

THE CONSTITUTIONAL COURT – AN INNOVATION IN THE ROMANIAN CONSTITUTIONAL SYSTEM

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ABSTRACT: *The control of constitutionality has an extremely important role in the functioning of the state of law. The premise for the birth of the control of constitutionality and the outlining of a control of constitutionality system is the necessity to guarantee ‘the supremacy of the law’, or ‘the supremacy of the Constitution’. In the constitutional systems in which the judge’s role of ‘constitutional judge’ was not recognized or assumed, the control of constitutionality was entrusted to a specialized body, deliberately created for this purpose (usually named constitutional court, tribunal or council). Austria and the Czech Republic were the first states to adopt a control of constitutionality system in the center of which lies this kind of a specialized body, initiative followed by an increased proliferation of these jurisdictional constitutional authorities, including in Romania.*

This paper represents a review of the Romanian Constitutional Court’s creation, considering both the procedural aspects and the reasons for which the Constituent Assembly has opted for a brand new institution in the Romanian constitutional system.

KEYWORDS: *control of constitutionality, the Constitutional Court, draft Constitution, political and jurisdictional control.*

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In Romania, a system of the control of constitutionality that would replace the political control can be mentioned beginning with 1912¹, but its ultimate recognition coincides with the coming into force of the 1923 Constitution, that explicitly established this kind of control. After a period of time marked by the lack of the control of constitutionality, as well as by the absence of all the mechanisms of a democratic state of law (the communist period), beginning with the 1991 Romanian Constitution, this constitutional guarantee has been reintroduced into the Romanian constitutional system.

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¹ See the Decision no. 261 from March 16th 1912 of the High Court of Cassation and Justice, section I, given when solving the process started by the Tram Society in Bucharest, which established the *right of the judiciary courts to rule upon the constitutionality of the laws*, decision that had the same impact and the same role for the system of control of constitutionality in Romania as the ones had by the Decision of the Supreme Court of the United States of America in the case *Marbury v. Madison*. The decision of the Supreme Court had an echo not only nationally, but also in the foreign doctrine of the era, respectively the French one. The decision of the Romanian Supreme Court was published with a commentary of authors M.M. Jèze și J. Barthélemy, in „Revue du droit public”, 1912, p. 365 – see Léon Duguit, *Manuel de droit constitutionnel*, Edition Panthéon-Assas, Paris, 2007, the reediting of the 1923 edition, p. 306.

One of these guarantees – the control of constitutionality for the laws (and the Government's ordinances) – was reintroduced. But the constituent legislator has chosen to give up the traditional (the jurisdictional control – performed by the supreme court²) and to opt for a different reading – the political and jurisdictional control, entrusted to a special and specialized body; in other words, an option towards the 'European model' of the control of constitutionality³. Respectively, a system of the control of constitutionality centered on a Constitutional Court – a specialized one, deliberately created for this purpose, on the outside of the judiciary authority – has been established. According to the present legal regulations, the Constitutional Court of Romania is the only⁴ body competent to perform the control of constitutionality in Romania.

As a result of some long and animated discussions and debates, held in the process of the elaboration and passing of the 1991 Constitution, the Constitutional Court of Romania appears as a 'strong public authority for the control of laws' constitutionality⁵ and not only.

Which were the reasons for which the Constituent Assembly opted for a brand new institution in the Romanian constitutional system?

The events in December 1989 ended the communist dictatorship in Romania and allowed the reestablishment of democracy. The started transformations received the legislative recognition throughout the elaboration and passing of the new Constitution of Romania in 1991⁶, by the Constituent Assembly of Romania. Obviously, in this period, negative reactions towards the totalitarian regime and 'a suspicion towards any form of excessive power... and abusive exercise of the power'⁷ manifested. In these circumstances, the new Constitution of Romania contains the principles, mechanisms and guarantees of a democratic state of law, including the control of constitutionality.

² Although in this period (1991), The Supreme Court of Romania was requested four times to rule on the constitutionality of a legal instrument – Decree no. 92/1950 – which it did by four decisions, not only considered itself competent to decide upon the constitutionality of the legal provisions, but it outlined a series of procedural rules regarding the performing of this control – for details see Mircea Criste, *The control of constitutionality of the laws in Romania – historical and institutional aspects*, Lumina Lex, Bucharest, 2002, pp. 69-76.

