

THE CONTROL OF CONSTITUTIONALITY BETWEEN NATIONAL LEGISLATION AND THE PROCEDURE IN FRONT OF THE EUROPEAN COURT OF JUSTICE

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ABSTRACT: *La Constitution représente la loi fondamentale de l'état Roumain, loi qui porte sur les principes générales d'organisation de l'état, les droits, les libertés et les obligations fondamentaux des citoyens et des autorités et les rapports développés entre les principales organismes de l'état, et entre celles-ci et les citoyens.*

L'article 142, alin.1 de la Constitution de la Roumanie, révisé en 2003, statue que: «La Cour Constitutionnelle est le garant de la suprématie de la Constitution». Aucune autre autorité publique ne peut se prononcer, avec valeur de décision obligatoire ou exécutoire, en ce qui concerne la constitutionnalité des lois (se prononce sur la constitutionnalité des lois, avant leur promulgation; sur la constitutionnalité des traités ou des autres accords internationaux; sur la constitutionnalité des règlements du Parlement; sur les exceptions de inconstitutionnalité concernant les lois et les ordonnances, invoqués devant les tribunaux ou les instances d'arbitrage commercial). La Cour Européenne de Justice est indépendante par-dessus toutes les autres autorités publiques.

Une fois avec l'adhésion de la Roumanie à l'Union Européenne, les aspects d'ordre juridictionnel ont changé dans le contexte de la nécessité des états membres de respecter les traités internationaux, de même que les actes juridiques émises par les autorités compétentes, qui on trouve un équivalent dans la législation nationale, aussi que les juridictions européennes (la Cour Européenne des Droits de l'Homme et la Cour de Justice de l'Union Européenne).

À cet égard, la Cour de Justice rapporté à la législation des tribunaux nationaux, accomplit quatre rôles essentielles: un rôle d'organe administrative quand on contrôle la légalité des actes communautaires et juge les recours des fonctionnaires communautaires; autorité juridictionnelle constitutionnelle, quand on interprète les traités communautaires ou juge les recours contre un état membre qui ne respecte pas les obligations qui découlent d'un traité; comme une instance civile, quand on juge les litiges qui ont comme objet l'octroi de dommages intérêts et comme instance d'Appel, tenant compte que les recours

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introduites contre les décisions prononcées par le Tribunal de Première Instance sont résolues par la Cour Européenne de Justice.

Envisageant les aspects exposés au-dessus, il s'impose la primauté du droit communautaire contre le droit national ainsi que les Cours Constitutionnelles des états doivent interpréter et solutionner les problèmes de constitutionnalité tenant en compte le plus haut niveau de juridiction, celle requise par la Cour Européenne de Justice, en vue de créer un ordre de droit à partir de la zone vaste d'applicabilité du droit communautaire égalisée en concret dans le droit national.

KEYWORDS: *Constitution, Constitutional Court, European Court of Justice, rule of law, Lisbon Treaty*

JEL CLASSIFICATION: *K 10*

The concept of the "Constitution" is understood in two ways, in the *material sense*, meaning that the Constitution contains all the rules of law regardless of the nature of their shape and having as their object the establishment, jurisdiction, functioning and relations between the principal organs of State and between them and citizens; and in a *formal sense*, the Constitution represents the totality of rules of law regardless of their subject, drawn up in writing and systematically by a particular state body set up for this purpose and following a specific procedure (Gionea & Pavel, 1998, p. 16-17).

The concept of the constitution is not analyzed only in terms of legal analysis but also sociological, so this represents a social pact intervened between the governed and that afterwards the latter one is guaranteed a sum of rights, in exchange for acceptance by it of power and domination which are subjected to afterwards, without however as it become tyrannical (Ionescu, 2004, p. 111).

The removal of communist state power through the Revolution of December 1989 has created prerequisites for drawing up a new Constitution to establish democratic order and the rule of law, representing the most important political and legal document which sets out the rights and duties of citizens in their relations with the State, as well as the functions, powers and responsibilities of and relations between the powers and the public. In other words, the Constitution is the foundation of a state of law, a democratic state.

