DISCUSSION REGARDING THE POSSIBILITY OF CONSIDERING THE CONSTITUTIONAL COURT'S CASE-LAW AS A SOURCE OF LAW

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Abstract

The paper intends to analyze the effect of the Constitutional Court's case-law on the whole ensemble of the Romanian legislation and to find out whether its case-law may be considered as a source of law. The Constitutional Court intercedes both in the stage of the legislative creation of the norm, by means of a priori constitutional review, and in the stage of the application of the norm, after its entry into force, performing an a posteriori review of constitutionality. This activity of the Court influences the normative system, the result of declaration as unconstitutional of a statute or of an ordinance being the cessation of the respective normative act's effect if the Parliament or the Government, where the case, doesn't react and correct the text. Due to the generally binding effect of the Constitutional Court's decisions, its interpretation of certain normative provisions gains also a special significance. The idea underlined in the paper is that its decisions don't have a direct normative value, but only a mediate one.

Keywords: constitutional review, Constitutional Court's powers, legislative process

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1. The constitutional review

The review of constitutionality is an essential feature of the state of law and represents a very effective instrument meant to protect human rights and liberties. This kind of review is drawing its roots from the superiority of the constitutional provisions compared with the ordinary ones and, subsequently, from the imperative of respecting the norms' hierarchy.

Hans Kelsen, the well-known law scholar, the founder of the famous normative legal doctrine, has visualized the state legal system as an edifice of over and under-ordered normative acts. This spatial image suggests the fact that the juridical system represents a range of legal norms that spring one from another. This chain finds its supreme reasoning in an hypothetical basic norm (the so-called *Grundnorm*), on which the unity of this interdependence of production is relied[2].

Kelsen also approaches the concept of source of law, concept which is crucial for explaining the idea of constitutional review. This notion refers to the ground of the juridical validity of a legal norm and resides in the higher positive legal norm, which regulates its generation. Starting from that, the Constitution is the source of all general legal norms, produced by the way of enactment by legislative bodies or as a result of social habit; in its turn, the general legal norm is the source of the courts' judgments which make its application and which represents the individual norm, this one finally being the source of the duty established by it.

From this point of view, the Constitution is the highest peak in the State's legal order, more precisely in the positive law[3], notion that designates the law which is in force in a country at a certain moment of time. All the other legal norms, which are inevitably situated on lower levels, have to be in accordance with the guiding lines prescribed by the Constitution.

The supremacy of the Basic Law has been raised at the rank of fundamental principle. In Romania, it has been stated directly in the very body of the Constitution which enshrines, in Article 1 paragraph 1, the compulsoriness of its supremacy and the necessity to comply with its provisions. This duty is equally opposable to the state's authorities and to all the other subjects of the law – natural or legal persons, having Romanian or foreigner nationality, public or private entities.

That is why the Constitution has settled an effective reviewing mechanism meant to check whether its supremacy is observed. This mechanism of control is performed by the Constitutional Court of Romania, authority which has been established by the 1991 Constitution and has begun its activity in 1992. The need of founding such an institution in the Romanian system has been confirmed by the experience of other different European countries, well known for their impressive constitutional tradition.

It would be interesting to mention, in this context, the fact that, in Romania, the need of the constitutional review of statues has been brought in discussion

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[2] H. Kelsen, *Doctrina pură a dreptului*, Editura Humanitas, Bucharest, 2000, p.272.

[3] "The positive law is the secretion of the juridical conscience of a certain society" noted Mircea Djuvara in *Teoria generală a dreptului*, 2nd vol., Editura All, Bucharest, 1995, p.406.

before this kind of control has been established for the first time in Europe[4]. The so/called „trial of the trams" has been concluded in 1912 with a famous decision rendered by the Court of Cassation, which confirmed the judgment issued in the first instance by the Tribunal of Ilfov which, mainly, stated the power of the courts to check the acquiescence of the statutes with the Constitution. Such a solution was based, among others, on the idea according to which, since the legislator has left the application of both constitutional and ordinary laws in the duty of the judge, it meant that it has, implicitly, also offered to the judge the right to decide which one had to be chosen in case of conflict between them. In other words, to give priority to the constitutional provisions every time an ordinary law contains prescriptions that do not comply with those included in the Basic Law. It has been said that, rendering such a solution, „the High Court has made a superior principle to win, a principle which was absolutely necessary in the constitutional life of the State"[5]. This praetorian precedent was followed by legislative improvements. The Romanian legislator has accurately noticed, at that time, that the right to declare the unconstitutionality of a statute couldn't be given to every court, because it might consecutively generate a misleading jurisdictional practice. Therefore, the Constitution of 1923 has set the rule according to which the United Sections of the Court of Cassation had the exclusive competence to perform the constitutional review[6].