³ See Nicolae Popa, *The Constitutional Court and the state of law*, in 'The Revue of Public Law', nr. 2/2001, p. 7.

⁴ A point of view that can be contradicted by the fact that the Constitutional Court and the judiciary courts recognize the right to establish that the laws prior to the 1991 Romanian Constitution contravene to the latter. Not only had the constitutional court considered competent to rule on the conformity with the Constitution of laws prior to it, on the basis of art.150 of 1991 Constitution (at present art. 154, para.1 that filters the reception of provisions prior to the Constitution from the perspective of the new rule of law order), but it also established that common law courts "have not only the right but also the obligation to determine whether the text of law that is to be enforced is or it is no longer in force. This involves the fact that it has to rule, if required, on the circumstances providing that the respective text was or was not abrogated, explicitly or implicitly. However, if, as indicated in the case study, the exception of unconstitutionality has been raised and the common law court has not ruled on that, it waives its competencies on this matter, the exception following to be sent to the Constitutional Court." – See in this respect the Decision of the Constitutional Court of Romania no. 31 from 26 May 1993 published in the Official Gazette no.13/ 19 January 1994, established as final on the basis of the decision no. 67/17 Nov.1993, published in the Official Gazette no.13/ 19 January 1994.

⁵ See Ioan Vida, *The Battle for the Constitutional Court*, in Ioan Muraru, *Liber Amicorum. On the Constitution and Constitutionalism*, Hamangiu, Bucharest, 2008, p. 12.

⁶ Published in the Official Gazette no. 233 from November 21st 1991 and passed by referendum on the 8th December 1991.

⁷ See Mihai Constantinescu, *The equilibrium of the powers in the constitutional regime from Romania*, in *'Dreptul' Revue*, nr. 3/1993, p. 8.

1. THE ESTABLISHMENT OF THE INSTITUTIONAL FRAME NEEDED FOR THE PASSING OF A NEW CONSTITUTION

The Parliament of Romania, elected on base of the Decree-law no. 92 from March 14th 1990⁸, worked both as a representative body (ordinary legislative assembly), as well as the Constituent Assembly, that was entrusted with the task of elaborating the new Constitution of Romania⁹.

In order to achieve the entrusted task, the Constituent Assembly started the procedure of elaboration and passing of a new Constitution. The first step was made when the Commission for the drawing up of the draft Constitution – formed of 12 deputies, 11 senators and 5 independent specialists, who had no right to vote deliberatively (also named experts) – was created. As asserted in the doctrine as well, this Commission's legal status was the one of a '*special parliamentary commission, subordinated only to the Constituent Assembly*'¹⁰, respectively a (working) technical organism of the Constituent Assembly¹¹.

The Commission for the drawing up of the draft Constitution, after a short organizational activity (the designation of the coordinating bureau, formed of the Commission's president, vice-presidents and secretaries), elaborated a document entitled 'Thesis for the elaboration of the draft Constitution of Romania', containing the principles and the structure on chapters of the future draft Constitution¹². Afterwards, the document was submitted to the Constituent Assembly's debate and passing. Based on the expressed vote, the Commission was entrusted with the drawing up of the *draft Constitution of Romania*. This was made public on the 2nd of July 1991, and between the 8th-20th of July 1991 at the drawing up Commission were presented 1019 amendments, on which the Commission presented a report on the 29th of July 1991.

The draft Constitution was submitted to the debates of the Constituent Assembly, was passed on the 21st of November 1991 and published in the Official Journal of Romania no. 233 from November 21st 1991. The text of the fundamental law was submitted to the approval of the electoral body as part of the national referendum organized on the 8th of December 1991, moment from which it came into force.

2. THE REGULATION OF THE CONSTITUTIONAL COUNCIL ACCORDING TO THE 'THESIS FOR THE ELABORATION OF THE DRAFT CONSTITUTION OF ROMANIA' FROM 1991

In a first variant of the documents drawn up by the Commission, the constitutional jurisdictional authority was assigned Title 4 of the *Thesis*, entitled 'The Constitutional Council'.

⁸ Published in the Official Gazette no. 35 from March 18th 1990.

⁹ The Constituent Assembly had to carry out its honorable task in 9 months, but not later than 18 months, and in the case in which the 18 month term was exceeded, it would dissolve *de jure* and new elections would have to be organized.