A "European Constitution"

With the accession of Romania to the European Union, judicial aspects have changed in the context of the need to respect member States of international treaties.

On 29 October 2004, was signed the "Treaty establishing a Constitution for Europe" by the 25 member States and two countries with candidate status for accession to the European Union, Bulgaria and Romania. (Sauron, 2008, pp 19-21)

The Treaty establishing a Constitution for Europe (TCE), commonly referred to as the European Constitution, is an international treaty that aims at the creation of a Constitution for the European Union. Currently, special importance is the entry into force of the Lisbon Treaty, considered by many authors, a text with legal value equivalent to a Constitution. The European Constitution is an important step in European construction. The European Constitution must create the framework for democracy, freedom and transparency, for the effective Europe. European Constitution in national constitutions and coexist with the institutions of European countries, and in no way replaces them.

The Constitution ensures the continuity of the Community legal instruments, simplifying and adapting to the challenges of the current decision-making process.

The Constitutional Treaty is characterized by multiple legal nature. Thus, it is an international treaty-subject to the rules of public international law; a source of Community law; a constitutional text-document that forms the basis of an autonomous legal order, the community legal order (Gâlea, et al., 2005, pp. 8-10).

In this context, the idea of the rule of law is closely connected to the role of the judiciary, the promotion of legality in the work of State bodies for the defence of rights and freedoms (Călinoiu & Duculescu, 2008, p. 197). And thus, it is necessary to create a european model of constitutional justice.

1. ASPECTS OF ROMANIA'S CONSTITUTIONAL COURT AND THE EUROPEAN COURT OF JUSTICE

With regard to ensuring the rule of the fundamental law, constitutional jurisdiction, performed by a particular organ is the intrinsic size and specialized and essential to the state of law.

Article 142 (1) of the revised¹ Constitution of Romania in 2003 proclaims: "the Constitutional Court is the guarantor of the supremacy of the Constitution."

The Constitutional Court is the sole authority of constitutional judicature in Romania, which signifies the exclusive nature of its competence. No other public authority can pronounce the mandatory or enforceable decision, regarding the constitutionality of laws. The Constitutional Court is independent of any other public authority, and in accordance with the Constitution of Romania, it has the role of guarantor of the supremacy of the Constitution.

In the basic law, the Constitutional Court is regulated in the six articles of Title V of the Constitution (art. 142-147). These articles relate to: name, jurisdiction, mandate, and modalities of nomination of judges and of the President, the conditions for the function of judge, incompatibilities, independence and immovability, competence, decisions.

The powers of the Court are as follows:

- a) to pronounce on the constitutionality of laws, before promulgation;
- b) to pronounce on the constitutionality of treaties or other international agreements;
- c) to pronounce on the constitutionality of the Regulations of the Parliament;
- d) decides on the exceptions of unconstitutionality regarding laws and ordinances, erected in front of the courts or of commercial arbitration;
- e) legal nature, adjudicates the constitutional conflicts between public authorities;
- f) ensure compliance with procedure for the election of the President of Romania and confirms the results of suffrage;
- g) reveals the circumstances which justify the interim in exercising the function of President of Romania, and communicates the findings to Parliament and the Government;
- h) gives an advisory opinion the proposal of suspension from Office of the President of Romania;

¹ Published in the Official Gazette of Romania, Part I, nr.767/31 Octobre 2003;

i will ensure that the compliance procedure) for the Organization and conduct of the referendum and its results confirmed;

j) verifies the fulfillment of conditions for the exercise of legislative initiative by citizens;

k) decides on complaints which have as their object the constitutionality of a political party;

l) meets other duties stipulated by the organic law of the Court.²

The Court of Justice of the European Union represents the judicial body which comprises the Court of Justice, the Tribunal and the courts. It ensures compliance with the law in the interpretation and application of the treaties. The European Union sets out the remedies needed to ensure effective judicial protection in the fields covered by Union law.

