regulations of the Parliament, or primary regulation normative documents, the exception being suppressed only before the court.

After the revision of the Constitution from 2003, the Court, besides the existent procedures, became competent to exercise:

– an *a priori* control of constitutionality regarding, on one side, the law for the revision of the Constitution, after it had been adopted, but before it was subjected to the approval from referendum<sup>30</sup> and, on the other side, on addressing the international treaties in the procedure of ratification, therefore before the law of ratification.

<sup>26</sup> K. Benke, *op. cit.*, p. 6.

<sup>27</sup> *Ibidem*, p. 7.

<sup>28</sup> Published in the Official Gazette of Romania, Part I, no. 758 from the 29<sup>th</sup> of October 2003.

<sup>29</sup> Șt. Deaconu, *Necesitatea reformării Curții Constituționale a României...*, p. 8; C. Ionescu, *Regimul politic în România*, Bucharest, All Beck Publishing House, 2002, pp. 249-271.

<sup>30</sup> An attribution introduced through *Law no. 232/2004 for the modification and completion of Law no. 47/1992 on the organisation and functioning of the Constitutional Court*, published in the Official Gazette of Romania, Part I, no. 502 from the 3<sup>rd</sup> of June 2004.



–an *a posteriori* control of constitutionality regarding the normative documents for the primary regulation, to the direct notification of the People's Advocate (a *a posteriori* abstract control of constitutionality<sup>31</sup>).

As regarding the *a posteriori* control of constitutionality, as an exception on addressing the normative documents for the primary regulation in the interpretation that was awarded, through decisions sentenced at the second appeal, in the interest of law<sup>32</sup>, it has to be mentioned that the role of the Constitutional Court of Romania, when applying and developing the law, is represented by “an expressed enforcement of the living law”<sup>33</sup>, the Court mentioning that: “The Constitution represents the background and the extent to which the legislator and the other authorities can act; thus, the interpretations that could be given to the juridical norm have to take into account this constitutional request, stipulated in art. 1, section (5) from the Fundamental Law, according to which, in Romania, the observing of the Constitution, and its supremacy, is mandatory. From the perspective of relating to the provisions of the Constitution, the Constitutional Court verifies the constitutionality of the applicable legal texts, in the interpretation consecrated through the appeals in the interest of the law. To admit a contrary judgement, it means to be inconsistent with the existence of the Constitutional Court itself, which would have its constitutional role negated, if accepting that a legal text to be applicable in the limits that might be against the Fundamental Law”<sup>34</sup>.

Nowadays, according to art. 146 from the Constitution, the Constitutional Court has the following attributions:

a) it sentences on the constitutionality of laws, before they have been promulgated, when the President of Romania, one of the presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the People's Advocate, at least 50 deputies or 25 senators intimate, or, ex officio, on the initiatives of revision of the Constitution;

b) it sentences on the constitutionality of the international treaties or covenants, when one of the presidents of the two Chambers, at least 50 deputies and 25 senators intimate;

c) it sentences on the constitutionality on addressing the regulations of the Parliament, when one of the presidents of the two Chambers, a parliamentary group, or at least 50 deputies and 25 senators intimate;

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<sup>31</sup> See, on the subject, *Decision no. 1167 from the 15<sup>th</sup> of September 2011*, published in the Official Gazette of Romania, Part I, no. 808 from the 16<sup>th</sup> of November 2011.

<sup>32</sup> See, for example, *Decision no. 854 from the 23<sup>rd</sup> of June 2011*, published in the Official Gazette of Romania, Part I, no. 672 from the 2<sup>st</sup> of September 2011 and the *Decision no. 515 from the 15<sup>th</sup> of May 2012*, published in the Official Gazette of Romania, Part I, no. 421 from the 25<sup>th</sup> of June 2012.

<sup>33</sup> See K. Benke, *op. cit.*, p. 12.

<sup>34</sup> *Decision no. 515 from the 15<sup>th</sup> of May 2012*, published in the Official Gazette of Romania, Part I, no. 421 from the 25<sup>th</sup> of June 2012.

d) it decides on the exceptions of unconstitutionality, on addressing the laws and ordinances, brought before the courts or the commercial arbitration court; the exception of unconstitutionality can be directly lifted by the People's Advocate;

e) gives the solution of the constitutional juridical conflicts between the public authorities, at the request made by the President of Romania, one of the presidents of the two Chambers, the Prime-Minister, or the President of the Superior Council of Magistracy;

f) supervises the observing of the procedure for the election of the President of Romania and confirms the results of the suffrage;

g) notices the existence of the circumstances that justify the interim, in exercising the function of President of Romania, and communicates the reports to the Parliament and the Government;

h) gives the advisory intimation for the proposal of suspension from the position of the President of Romania;

i) supervises the observing of the procedure for the organisation and the carrying out of the referendum, and confirms the results;

j) verifies the meeting of the conditions for exercising the legislative initiative, by the citizens;

k) decides on the contestations that have as subject the constitutionality of a political party;

l) fulfils other attributions too, which are stipulated in the organic law of the Court.

Unlike the control of the legality of the acts of enforcement, which can be a hierarchic control, or a judicial control that can be done by means of different forms and manners, at the disposal of the parties involved in the specific juridical relation, the control of legality, as regarding the normative acts, presents a system of specific guarantees. As a form of this last type of control, the one exercised by the Constitutional Court "is manifested as a prolonging of the will and the meaning asserted by the legislator, evidenced as viable until the moment the legislator interferes"<sup>35</sup>.

Being "the guarantee for the supremacy of the Constitution"<sup>36</sup>, the Constitutional Court "has to remain a special and specialised institution, independent from any other institution of the state"<sup>37</sup>, situated outside any other institutions and authorities of the state, including outside the judicial system, as a "guarantee for the existence of the separation of powers in state, but nevertheless as an extra guarantee of legality and the stat of law"<sup>38</sup>.

<sup>35</sup> M. van Kerkhove, Fr. Ost, *Le système juridique entre ordre et désordre*, Paris, PUF, 1988, p. 232.

<sup>36</sup> Art. 1 section 1 from the *Law no. 47/1992 on the organisation and functioning of the Constitutional Court*, republished in the Official Gazette of Romania, Part I, no. 807 from the 3<sup>rd</sup> of December 2010, in accordance with the dispositions of art. V from the *Law no. 177/2010 on the modification and completion of Law no. 47/1992 on the organisation and functioning of the Constitutional Court*, the Civil Procedure Code and the Penal Procedure Code of Romania published in the Official Gazette of Romania, Part I, no. 672 from the 4<sup>th</sup> of October 2010, giving another numbering to the texts.

<sup>37</sup> Șt. Deaconu, *Necesitatea reformării Curții Constituționale a României ...*, p. 4.

<sup>38</sup> *Ibidem*.