In 1991, along with the restoration of the democratic traditions of the Romanian people, the Romanian Constituent Assembly has opted for the so-called „European model" characterized by a unique body of constitutional review, situated outside the jurisdictional system. This authority is distinct and independent of any other public authority[7]. The Constitutional Court of Romania perfectly fits into the definition offered by the professor Louis Favoreu, who has remarked that „a constitutional court is a jurisdiction especially created to solve the constitutional contentious, placed outside the jurisdictional system and independent of this and of all the other public authorities as well"[8].

The Law no.47 of 1992 on the organization and operation of the Constitutional Court states, in the Article 1, both the exclusivity of the

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[4] The Czech Constitutional Court has been established by the Constitution of the 29th of February 1920 and the High Constitutional Court of Austria, by the Constitution of the 1st of October 1920.

[5] G. Alexianu, *Controlul constituţionalităţii legilor*, in „Revista de Drept Public", Bucureşti, 1927, published in excerpt in „Revista de Drept Public" no. 1/2000, p.77.

[6] See G. Conac, *O anterioritate română: controlul constituţionalităţii legilor în România de la începutul secolului XX până în 1938*. The study can be found at the web address http://www.ccr.ro/events/2000/ro/Conac.pdf.

[7] M. Constantinescu, I. Deleanu, A.Iorgovan, I. Muraru, Fl. Vasilescu, I. Vida, *Constituţia României comentată şi adnotată*, R.A. Monitorul Oficial, Bucharest, 1992 p.304. For further details regarding the juridical figure of the Constitutional Court see also I. Muraru, E.S. Tănăsescu, coord., *Constituţia României. Comentariu pe articole*, Editura C.H.Beck, Bucharest, 2008, p.1374-1378.

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

constitutional jurisdiction, meaning that this is the only authority of constitutional review in Romania[9], and its role of guarantor of the supremacy of the Constitution.

In the juridical literature it has been said that the Constitutional Court renders judgments, just like any other court, only that it doesn't takes into discussion the rights and the interests of the persons, but the constitutional legitimacy of the law, its validity as a normative act that has to be subordinate to the Constitution, analyzing whether the legislator has observed the constitutional supremacy to which it essentially related on[10].

2. The influence of the Constitutional Court's case-law on the legal order

The role played by the Constitutional Court is very complex and has to be examined in relationship with the fact that all its powers are subsumed to its primordial and essential function of guarantor of the supremacy of the Constitution[11]. It is important to be underlined that he Constitutional Court is not part of the judiciary; it is a public authority having a double juridical nature, jurisdictional, but also political, and it acts in the confluence area of the three classical authorities: legislative, executive and jurisdictional. Nevertheless, it is distinct and independent, in the same time, of any of the fore-mentioned authorities.

The Constitutional Court has a range of powers that concur to preservation of the functionality of the State's edifice and to the creation of a solid and durable institutional structure. Therefore, besides the power to examine the compatibility with the constitutional provisions of the normative acts of primary regulation - laws and ordinances, simple or of emergency – the constituent legislator empowered the Constitutional Court to decide on legal disputes of a constitutional nature between public authorities[12], to see to the observance of the procedure for the election of the President of Romania and to confirm the ballot returns[13], to ascertain any

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[9] This unique character concerns the statutes (laws enacted by the Parliament) and the Government ordinances. The constitutionality of other different normative acts which have lower legal force can be examined by the administrative courts.

[10] I.Muraru, M. Constantinescu, *Curtea Constituţională a României*, Editura Albatros, Bucharest, 1997, p.41; and I. Muraru, E.S. Tănăsescu, coord., op.cit., p.1376.

[11] The Constitutional Court has stated that the fact that the Basic Law itself confers it the role of guarantor of the supremacy of the Constitution determines an active attitude (see Decision no.1615 of the 20th of December 2011, published in the Official Gazette of Romania, Part I, no.99 of 8th of February 2012, where the Court noticed that the challenged legal provision induced a difference of treatment between the teachers that worked in the primary schools and those working in secondary schools, consisting in the fact that the benefit of the salary increase due to the simultaneous teaching was granted only to the first category, despite the fact that both categories of teachers were working in the same conditions and the mental stress and neuropsychological overload and effort were identical. The Court has concluded that the difference of treatment was not justified by any objective criterion and stated that the legislator opted for a wrong criterion in granting this kind of salary increase and this situation generated a discrimination between the two mentioned categories of teachers.