The Court of Justice is composed of 27 judges, one judge for each member state and eight advocates-general (Scăunaş, 2008, p. 172), in the composition of the Court also enters clerks, assistant protractors and other officials and relevant agents of the Court.

The judges and general advocates of the Court of Justice and the judges of the Tribunal shall be elected from among the persons who offer every guarantee of independence and which meet the conditions referred to in articles 223 and 224 of the Treaty on the functioning of the European Union. They are appointed by common accord of the Governments of the member states for six years. The judges and general advocates shall conclude its mandate can be nominated again.

In order to facilitate the work of the Court, in 1989, it was created the first instant Court that prosecutes certain disputes under the jurisdiction of the Court and appeals brought by individuals and processes of unfair competition between enterprises. The sentences can be appealed to the European Court of Justice.

In accordance with article I-29, point 3 of the Lisbon Treaty, the Court of Justice of the European Union decides:

(a) with respect to actions brought by a Member State, an institution or of natural or legal persons;

(b) preliminarily at the request of national courts on the interpretation of Union law or the validity of acts adopted by the institutions;

(c) in other cases provided for in the treaties.

At the same time, the Treaty sets out the powers of the Court of Justice of the European Union:

➤ Competence concerning the violation of the Constitution or of any rule of law relating to its application or misuse of power;

➤ Competence concerning the violation of the obligations provided for by the Constitution;

➤ Lawfulness Powers laws, European framework laws and other acts, with the exception of recommendations, opinions and Parliaments acts, which are intended to have effect against third parties;

➤ Competence concerning disputes relating to incompetence and violation of procedural forms;

² See art. 146 from the Constitution of Romania;

- Competence concerning actions brought by natural and legal persons against whom they are addressed or which concern them directly and personally;
- Competence regarding interpretation of the Constitution, interpretation, and validity of acts adopted by the institutions, organs and bodies of the European authorities.³

2. THE CONSTITUTIONALITY CONTROL IN THE NATIONAL LEGISLATION AND THE PROCEDURE IN FRONT OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

The notion of constitutionality control

Essentially, the Constitution has a legal value superior to other rules of law specific to a society. Therefore the normative acts adopted by the Parliament and the Government as well as other normative acts of other public authorities must comply with the rules and principles of constitutional law.

To ensure the supremacy of the Constitution, it has been created two efficient legal institutions: the control of constitutionality of laws and administrative contentious.

A possible and unique relationship between national sovereignty and the law could lead to the idea that any form of control of the constitutionality of laws is inadmissible, the only law is the expression of the General will is itself making real sovereignty. Therefore, by definition, the law would prove uncontrollable, uncensorshipable, whereas the law is an act of Constitution (Deleanu, 2003, p. 377)

The Basic Law of Romania has established a constitutionality control of laws, initiatives to revise the Constitution, treaties or other international agreements, Regulations of the Parliament, Ordinances of the Government, through a special and specialized body, the Constitutional Court.

The control of the constitutionality of laws is the activity organized by checking the compliance of laws and other normative acts with the provisions of the Basic Law (Ionescu , 2001, p. 221), the Constitution, and as an institution of constitutional law contains rules concerning the competent authorities to make this check, the procedure to be followed and measures to be taken after completion of this procedure.

The control of constitutionality of laws is therefore the resultant of official and legal realities, is the guarantee of constitutional principles and structures. The functions of this control are undeniable, through today aims to ensure the supremacy of the Constitution, the more it appears as a guarantee for the effective expression of parliamentary opposition, so that the opposition can express themselves and right through what it takes to claim some constitutional authority to pronounce on the conformity of the Constitution and legal acts (Muraru & Tănăsescu , 2001, p. 91).

