THE ESTABLISHED OBLIGATION FOR THE ORDINARY COURTS TO INTERPRET THE LAW IN THE LIGHT OF THE INTERPRETATION PROVIDED TO THE CONVENTION BY THE CONSTITUTIONAL COURT OF ROMANIA

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Abstract

In the last years the Constitutional Court of Romania was asked to rule on the constitutionality of the erga omnes obligatory interpretations provided by the High Court of Cassation and Justice. Through such constitutionality review, the Constitutional Court manages to impose its own interpretation of the European Convention on Human Rights on all national ordinary courts whenever such courts are to ensure that the European Convention of Human Rights is observed and respected in a pending case. This paper sumarises a couple of such rulings, pointing out that through such constitutionality review rulings, the Constitutional Court of Romania has also established that it has the competence to impose, at the national level, the unique interpretation that can be given to a norm whenever that unique interpretation was already imposed by the High Court of Cassation and Justice.

Keywords: *constitutionality review; European Convention on Human Rights; High Court of Cassation and Justice; appeal in the interest of the law; unique interpretation*

The Constitutional Court was asked in the last couple of years to decide in relation to the constitutionality of *erga omnes* interpretations provided by the High Court of Cassation and Justice[1]. These types of constitutionality reviews can be split into

[1] For a similar case law, see Decision 2010-39-QP, para. 2, *fine* in which *Conseil Constitutionnel* declared that a litigant has the right to contest through a "QPC" proceeding (question prioritare de constitutionnalité) even the presumed constitutionality of a constant judicial interpretation given to the same legal provision that represents the object of that constitutionality review ("qu'en posant une question prioritaire de constitutionnalite, tout justiciable à le droit de contester la constitutionnalité de la portée effective qu'une interpretation jurisprudentielle constante confére à cette disposition"). For a justification and delimitation of the same competence belonging to the Constitutional Court of Romania, see also T. Toader, M. Safta, *Rolul deciziilor interpretative în procesul de constituționalizare a dreptului* [Role of interpretative decisions in the process of constitutionalization of law], in Dreptul no. 9/2014, p. 85: "În cazul deciziei Curții Constituționale de control al RIL-urilor, nu este în discuție autoritatea de lucru interpretat, ca în cazul recursului în interesul legii, ci stabilirea interpretării constituționale a legii" [In the case of decisions of the Constitutional Court to control the RILs is not in question the establishment of *res interpretata* like in the case of appeals in the interest of the law, but the establishment of the the constitutional interpretation that can be given to a legal provision] (t.a.).

substantial and formal ones: the formal reviews being the reviews in which the Court is asked to decide if through the interpretation provided to a certain fundamental right the High Court has respected the limits imposed by article 126 para. (3) of the Constitution[2]; while through the substantial review, the Court verifies if the limits of fundamental rights established within the Constitution or within the European Convention of Human Rights ("ECHR" or "Convention") are respected by such rulings[3].

In the same time, the Constitutional Court issued decisions – such as Decision no. 269/2014 – through which it was established, by also sending the Convention, the exact way in which an ordinary courts must interpret a statutory provision in order to guarantee that the application of that provision in a pending case is going to be achieved in a valid manner. We shall analyze some examples from this specific case law:

1. Decision no. 269/2014

In Decision no. 269/2014[4], the Constitutional Court underlined that ordinary courts have the obligation to interpret a national legal provision in conformity with the requests and guarantees provided by the ECHR law. As such, the Court declared:

[2] See para. 26 of Decision no. 161/2015, published in Official Journal of Romania, Part I, no. 352 from 17 June 2014: "According to the jurisprudence of the Constitutional Court, objectified in Decision no. 349 of 17 June 2014, published in the Official Journal of Romania, Part I, no. 582 of 4 August 2014, as a premiss for the analysis of the constitutionality of legal texts as interpreted by the Supreme Court, *the Court must first determine whether that interpretation is within the limits of Art. 126 para. (3) of the Constitution*" (emphassis added). For a reading of article 126 para. (3) of the Constitution in conjunction with article 124 para. (3) of the Constitution, see para. 37 of Decision no. 393/2015, published in Official Journal of Romania, Part I, no. 609 from 12 August 2015: "Art. 124 para. (3) of the Constitution is not applicable in the present case given that the author criticizes a rule of incrimination and *not the provisions governing the procedure of preliminary rulings pronounced by the High Court of Cassation and Justice*" (emphasis added).