¹⁰ See Ioan Muraru, Mihai Constantinescu, '*The Constitutional Court of Romania*', Albatros, Bucharest, 1997, p. 28.

¹¹ See Antonie Iorgovan, *op.cit.*, p. 33.

¹² One of the important voices of this document considered it to be a preliminary draft, which contained a synthesis of the great political options regarding the state organization, the sphere of fundamental rights and freedoms – see Antonie Iorgovan, *op.cit.*, p. 14.

The creation of this kind of a body was considered an innovation in our constitutional system, and the main argument in favor of its establishment referred to the guarantees of the constitutional system that can be found in almost every modern state beginning with World War II¹³.

Therefore, in the contents of the *Thesis*, the Constitutional Council appears regulated in Title IV, with provisions concerning: its composition and organization, its members and its attributions.

Based on these provisions, the Constitutional Council was to be composed of 9 designated members (3 by the Deputies' Assembly, 3 by the Senate and 3 by the President of the Republic), for a 9 year mandate which could not be renewed. The members of the Council were to elect a president for a 3 year mandate, who could decide in case of parity of votes (decisive vote). The conditions required for a person to hold such a quality (high legal training, at least 15 years of legal service or of high legal education), as well as the incompatibilities (the position of member of Parliament, minister, magistrate, public servant, member of a political party or of the management of a trade-union organization, or any other incompatibilities, that were to be established through a future organic law of organization and functioning) and, most important, the independence and the immovability of the constitutional judges all through their mandates were stipulated.

Regarding the aspect of the Constitutional Council's competence, three essential matters were taken into consideration, outlining its main attributions:

1. Performing the control of constitutionality, in various ways: the control *a posteriori on laws and on the Government's ordinances (ex officio or on notice)*; the control *a priori on the organic laws (ex officio and compulsory)*; the control *on the parliamentary regulations (ex officio and compulsory)* and the control *of a political party's constitutionality*.

2. Carrying out the *electoral proceedings, consisting of: the supervising of the respecting of the election procedure for the President of Romania and the confirmation of the voting's results; the confirmation of the existing circumstances, which justify the interim in exercising the function of President of Romania; the supervising of the respecting of the procedure for the organization and development of the referendum and the confirmation of its results; the deciding, if contested, upon the election of the deputies and senators.*

3. Solving *the conflicts of competence between the central authorities or between these authorities and the local ones.*

Based on the way in which the Constitutional Council's regulation was proposed through the *Thesis*, it results that the main model taken into consideration was the French Constitutional Council, a resemblance that will also be maintained in the final variant of the Constitution, passed by the Constituent Assembly and that will only be attenuated – to a certain extent – by the transformations of Title IV, generated by the debates that followed.

The debates regarding Title IV from the *Thesis*, turned Title V in the *Draft Constitution*, were extremely animated, 19 amendments being deposited by the parliamentary groups, deputies and senators.

¹³ See the Address of Mr. Antonie Iorgovan, in Antonie Iorgovan, *op.cit.*, p. 93.

By analyzing the amendments and the debates that took place, a number of positions regarding the Constitutional Council, renamed *Constitutional Court*¹⁴, can be pointed out:

1. The rejection of this institution, as its introduction in the state's system was considered to be a forced one; a number of arguments were presented: the possibility of becoming a '*forth authority in the state or... a superpower, both because of its composition, as well as because of its attributions, compulsory and definitive decisions*'¹⁵; it is an '*alien body, inadequate to the Constitution that Romania needs today... a body that, practically, is not submitted to any control. ... an extra-parliamentary body ... and having in view the attribution of deciding upon the constitutionality of the laws, after their promulgation, is a body situated above the parliament*'¹⁶;

2. The acceptance of the Constitutional Court as a specialized constitutional jurisdiction body, but with its inclusion within the framework of the judiciary instances, as a '*special body of the judiciary authority*'¹⁷, or as a distinctive department¹⁸;

3. The acceptance of the Constitutional Court as a distinctive body of control of constitutionality, a number of modifying proposals being made, especially regarding its composition (the replacement of the term 'members' with the term 'judges'; the elimination of the right to name some of the judges held by the President of the Republic or the stipulation of the Supreme instance's right to propose some of the members of the Constitutional Court) and its attributions.