Forms of control of constitutionality. Procedure

As a rule, the control of constitutionality at the national constitutional jurisdiction level shall be done at *referral*, which can be a priori or a posteriori, and *ex officio*, on

³ See art. 9 F in conjunction with 238(250) paragraph. 1 Article 8 of the Protocol on the application of the principle of subsidiarity and proportionality of the Treaty of Lisbon.

initiatives to revise the Constitution-which only works in the form of pre-emptive and control. *Control of the referral* may be made, if necessary, 1) anterior and preventive control and 2) a posteriori control and sanction. In terms of a priori control, is considered by many authors that there is a genuine control of constitutionality, as long as the law is not adopted, the changes may take place on the bill. On the other hand, a posteriori control is exercised over the laws already enacted, the legislature set in concrete and State bodies which may refer to the unconstitutionality of the procedure to be followed, penalties, considered a true control of constitutionality.

Constitutionality of laws, before promulgation

The control of the referral and a priori concerns the constitutionality of laws, therefore, before promulgation. In this sense, art. 146, a) the first sentence of the Constitution provides that one of the important tasks of the Constitutional Court is "to rule on the constitutionality of laws, before promulgation, upon referral to the President of one of the Presidents of both Chambers, to the Government, the High Court of Cassation and justice, Ombudsman, a number of at least 50 deputies or at least 25 senators".

In order to characterize this type of control has the following features:

a) Is an abstract control and only a priori. In other states, such as Italy, Germany there is an abstract and a priori control, the right of appeal is given not only to state bodies and citizens.

b) Is an "optional" originally by conditioning the exercise of the existence of a complaints. Therefore, it is considered necessary to introduce a posteriori control, refer to the same subjects stipulated in the Constitution, thus moving closer to fulfillment of the obligations that the Constitutional Court in safeguarding the rule of law, respect for the fundamental conditions necessary for the rule of law and democracy. Also, exercise control of unconstitutionality cannot fill the inexistence of an abstract of a posteriori control. In other States, the right to have recourse to the constitutional jurisdiction is given to citizens, especially in cases of infringement of fundamental rights stipulated in the Constitution. Sometimes it is assigned and other organs than those that have this right from us. So, for example in Germany, citizens have the right to such an appeal, according to art. 93 (4) of the basic law, as well as the municipalities or municipal associations. Secondly, the control shall be carried out on the Parliament regulations. In this case, the Court acting at the referral to one of the Presidents of the two chambers, a parliamentary group or a number of at least 50 deputies or 30 senators.

c) Is a control for the conformity of the law with the Constitution, not one opportunity whereas the principle of expediency is fundamentally political, one representing an option of legislative authority. It is important to note that we are talking so a line regarding the form, content and the constitutional procedure.

In order to exercise the right of appeal to the Constitutional Court it is necessary to achieve it within 5 days before the law to be submitted for promulgation, shall be submitted to the Secretary-General of the Chamber of Deputies and the Senate, respectively, of two days where it was adopted by the emergency procedure (Deleanu, 1995, p. 235). They may consult, in order to exercise their constitutional right to refer the matter to the Constitutional Court (Varga, 2009, p.²⁴³⁻²⁴⁴).

The debate takes place on the Court. Concerning the object of the debate, art. 20 of Law no. 47/1992 stipulate that they will wear "on the provisions mentioned in the complaint and those which necessarily and obviously cannot be dissociated".

Following the Court's decision, the debate shall be taken by a majority vote of judges and shall be communicated to the President of Romania. The decision shall be communicated to the Presidents of both Chambers, the law will be reviewed, according to art. 147 of the Constitution, by the Parliament in order to reach in agreement with the text of the decision of the Constitutional Court.

If the law is adopted in the same form, with a majority of at least two-thirds of the members of each Board, the objection of unconstitutionality is eliminated, and it becomes binding. If, however, in one of the Chambers does not get the two-thirds majority, the provisions declared unconstitutional by the Constitutional Court's decision to remove from the law, subject to the approval of the Board, the necessary legislative and technical correlations. If the whole law is declared unconstitutional, it no longer sends the President of Romania for promulgation.