[12] Article 146 letter e).

[13] Article 146 letter f) of the Constitution.

circumstance as may justify the interim in the exercise of office of President of Romania and to report its findings to Parliament and to Government[14], to give advisory opinion on the proposal to suspend the President of Romania from office[15], to see to the observance of the procedure for the organization and holding of a referendum and to confirm its returns[16], to verify whether conditions are met for the citizens' exercise of their legislative initiative[17] or to rule upon challenges as to the unconstitutionality of a political party[18].

Due to its *a priori* review of the laws before their promulgation and to the *a posteriori* review by means of the objection of unconstitutionality of laws after their promulgation and of the Government ordinances, the Constitutional Court contributes to the improvement of the ensemble of the legislation and to the adjustment of the mechanism that generates the normative provisions that regulate the social, economical and political dynamics.

The constitutional review is a very important side of the Constitutional Court's activity, being, in fact, represented in the largest percentage in the statistics. The finality of the *a priori* and *a posteriori* constitutional review consists in the necessity of preventing the risk of entering into force of laws contrary to the Constitution and, respectively, the elimination from the ensemble of the legislation of those legal provisions that contradict to the constitutional prescriptions.

In the same time, the constitutional review of Parliament's Standing Orders and of the resolutions issued by the Plenary of the Chamber of Deputies, of the Senate and of the joint Chambers of Parliament[19], offers to the activity of the legislative branch the certitude of its compliance to the constitutional requirements.

Examined as a whole, the Constitutional Court's case-law gains normative valences due to the fact that the rendered solutions reverberate their effects over the entire normative system thanks to the so-called process of "law constitutionalization", meaning the impregnation of all branches of normative system with the values and principles of the Constitution[20].

3. The influence of the Constitutional Court on the Basic Law

The Constitutional Court's case-law has enriched and amplified the very content and significance of the Romanian Basic Law, placed on the top of the

[14] Article 146 letter g) of the Constitution.
[15] Article 146 letter h) of the Constitution.
[16] Article 146 letter i) of the Constitution.
[17] Article 146 letter j) of the Constitution.
[18] Article 146 letter k) of the Constitution.
[19] This power has been introduced by the Law no.177 of 2010 that amended the Law no.47 of 1992 on the Organization and Operation of the Constitutional Court, the Code of civil procedure and Code of criminal procedure. New powers can be assigned to the Constitutional Court according to Article 146 lit.l) of the Constitution that provides that Court also fulfils other prerogatives as provided by the Court's organic law.
[20] Louis Favoreau was the first one that has noticed and theoretized this trend of progressive constitutionalization of all braches of the law due to the review of constitutionality (*L'apport du Conseil constitutionnel au droit public,* article published in review „Pouvoirs" no.13/1980, p.17).

normative acts' pyramid, arranged progressively ascending depending on their normative value. The Constitutional Court's influence on the Romanian Constitution has been manifested, over the years, and has been materialized in the creation of new constitutional benchmarks necessary for performing the review of constitutionality. This was the case, for instance, with the principle of check and balance of the powers[21], the principle of the fair trial[22] or with the exception of the non-retroactivity of the more favorable contraventional law[23], which haven't been enshrined *in terminis* in the 1991 Constitution, but which have been often mentioned by the Constitutional Court in its decisions. All these principles have been explicitly inserted in the Constitution amended in 2003[24].

On the occasion of examining the initiative of constitutional revision, there is a co-operational relationship that establishes between the constitutional judge and the constituent legislator. This is meant to lead to the drafting of the most adequate version of the Basic Law. By settling such a power[25], the constituant legislator offered to the Constitutional Court the opportunity to render valuable judgments destined to guide the Parliament, as a derived constituant body, to draft a Basic Law that corresponds to the level of democracy to which the Romanian State aspire to, in the present stage of European political development. The reasoning of such a power given to the Constitutional Court is represented by the fact that its activity cannot take place in a genuine democratic environment unless the benchmarks enshrined in the Basic Law to which the Court relates to when it performs the constitutional review are authentically legitimate and meet those qualities that confer them supreme force, recommending them as impeccable from the point of view of the social, moral, economical and legal values they embed. Performing the fore-mentioned power, the Constitutional Court anticipates and ensures the fact that the State benefits of a well designed Basic Law, conceived in the spirit of the modern values of democracy, that represents a real pillar for the whole juridical and social life and who's force irradiates over the work of the legislator, balancing and valuing thus the entire society.