3. THE REGULATION OF THE CONSTITUTIONAL COURT OF ROMANIA ACCORDING TO THE DRAFT CONSTITUTION FROM 1991

The option of the Commission for the drawing up of the draft Constitution to establish such a public authority was backed up and motivated, the following arguments being, mainly, considered¹⁹:

¹⁴ Proposal made by Mr. Mircea Ionescu-Quintus – deputy – which was voted in the Constituent Assembly in the meeting on May 15th 1991, with a total of 300 votes – see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', R.A. Official Gazette, Bucharest, 1998, p. 874.

¹⁵ Proposal made by Mr. Gheorghe Frunda – senator – see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 856, respectively by Mr. Vasile Rădulescu – deputy – see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 858; Mr. Mihai Ruva – senator, see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 860; Mr. Mihai Carp – deputy, see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 864. Other expressed points of view regarding the Constitutional Court: the existence of too big interferences between the Legislative Council and the Constitutional Council (see the Allocution of Mr. Dan Marțian, in Antonie Iorgovan, *op.cit.*, p. 81); '*The Parliament has to be the one that has the last word – That's the body that expresses the desiderate of the people in law-creating matters, not the Constitutional Council*' (see the Allocution of Mr. A. Echim, in Antonie Iorgovan, *op.cit.*, p. 100).

¹⁶ See the Speech of Mr. Mihai Carp – deputy, in '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', pp. 864 - 865.

¹⁷ Proposal made by Mr. Hosszú Zoltán – see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 857. Also, the proposal of Mr. Vasile Diacon – deputy - see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 868, or the proposal of Mr. Petre Ninosu, '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 971.

¹⁸ Proposal made by Mr. Dumitru Teaci – deputy – see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 961.

¹⁹ See the Speech of Mr. Ion Deleanu, in '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', pp. 854 – 855.

- the control of constitutionality of the laws and of other subordinate legal instruments is a necessity for a democratic state of law;

- the possibility of performing a preventive control is born;

- the adequate line of action is for this control to be performed by a unique, distinctive and specialized body, all the other known methods being inefficient, out-of-date and open to criticism;

- the system of control of constitutionality entrusted to a distinctive and specialized body has a series of advantages: it assures the homogeneity of the jurisprudence; the *erga omnes* effects of the decisions of confirmation or invalidation of the constitutionality; the reduction of the judiciary insecurity; the professionalism and the neutrality of this body's members;

- the possibility of this body being entrusted with attributions that exceed the jurisdictional sphere;

- under the influence of the contacts with foreign specialists, it was considered that the choice of a European model of control of constitutionality is a realistic and contemporary act, connected to the reality from the majority of the constitutional systems, especially the European ones. In the European space, the control of constitutionality has known a strong development during the 20th century, with three important periods being taken into consideration: the starting period (the establishment of the first Constitutional Court, under the influence of Hans Kelsen), the period following the World War II, when the Constitutional Courts expanded and the third period, beginning with the 1970s, during which the jurisdictional control extended towards new fields²⁰;

- the adoption of the system of control of constitutionality centered on a distinctive and specialized body in the majority of the European countries, including many of the ex-communist countries should be enough to eliminate any restraint concerning the existence of such an organism²¹. *'The Constitutional Council, formed of a specialized body of judges, without political affiliation and independent in relation to the three state authorities, having as an object of activity the justice of the Constitution... represents a viable solution for the defending of the Constitution... means to fully and distinctively guarantee the prestige and the respecting of the Constitution, of the people's rights and freedoms... the proposed institution conserves the separation and the equilibrium of the powers within the state, circumscribing the law creative activity of the legislative body inside the limits of the Constitution, eliminating the voluntarism and the legislative subjectivism'*²²;

- this kind of institution is not even expensive, due to the 9 members who compose it²³.

Not entrusting the performing of the control of constitutionality to the judiciary courts was also motivated during the debates:

²⁰ See Mauro Cappelletti, *General report*, in Louis Favoreu, J.A. Jolowicz, *Le contrôle juridictionnel des lois*, Editura Economica, Paris, 1986, p. 229 (trad. n.).

²¹ See the Address of Mr. Vasile Gionea - deputy, see *'The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly'*, p. 858.