Constitutionality control of treaties or other international agreements

The Romanian Constitution establishes in article. 146. (b) a new power of the Constitutional Court namely the constitutionality of treaties or other international agreements. This type of control has a preventive character, thus possibly in terms of political expediency, but also, as regards the offence to avoid unfair conclusion of a treaty, beyond the limits imposed by the basic law. In other words, the Constitutional Court must exercise control over the constitutionality of treaties or other international agreements in order to avoid an eventual revision of the Constitution on a different path than to fulfil the constitutional special proceedings for revision.

Among the features are:

- a) is an a priori control, before the ratification of the Treaty or agreement
- b) is performed only at the control to refer to the Constitutional Court, by one of the Presidents of both Chambers, by at least 50 deputies or at least 25 senators.
- c) Is a strict conformity with constitutional provisions and the conformation of the Parliament.

If the constitutionality of a treaty or international agreement has been established, it cannot be an exception of unconstitutionality⁴.

If the referral comes from one of the Presidents of the Chambers of Parliament, the Constitutional Court shall communicate to the President of Romania, the President of the other rooms, as well as the Government. Referral made by the members of the Senate or is registered at the Chamber of Deputies and is sent to the Constitutional Court on the day of its receipt by the Secretary general of the Chamber. Those who send referral may submit in writing their views in debates at the Constitutional Court (Muraru & Tănăsescu, 2008, p. 1399).

The debate takes place on the basis of referral to the Court, documents and views received. The decision shall be taken by a majority vote of judges and shall be communicated to the President and the Presidents of both chambers.

⁴ See art. 146 (2) from the Constitution of Romania

Constitutionality of the Regulations of Parliament

It is a form of control that occurs at the referral, but a posteriori, following the adoption of the regulations. If the decision of the plenum of the Constitutional Court establishes the unconstitutionality of certain provisions of the regulations, the Chamber seized will re-examine these provisions, for the implementation of their agreement with the provisions of the Constitution, according to Law no. 47/1992.

In terms of the subjects that can notify the Constitutional Court about the constitutionality of the Regulations of the Parliament, we mention the President of one of the Chambers, and collectively, the right of appeal belongs to a parliamentary group or a number of at least 50 deputies or 25 senators. The consultation work of the provisions contained in the regulation with those of the Constitution. It is necessary to mention the fact that the referral can be made only if the author invokes and motivates the existence of a conflict of constitutionality. If referral belongs to a parliamentary group or a number of at least 50 deputies or 25 senators, it shall within 24 hours after the Chairman of the Chamber of registration, which lawmakers are specifying the date when the debate will take place, until then it will be able to communicate the views of the permanent Bureau⁵. The decision shall be acknowledged to the Chamber whose regulation was discussed.

Constitutionality of laws and ordinances. The exception of unconstitutionality

In terms of the a posteriori control of the laws and ordinances, art. 146. (d) provides, making reference to the Constitutional Court, that the Constitutional Court "decides the exceptions raised in front of the courts or of commercial arbitration concerning the constitutionality of laws and ordinances, the exception can be raised directly by the Ombudsman". This type of control by the courts is an expression of the implementation of the principle of the separation of powers.

The control made as a direct action, taken against an authority or an act, considering the violation by the latter of a right recognized by the Constitution or by law, as well as by an act of regulation of executive power (judgment, order, rules) constitutes a person's right to challenge the constitutionality of the law. The complaint shall be a Special Court, invested by the Constitution to exercise control, either by ordinary courts. Declared constitutional law as a result of direct action is cancelled with effect erga omnes. The decision has become final.

The control exercised as an exception. This procedure is used within any process, when either side can claim that a text from a law or a bill as a whole, is unconstitutional and it affects the legal rights to be judged. Only the parties to the proceedings may raise this exception. The judge may not rule on the merits of the case before deciding.

Law no. 47/1992 as amended by law No. 138/1997, sets out several conditions for the admissibility of unconstitutionality exception, including the exception: to refer to a law or an Ordinance in force; the exception does not relate to a legal provision whose constitutionality has been established in accordance with the Constitution.