When adjudicates *ex officio* on the initiative purporting a revision of the Constitution, the Court issues a range of valuable assessments and the constituant legislator has to take them into account during the drafting process of the final version of the Basic Law.

While settling on the most recent initiative of this kind, the Constitutional Court has rendered the Decision no.799 of 17th of June 2011[26] and made a series of

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[21] Decision no.96 of 1996, published in the Official Gazette of Romania, Part I, no.251 of the 17 th of October 1996.

[22] Due to Article 11 and Article 20 of the Romanian Basic Law.

[23] See Decision no.183 of the 8th of May 2003, published in the Official Gazette of Romania, Part I, no.425 of the 17th of June 2003.

[24] V. Bărbăţeanu, *Influenţa jurisprudenţei Curţii Constituţionale asupra ansamblului normativ, cu privire specială la problema omisiunilor legislative*, published in „Dreptul" no.5/2012, p.91-92.

[25] According to Article 146 letter a) of Constitution, the Constitutional Court adjudicates on the constitutionality of any initiative purporting a revision of the Constitution.

[26] Published in the Official Gazette of Romania, Part I, no.440 of the 23rd of June 2011.

assessments which actually represent genuine proposals of amendments to the Basic Law. The suggestions have regarded the national minorities right to identity, the State's liability for damages caused by judicial errors, the Parliament's Standing Orders, the fields regulated by organic laws, the conditions for the nomination and removal from the office of the members of the Government, the conditions for organizing the referendum, the narrowing the possibility of assuming by the Government of responsibility before the Senat and the Deputy Chamber, legal disputes of a constitutional nature between public authorities. We will see how many of the Court's assessments will be taken into consideration by the Parliament on the occasion of the adopting the constitutional revision law.

It is also important to underline that the Court plays a crucial role explaining the meaning of certain concepts mentioned in the Constitution, but which are not defined there, in order to preserve the concise character, distinctive for a basic law.

For instance, in 2007, confronted for the first time with an application concerning a legal dispute of a constitutional nature between the President of Romania and the Parliament, the Constitutional Court had to clarify the meaning of this notion, stating that: *"the legal disputes of a constitutional nature between public authorities involve acts or concrete actions by means of which one or more authorities arrogates powers, atributions or competences which, according to the Constitution, belong to other public authorities, or some public authorities omission consisting in declining the competence or in the refusal of fulfilling certain acts that enter into their powers"*. [27]

The Court has also explained the concept of „*serious offence*" contained in the Article 95 par.1 of the Constitution, when it was asked to asses on a proposal to suspend the President of Romania from office[28].

4. The creative valences of the Constitutional court's case-law highlighted during the constitutional review of laws and Government ordinances

The contribution of the constitutional jurisdiction to the process of creation of law can be noticed when the Constitutional Court performs the constitutional review of laws and Government ordinances by means of objection of unconstitutionality and the *a priori* constitutional review of the laws before their promulgation.

4.1. When performs the first mentioned power, the Court gradually shows its law- creative ability, depending on the solutions it renders. The most obvious expression of its influence on the ensemble of the legislation is represented by the declarations of unconstitutionality regarding laws and ordinances or of certain provisions thereof. In this case, the legal provisions which are held as inconsistent with the Basic Law shall be suspended as of right for an interval of 45 days from publication of the decision rendered by the Constitutional Court. During this time,

[27] Through the Decision no.53 of the 28th of January 2005, published in the Official Gazette of Romania, Part I, no.144 of the 17th of February 2005.

[28] Advisory opinion no.1 of 2007, published in the Official Gazette of Romania, Part I, no.258 of the 18th of April 2007.

the Parliament or Government, as may be applicable, have to bring these unconstitutional provisions into accord with those of the Constitution, as it is explained in the reasoning of the Court's decision. If the Parliament or the Government disregards this duty, the provisions declared unconstitutional shall cease their legal effects. In order to avoid such a sanction[29], the legislator is obliged to find a new legal solution and to draft a new normative text, according to what have been stated in the Constitutional Court's decision.

It is to be noticed that a decision that finds the normative act or the legal provision unconstitutional can also intervene after previous rejection of the same exception of unconstitutionality. Re-appraisal of an existent case-law is not out of the question. On the contrary, it may, sometime, be even necessary, due to the evolutions of the social general perception regarding the fundamental constitutional values[30]. Turning around the case-law is a signal for the legislator on the adjustments it has to make in order to regulate the State's functioning mechanism.