²² See the Address of Mr. Marian Enache - deputy, *'The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly'*, pp. 861-862.

²³ See the Report of the Commission on the amendments presented by the parliamentary groups, deputies and senators in response to the draft Constitution, in *'The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly'*, p. 878.

- the temptation or the judges' obligation to sometimes appreciate the law from a political point of view, and not from a legal perspective;
- the judiciary courts would become a part of the legislative authority or even a real governing power;
- the impartial judiciary court could become a discretionary one;
- a judiciary decision, once irrevocable, cannot be withdrawn even if it would be wrong²⁴;
- the performing of the control of constitutionality by the judiciary court would mean an infringement of the principle of separation of powers within the state²⁵.

In the final variant of the draft Constitution, in comparison with the text proposed by the *Thesis*, the regulation of the Constitutional Court presents some changes: the change of name, from the Constitutional Council to the Constitutional Court, considered to be a compromise obtained by the supporters of the American model²⁶; the replacement of the term 'member' of the Constitutional Court with the term 'judge'²⁷; the renunciation to the decisive vote of the Constitutional Court's president, in case of parity of the judges' votes and the election of the president of the Court by secret vote; the increasing of the minimum point of the condition from 15 to 18 years in service; the limits of the incompatibilities with being a judge at the Constitutional Court were settled in the text of the Constitution, the possibility of establishing new ones by the organic law of the Court no longer existed; the control of constitutionality a priori aims at every law (not only the organic ones, but with the obvious exception of the constitutional laws) and is performed only by notice, not ex officio; the control of constitutionality of the Parliament's regulations is also performed by notice; the competence of the Constitutional Court was extended by adding three new attributions: to decide upon the exceptions of unconstitutionality raised before the judiciary courts, regarding the unconstitutionality of the laws and of the ordinances; to pronounce, throughout a consultative note, upon the proposal to suspend from service the President of Romania; to check the carrying out of the conditions required for the citizen's practice of the legislative initiative.

On the other hand, due to the strong opposition that was manifested during the activities of the Constituent Assembly, both the attribution to decide, if contested, upon the election of the senators and of the deputies, as well as the attribution to solve the conflicts of competence between the central authorities, or between the central authorities and the local ones were abandoned. Similarly it was removed the text at letter j from Title IV of the *Thesis*, according to which the Council (Court) may fulfill '*any other attributions stipulated by the Constitution or by organic laws*', and the value and the effects of its decisions are differently regulated, in a separate article. In the situation in which the control of constitutionality is performed a priori, as well as regarding the regulations of the Parliament, the decision of the Court is no longer compulsory and definitive, the Parliament being able

²⁴ See the Speech of Mr. Ion Deleanu, in '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 854.

²⁵ See the Address of Mr. Vasile Gionea - deputy, see '*The Genesis of the 1991 Constitution of Romania. The Works of the Constituent Assembly*', p. 858.

²⁶ See Antonie Iorgovan, *op.cit.*, p. 309. It was affirmed that the modification was made in order to emphasize the jurisdictional character, in comparison with the political one - see Carmen Nora Lazăr, '*The theory and the practice of the control of constitutionality*', Casa Cărții de Știință, Cluj-Napoca, 2003, p. 133.

²⁷ Proposal made by Mr. Gheorghe Frunda, in Antonie Iorgovan, *op.cit.*, p. 660.

to repeal it if, as a result of a reexamination, the law passes in the same form, but with a majority of at least two thirds of the members of each Chamber, case in which its promulgation becomes compulsory²⁸. Article 145 (2) stipulates that the decisions of the Constitutional Court are compulsory and have effects only for the future, being published in the Official Gazette of Romania.

It is to be observed that, in 2003, by revising the Constitution of Romania²⁹, together with other changes, somehow, two of the proposals from the *Thesis* were reaffirmed: the competence of the Constitutional Court to solve legal conflicts of a constitutional nature (letter e of article 146 from the revised Constitution of Romania) and the fact that it can also fulfill other attributions stipulated by the organic law of the Court (letter I of article 146 from the revised Constitution).