[3] See Decision no. 349/2014, published in Official Journal of Romania, no. 582 from 4 of August 2014 where the Constitutional Court underlined that "is going to analyse if *the setting of the procedure* in the case of those complaints based on article 136 para. (1) of Law no. 31/1990, *through the supreme court decision*, is or not in accordance with the constitutional and conventional coordinates alleged and with the intention of the legislature" (emphasis added), and pointing out afterwards that "the High Court of Cassation and Justice by adopting Decision no. 16 from 17 of October 2011 has pronounced a read in conjunction between the normative concrete content of article 136 para. (1) of Law no. 31/1990 and the Civil Procedural Code from 1865, qualifying the procedure established therein as being a non-contentious one. The Court therefore considers that it is facing a genuine interpretation operation within the meaning of art. 126 of the Constitution, that respects, altogether, the legislative competence of Parliament prescribed by art. 126 para. (2) of the Constitution and the interpretative jurisdiction of the High Court of Cassation and Justice, referred to in art. 126 para. (3) of the Constitution". See also Decision no. 534/2013, published in the Official Journal of Romania, Part I, no. 114 from 17 February 2014: "The problem that arises in this context is to determine whether the limitation only to immovable property, by a decision of the Supreme Court, of the category of goods in respect of which the entitled persons may request and obtain compensation when the legislature used the term «confiscated goods» – without distinction – complies with the constitutional and conventional coordinates alleged and with the intention of the legislature".

[4] Published in the Official Journal of Romania, Part I, no. 513 from 9 of July 2014.

"27. Or, given that a new legal provision becomes applicable in ongoing trials, *the risk of a procedural imbalance to appear between the parties must be mitigated by the courts through an interpretation of those new provisions in the light of the requirements established by the Convention on Human Rights and Fundamental Freedoms through article 6, which enshrines the right to a fair trial, and in accordance with Art. 20 para. (1) of the Constitution that establishes that «Constitutional provisions concerning the citizens rights and liberties shall be interpreted and enforced in conformity with the Universal Declaration of Human Rights, with the convenants and other treaties Romania is a party to*» (emphasised added).

28. In this regard, the Court notes that in order to counter the risk concerning the emergence of a procedural imbalance and in order to provide in the same time efficiency to the measures adopted for finalizing the restitution of abusively confiscated properties during the communist regime in Romania, *the administrative court* seised before the entry into force of Law no. 165/2013 *will have to give* – in accordance with article 18 para. (1) of the Law no. 554/2004 which states the solutions that a court can provide for – *a ruling that imposes* on the National Commission for Compensation of Property [*Comisia Națională pentru Compensarea Imobilelor*] *the obligation to verify the existence of a property right in relation to the claimed properties*, to appreciate its scope of application and to assess the cuantum of a compensation if, after it shall examine the whole case, it will come to the conclusion that the plaintiff is the holder of that property right, and to also issue a decision that establishes a reward in a points system. *The National Commission for the Compensation of Properties will have to fulfill these obligations imposed by the court within 30 days from the date in which the judgment becomes final*, as required by article 24 para. (1) of Law no. 554/2004" (emphasis added).

We observe how the Constitutional Court imposes, in the name of the need to ensure the respect for the Convention at the national level, the way in which an administrative court must interpret national legislation, while also establishing the precise obligations that that ordinary court must impose on the administrative authorities in order to ensure that certain legal provisions[5] are applied in conformity with ECHR law, and therefore, in conformity also with the demands of the Constitution[6].

[5] Especially the provisions of article 16 of Law no. 165/2013, published in the Official Journal of Romania, Part I, no. 278 from 17 of May 2013. We further mention that different provisions of Law no. 165/2013 formed the subject matter of 172 decisions pronounced by the Constitutional Court of Romania in 2014 and 2015. In addition, and in a different decision, the Constitutional Court declared the extranous unconstitutionality of the provisions of the Law approving the Emergency Ordinance of Government no. 115/2013 establishing a new final term for ending the process of restitution, in nature or equivalent, of properties abusively taken during the Communist regime (see Decision no. 1/2015 published in the Official Journal of Romania, Part I, no. 85 from 2 February 2015).

[6] Through the means of interpretating the constitutional provisions in the light of the provisions of the Convention and in accordance with the obligation imposed by article 20 para. (1) of the Constitution.

2. Decision no. 19/2014

Another worthy mentioning decision is Decision no. 19/2014[7] in which the Constitutional Court specified the conditions for applying a constitutionality review that has as an indirect subject-matter a High Court decision handed down in an appeal in the interest of the law ("recurs in interesul legii [RIL]"), and this whenever the High Court sends within its own legal reasoning also to the provisions of the Convention that are even directly applicable in pending cases in front of ordinary courts. In this ruling, the Constitutional Court declared the followings:

Primo, "[t]he Court notes that *the author criticizes indirectly Decision no. 27 of 14th November 2011 handed down by the High Court of Cassation and Justice*, claiming that the interpretative judicial solution given through an appeal in the interest of law and by which it was established that provisions of the special law, *i.e.* Title VII of Law no. 247/2005 take precedence over the general law, namely art. 480 and following of the Civil Code of 1864 read in conjunction with art. 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, *is contrary to art. 20 para. (2) of the Constitution that establishes the priority of international regulations concerning fundamental human rights*, with the exception of cases in which the Constitution or national law comprise more favorable provisions" (emphasis added).