A very special situation is represented by the interpretative decisions. Thanks to this kind of decisions, the Court states that the legal provision subjected to the review confines with the Constitution only if it is interpreted in a certain way or, on the opposite, it violates the constitutional prescriptions if it is given a certain meaning.

It has to be mentioned the fact that the interpretative decisions offer the Court a wider margin of action and one could say that some of them tempt the Constitutional Court to abandon the limits imposed by the kelsenian doctrine of „negative legislator", according to which the constitutional jurisdiction has the sole power to invalidate the normative provisions, acting in an exclusively annihilating manner.

Thereby, the Court has manifested a creative role by sanctioning, occasionally, legislative omissions. It stated that, in certain situations, it was the only possible way to remove the deficiency of constitutionality and to carry out its goal consisting in ensuring he supremacy of the Basic Law. One of the most illustrative decision in this respect is the Decision no.503 of 2010 where the Court had an active attitude and stated that even if the flaw of unconstitutionality takes the appearance of a legislative omission, it cannot be ignored, because the omission itself generates the breach of the right to be elected, granted by Article 37 of the Basic Law. But the Constitutional Court is, according to Article 142 of the Basic Law, the guarantor of the supremacy of the Constitution and it implies, among others, the conformity of the whole normative system with the Constitution.

Such a solution represents a needful deviation of the traditional case-law in conformity to which the Court rejects as inadmissible the exceptions of unconstitutionality reasoned on the lack of certain mentions which the author of the exception of unconstitutionality considers that should be included in the contested legal provision. The inadmissibility of this kind of exceptions of unconstitutionality

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[29] See, in this regard, M. Safta, K. Benke, *Obligativitatea considerenteler deciziilor Curţii Constituţionale*, in „Dreptul" nr.9/2010.

[30] For details, see V. Bărbăţeanu, *Aspecte particulare referitoare la reiterarea excepţiei de neconstituţionalitate*, published in „The Constitutional Court's Bulletin" nr.2/2011.

is caused by the inappropriate way of arguing the unconstitutionality. It would generate a violation of the principle of check and balance of the powers in the State if the Court proceeded at examining such exceptions of unconstitutionality on merits.

In the same time, it is also important to mention that, from the point of view of the creative potential of the constitutional court's case-law, the decisions through which the Court ascertains the constitutionality of the challenged normative provision are also relevant. That is because the Court offers an interpretation of the contested normative act and, in the same time, of the constitutional provisions to which the review is performed. In this regard, it can be said that, during this process of interpretation, the Court transforms itself into a co-author of the interpreted norm, taking into consideration the affirmation of some prominent scholars, according to which „the interpreter of the law holds a legislative power and the interpreter of the Constitution holds a constituent power"[31]. That is why it has to be specified that the positive law is not exclusively the result of legislative will, but also the product of the social consciousness which evolve and permanently adapts itself to the real necessities. In the law's dynamics, the interpretations given to the laws become protean, enriching the legal system, explaining and completing it through the new meanings it reveals. The constitutional jurisdiction perfectly fits into this mechanism, as well.

4.2. In what concerns the Constitutional Court's power to review the constitutional legitimacy of the laws before their promulgation, taking into account the moment when it occurs, it could be assimilated with a new phase of the legislative procedure. That's because the *a priori* review of constitutionality of not yet enacted laws intercalates between the stages covered by the law in the Parliament. More precisely, this kind of review can be performed on request of certain subjects, between the moment of passing of the law in the Parliament and the one of its promulgation by the President of Romania. It has been said that, by performing the *a priori* review of constitutionality, the Court is involved in the legislative process, which is essentially a political process. Despite this character, the Court states solely from a jurisdictional point of view[32].

Through the decisions rendered when performing the *a priori* review, the Court leads the legislator to the enactment of laws that altogether fulfill the constitutional requirements. Illustrative in this regard is, for instance, the Decision no. 61 of 14th of January 2010[33], where the Court stated that the present settlement of the Romanian electoral system shows a range of shortcomings and it should be re-analyzed in the prospect of the parliamentary elections in 2012 in a manner likely to ensure, under every aspect, the organization of democratic elections in Romania.

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[31] G. Burdeau, F. Hamon şi M.Troper, *Droit constitutionnel*, the 26th Edition, Librairie Générale de Droit et Jurisprudence, 1999, Paris, p.59.