According to article 152 from the 1991 Constitution of Romania, the Constitutional Court had to constitute itself in 6 months from the coming into force of this Constitution. Later on, the Parliament of Romania passed Law no. 47 from May 18th 1992 regarding the organization and the functioning of the Constitutional Court³⁰. This law was modified by Law no. 138 from July 24th 1997³¹, especially regarding some procedural provisions; Law no. 124 from 2000 regarding the structure of the Court's personnel³² and by Law no. 232 from 2004 for the modifying and completion of Law no. 47 from 1992³³, on the basis of which it was also republished³⁴.

The Constitutional Court of Romania effectively began its activity halfway through 1992, the first decisions being ruled on the 30th of June 1992.

4. CONCLUSIONS

The control of constitutionality of the laws represents one of the highly discussed, analyzed and, inherently, controversial subject of the constitutional regime's matter and, in a larger context, of the fundamental legal instrument's supremacy.

In Romania as well, a long and often sinuous way was followed before outlining and implementing a system of a jurisdictional control of constitutionality.

Considered to be an innovation in our constitutional system, the idea of establishing a Constitutional Court in Romania came up against many passionate criticisms. As a result of some long and animated discussions and debates, that were held in the process of the creation and passing of the 1991 Constitution, The Constitutional Court of Romania finally appears as a '*strong public authority for the control of laws' constitutionality*³⁵, the only public institution that is explicitly entrusted with the control of constitutionality.

²⁸ To be observed that, although at the beginning of art. 145 (a) from the unrevised Constitution it was stipulated that both the law and the regulation considered unconstitutional by the Court had been sent to the Parliament for a reexamination, the second part of the paragraph only mentioned the effects of the reexamination towards the law! For identity of reason, we can also consider the same principle as applicable to the Parliament's regulations.

²⁹ Throughout the revising law no. 429 from September 18th 2003, Published in the Official Gazette no. 669 from September 22nd 2003, submitted to approval in a national referendum.

³⁰ Published in the Official Gazette no. 101 from May 22nd 1992.

³¹ Published in the Official Gazette no. 170 from July 25th 1997, republished in the Official Journal no. 187 from August 7th 1997.

³² Published in the Official Gazette no. 331 from July 17th 2000.

³³ Published in the Official Gazette no. 502 from June 3rd 2004.

³⁴ The republishing was made in the Official Gazette no. 643 from July 16th 2004.

³⁵ See Ioan Vida, '*The Battle for the Constitutional Court*', in Ioan Muraru, *op.cit.*, p. 12.

We consider that this fact is, essentially, the result of the Constitutional Court's activity.

The Constitutional Court of Romania represents the coming into substance, on an institutional level, of a condition and simultaneously an inherent desideratum of the state of law – *the supremacy of the Constitution*.

In Romania, we have opted for a hybrid system of control of constitutionality, in the conditions in which the Constitutional Court performs both an *a priori* control (preceding or preventive) and an *a posteriori* control (subsequent or repressive). The choice of the Romanian legislator to combine the two forms of control can be considered salutary, in the context in which the system would allow the exploitation of their advantages and the elimination of their disadvantages.

The control of constitutionality, including by raising an exception of unconstitutionality, is a way of guaranteeing the supremacy of the Constitution. And, in order not to remain a simply attractive formula, it has to constitute as a true instrument of protection of the people's rights and freedoms and as a way of achieving the desiderata and the principles of the state of law³⁶.

In over 15 years of activity, the Constitutional Court has proved to be a more than satisfying option. Throughout its activity, it has confirmed the entrusted role – as the only constitutional jurisdictional authority in Romania, managing to successfully carry out the task of supervising and guaranteeing the supremacy of the Constitution, but it has also proved to be (when it had the opportunity) an instrument that guarantees the equilibrium between the public authorities, by penalizing the attempts to go beyond 'the letter and the spirit' of the Constitution. Throughout its jurisprudence, the Constitutional Court not only carries out its role as a guarantor of the Constitution's supremacy, but also contributes to the understanding and to the respecting of the fundamental principles of law and of the state of law.

³⁶ The control of constitutionality of the laws is considered to be a 'technical instrument of ensuring the viability of some widely-known legal principles which, in their turn, are nothing else than ways used on a large scale for the reaching of the supreme finality of each state organization: ensuring the 'happiness of the citizens' throughout the whole activity of the public authorities' – see Elena Simina Tănăsescu, 'The procedure before the Constitutional Court', commentary on jurisprudence in the 'Curierul judiciar' Revue, no. 7-8/2005, pp. 9-10.