Referral to the Constitutional Court can be made by the judge of the Court in quo, against which he has invoked the exception. The Court must ascertain the dispute to

⁵ See Law no. 47/1992 concerning the organization and the function of the Constitutional Court

resolve it. During the period of exception of unconstitutionality proceedings shall be suspended, and if the exception is inadmissible, the Court rejects, by a reasoned conclusion. The judgment has them in open court on the basis of the report presented by the rapporteur-judge, the conclusion which was referred to the Court, the views presented, the evidence given, the contention of the parties with the attendance of the Public Ministry.

If admitted, the Court will rule on the constitutionality of other provisions of the act challenged. Provisions considered unconstitutional cease legal effect within 45 days of the publication of the Decision of the Constitutional Court. The decisions take effect erga omnes.

Declared constitutional law as a result of direct action is cancelled with effect erga omnes. The decision has become final. The decision declaring the unconstitutionality of a law or Ordinance or of any provision of a law or an Ordinance into effect shall be final and binding.

Constitutionality of laws are thus special importance in a state of law is created in the interests of citizens, to protect them against abuses by the legislature and to ensure that it does not prejudice the rights and freedoms guaranteed by the Constitution and there is in the interest of the public powers, in order to maintain separation between the functions laid down in the Basic Law of the State.

The procedure in front of the European Court of Justice

Created in 1952 through the Treaty of Paris, the European Court of Justice is the judicial institution of the community.

Through its decisions, the European Court of Justice has established the idea of a community's jurisdiction, however, is distinct from the juridical order of the member states, superior to the national agendas and stressed at the same time the principle of the direct application of Community law (Călinoiu & Duculescu, 2008, p. 207)

In 2004 through a Council decision was created the Tribunal of the Public Function, which has taken over some of the powers of the Court of first instance and whose decisions can be appealed to the problems of law before the Court of First Instance.

The procedure takes national procedural principles but resumes and some features. In essence it is a procedure with mixed character, free, public and adversarial.

The language is chosen by the applicant among the official languages of the European Union.

The written procedure. The first stage of the procedure begins with the filing of a complaint at the registry of the Court, by registered letter. Just like in national law, it must contain the names of the parties, the State of fact and law, the subject of the dispute and findings, plus the evidence which the parties understand to present in support of their requests. In other words, the written procedure including communication to the parties and the Union institutions whose decisions are concerned, requests, pleadings, and defenses and possibly replicas, as well as all the supporting acts and documents, or copies thereof, certified. Notifications shall be made by the Registrar in the order and time limits laid down in the rules of procedure.

Member states and the institutions of the European Union are represented by an agent who is part of the legal service of the Ministry of Foreign Affairs of the state

concerned, either in the legal service of the institution. At the same time the agent may be assisted by a lawyer or adviser.

Where appropriate, the application shall be accompanied by the Act annulment of which is sought or, in the situation referred to in article 265 of the Treaty on the functioning of the European Union, of a written test, the date of the invitation to be addressed to an institution, in accordance with that article. If they are not annexed to the application, the Registrar shall ask the party in question to present them in a reasonable time, without that of acquiescence can be opposite of where the documents are submitted after the expiry of the period for the submission of the action.

The oral procedure includes reading a report of a judge rapporteur, the hearing by the Court of agents, advisers and lawyers, the conclusions of the advocate general and the hearing of witnesses and experts, if necessary. If it considers that the question did not ask a new question of law, the Court may decide, after hearing the advocate general, to be tried without the conclusions of the advocate general.

The Deliberations. Represents the last stage of the judgment the only County who were present at the oral proceedings, they are the majority in the Council Chamber. Delivery takes place in open court. The device shall be drawn up in the language of the proceedings translated into the official languages of the parties.