[32] I. Deleanu, *Justiţia constituţională*, Editura Lumina Lex, Bucharest, 1995, p.47, footnote no.1.

[33] published in the Official Gazette of Romania, Part I, no.76 of the 3rd of February 2010.

Through the Decision no.51 of 25th of January 2012[34], the Court has also stated, in the same regard, that the legislator has to have in mind the economical, political and social realities of the country, the role played by the political parties in the electoral process and the need to rationalize the activity of the Parliament and, accordingly, to regulate a certain variety of scrutiny adapted to the conclusions drawn and concordant with the types of scrutiny adopted by the most European countries. Besides, regarding the electoral system, the Court has highlighted[35] the requirement that the whole electoral legislation concerning the election of the Chamber of Deputies and of the Senat, of the President of Romania, the European Parliament and of the local public administrative authorities to be re-examined and recommended the gathering of this kind of legal provision in an Electoral Code, aimed to ensure democratic, fair and transparent scrutiny, concordant with the constitutional principles.

In another decision[36], the Court signaled a lack of regulation in a normative act adopted by the Parliament and showed that it didn't questioned the legitimacy of granting a certain salary increase to the teachers from the primary education system, but the constitutionality of the limitation of such a salary increase only to that category of teachers, so of the fact that it was not granted to other categories which were also entitle to receive it. In order to explain this less common way of reasoning, the Court has evoked its own case-law. More precisely, the decision[37] through which the Court has extended the prosecutor's duty to always present to the accused person the whole prosecution material. In the same regard, the Court has invoked another decision[38] .

Moreover, the Court has stated[39] that the elimination of legal provisions contrary to the Constitution is legitimated by the need of cleansing the positive law of unconstitutional normative acts and, following this goal, the Court should not remain passive, waiting for a hypothetical reaction from the Parliament[40].

In order to ensure the effectiveness of its decisions, the Constitutional Court has appreciated useful to stress[41] the fact that the public authorities, including the ordinary courts, are asked to perform an appropriate interpretation and to apply the legal provisions in accordance with the Constitutional Court's decisions. In the specific case of the fore-mentioned teachers, this meant that the said salary increase had to be offered to all the entitled categories of teachers, from the primary and

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[34] published in the Official Gazette of Romania, Part I, no.90 of the 3rd of February 2012.
[35] Through the Ruling no.39 of the 14th of Decembre 2009, published in the Official Gazette of Romania, Part I, no.924 of the 30th of Decembre 2009.
[36] Decision no.1615 of the 20th of Decembre 2011, quoted supra at the footnote nr.8
[37] Decision no. 24 of the 23rd of February 1999, published in the Official Gazette of Romania, Part I, no.136 of the 1st of April 1999.
[38] Decision no.1.086 of the 20th of Novembre 2007, published in the Official Gazette of Romania, Part I, no.866 din 18 decembrie 2007.
[39] Decision no.1615 of the 20th of Decembre 2011, quoted supra.
[40] See *mutatis mutandis* Decision no.1.640 of the 10th of Decembre 2009, published in the Official Gazette of Romania, Part I, no.48 din 21 ianuarie 2010.
[41] Decision no.1615 of the 20th of Decembre 2011, quoted supra.

secondary school. This outspoken affirmation highlights the importance of the Court's case-law for the living law, the applicable law.

5. Conclusions

The Constitutional Court plays a very complex role in the process of creation of the law and in its development, due to the fact that its constitutional powers are capable to significantly influence the whole normative system. Nevertheless, the Constitutional Court does not directly produce normative provisions and it does not act by the same mechanism characteristic for the sources of law understood from the point of view of legal theory. It only has a mediated effect over the normative provisions and over the legal system in general, through its possibility to intervene in order to modulate and harmonize legal provisions and the authorities' actions with the principles enshrined in the Constitution. From this point of view, even if the character of source of law of its case-law cannot be firmly affirmed, it is obvious that the decisions rendered by the Constitutional Court leave their mark on the entire normative system. The most visible ways of acting in this direction are the elimination of legal provisions that are contrary to the Constitution in three ways: by finding the unconstitutionality of a law or Government ordinance or of provisions thereof challenged by means of exception of unconstitutionality; by preventing the entering into force of unconstitutional laws by means of *a priori* review of constitutionality; by saving a normative act or provision thanks to its possibility to highlight and impose only the interpretation which gives a constitutional figure to the contested legal provision.

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