The Court gives rulings on the cases brought before it. The five most common types of cases are:

- *requests for a preliminary ruling* – when national courts ask the Court of Justice to interpret a point of EU law
- *actions for failure to fulfill an obligation* – brought against EU governments for not applying EU law
- *actions for annulment* – against EU laws thought to violate the EU treaties or fundamental rights
- *actions for failure to act* – against EU institutions for failing to make decisions required of them
- *direct actions* – brought by individuals, companies or organizations against EU decisions or actions

1. Preliminary ruling procedure

The national courts in each European Union country are responsible for ensuring that European Union law is properly applied in that country. But there is a risk that courts in different countries might interpret European Union law in different ways.

To prevent this happening, there is a 'preliminary ruling procedure'. If a national court is in doubt about the interpretation or validity of an European Union law, it may – and sometimes must – ask the Court of Justice for advice. This advice is called a 'preliminary ruling'.

2. Proceedings for failure to fulfill an obligation

The Commission can start these proceedings if it believes that a member country is failing to fulfill its obligations under European Union law. These proceedings may also be started by another European Union country.

In either case, the Court investigates the allegations and gives its judgment. If the country is found to be at fault, it must put things right at once. If the Court finds that the country has not followed its ruling, it can issue a fine.

3. Actions for annulment

If any European Union country, the Council, the Commission or (under certain conditions) Parliament believes that a particular European Union law is illegal, it may ask the Court to annul it.

'Actions for annulment' can also be used by private individuals who want the Court to cancel a particular law because it directly and adversely affects them as individuals.

If the Court finds the law in question was not correctly adopted or is not correctly based on the Treaties, it may declare the law null and void.

4. Actions for failure to act

The Treaty requires Parliament, the Council and the Commission to make certain decisions under certain circumstances. If they fail to do so, member countries, other Community institutions and (under certain conditions) individuals or companies can lodge a complaint with the Court so as to have this failure to act officially recorded.

5. Direct actions

Any person or company who has suffered damage as a result of the action or inaction of the Community or its staff can bring an action seeking compensation before the General Court.

3. CONCLUSIONS

The control of constitutionality finds a particular equivalent in the action in annulment, action promoted to the European Court of Justice. An important distinction between the two actions is the effect they produce declared unconstitutional legal acts, i.e. those which are not in line with European Union's legislation. In the case of control of constitutionality, the act declared unconstitutional is sent to the issuing authority, which should eliminate the unconstitutional or to modify it for his implementation of the agreement with the Constitutional Court decision. In the case of the European Court of Justice the act challenged is declared invalid, as opposed to the laws referred to in our legislation that doesn't allow the Constitutional Court to repeal this unconstitutional act. In the event that the instrument is a regulation, the Court of Justice will indicate the effects of the annulled regulation should be regarded as definitive. The institution which has issued the act canceled must undertake all efforts to execute the judgment of the Court of Justice, is important to note that all acts which were issued under the act are liable to cancellation.

The Court of Justice in relation to the law of the national courts, meets the four essential roles: the role of competent judicial control of the legality of administrative acts, when the community and community officials, appeals judge; the judicial authority, the constitutional (Constitutional Court) when construed to the treaties or community judges considering appeals against a Member State that does not comply with the obligations of the treaties; as a civil court, when judge disputes which have as their object the granting of

damages and that the Court of appeal, considering that the appeals brought against decisions handed down by the Court of First Instance shall be settled by the European Court of Justice.

The Constitutional Court has contributed substantially to addressing important issues of law in a transitional period, in which normative legal field, there are still many previous laws of the Constitution, which had to be replaced or, if appropriate, "to date" so as to meet the new social relations which required need to be regulated in terms of the correlation of legal acts issued with the basic law.

On the other hand, at community level, the Court of Justice's role is to maintain the balance between the powers of the Community institutions on the one hand and between the powers conferred on the community and the member states kept on the other side.

The fact that the jurisdictional authority of Community decisions are of major importance in the European legal system, we consider that the states constitutional courts have to interpret and solve constitutionality problems by considering the highest degree of jurisdiction, as required by the European Court of Justice, for the purpose of creating a community legal order.

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