Secundo, "[t]he Court notes that by Decision no. 27 of 14 November 2011, the *High Court of Cassation and Justice held that the actions* that call for the award of pecuniary compensation in the case of confiscated property in an abusive manner, but impossible to be returned in kind and for which measures of redress are estalished under Title VII of Law no. 247/2005, *actions that are introduced against the Romanian State based on the provisions of the common action for recovery of property, read together with article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms and with article 13 of the Convention*, must be rejected as being inadmissible" (emphasis added).

Tertio, it is reminded that the Constitutional Court of Romania "has no jurisdiction to rule in relation to the decisions of the High Court of Cassation and Justice, decisions seen here as judicial acts, but can decide in relation to the way in which the legal provisions that formed the legal basis for adopting that judicial act were interpreted by the High Court". Therefore, "when the subject-matter of the exception of constitutionality is the very decision taken by the Supreme Court, and not a particular

[7] Published in the Official Journal of Romania, Part I, no. 144 from 27 February 2014. We chose to mention precisely this decision because it is in this decision where the Constitutional Court does a summary of other four decisions: Decision no. 202/2013, published in the Official Journal of Romania, Part I, no. 365 from 19 June 2013, Decision no. 212/2013, published in the Official Journal of Romania, no. 371 from 21 June 2013, Decision no. 466/2013, published in the Official Journal of Romania, Part I, no. 35 from 16 January 2014, or Decision no. 491/2013, published in the Official Journal of Romania, Part I, no. 61 from 24 January 2014.

interpretation given to a legal provision through an appeal in the interest of the law, the exception of unconstitutionality must be inadmissible since a judgment may not be subject to constitutional review"[8].

Quatro, the Constitutional Court stated that "by Decision no. 27 of 14 November 2011 *it was not established an interpretation in relation to the normative content of title VII* of Law no. 247/2005, with the purpose to ensure unitary application of that provision by the ordinary courts" (emphasis added) but "the High Court of Cassation and Justice has established an uniform application of a general principle of law, ruling that the special law – Title VII of Law no. 247/2005 – takes precedence over the general law in virtue of the general principles of law, namely that the provisions of a general statute must yield to those of a special one – *specialia generalibus derogant*". Consequently, in the Court's view, the exception of unconstitutionality must be considered inadmissible because "the High Court of Cassation and Justice has not intervened on the provisions of Title VII of Law no. 247/2005, in order to interpret and establish, in concrete terms, a certain legal meaning, as a consequence of certain facts and different judicial solutions".

We submit that through the above-mentioned type of constitutionality review, the Constitutional Court conditions the constitutionality review of a High Court decision to the conditions that the author of the exception of constitutionality is to prove that the High Court decision brought under scrutiny imposes a certain interpretation that must be given to a certain law provision[9], and not just the

[8] See also Decision no. 399/2013, published in the Official Journal of Romania, Part I, no. 708 from 19 February 2013: "The circumstance that, within the process of interpretation, the ordinary court qualifies the prosecutor's resolution to classify a case to be or not to be an administrative act does not give legitimacy for the Constitutional Court to step in and decide because, in accordance with article 146 letter c) of the Constitution, this Court ensures the constitutionality review of laws and ordinances, not of court rulings". Therefore, it is pointed out that "the constitutional judge has, in terms of compatibility with the Basic Law, the mission to censorship a legal provision only to the extent that the ordinary court is handcuffed to an interpretation given by an appeal in the interest of the law" sending also to Decision no. 854/2011, published in the Official Journal of Romania, Part I, no. 672 from 21 September 2011. In addition, see also Decision no. 534/2013, published in the Official Journal of Romania, Part I, no. 114 from 17 February 2014: "It can be identified from the settled case law of the Constitutional Court on this subject two different approaches, depending on the subject matter of the exception of unconstitutionality: in the first case, when the author of the exception criticizes the ruling in itself delivered in an appeal in the interest of the law, the exception is declared inadmissible, while in the second situation, if the exception of unconstitutionality refers to the legal texts interpreted by the High Court of Cassation and Justice, during the settlement of an appeal in the interest of the law, the Court has jurisdiction to rule in relation to the points raised in the exception of unconstitutionality". Or Decision no. 466/2013, published in the Official Journal of Romania, Part I, no. 35 from 16 January 2014 that sends to Decision no. 409/2003 concerning the exception of unconstitutionality raised in relation to the provisions of article 35 of Law no. 33/1994 concerning the expropriation for public purpose and to Decision no. VI from 1999 of the Joint Chambers of the Supreme Court of Justice and published in the Official Journal of Romania, Part I, no. 848 from 27 November 2003.

[9] For the issue of admisibility of such a control in this given situation, see also Decision no. 174/2014, published in the Official Journal of Romania, Part I, no. 515 from 10th of July 2014 where the Constitutional Court analysed the constitutionality of the interpretation provided to a legal text by Decision no. 18/2011 of the High Court of Justice and Cassation, decision published also in the Official Journal of Romania, Part I, no. 892 from 16 December 2011.

application of some general principles of law ordered to be applied in a certain manner by ordinary courts[10].

As a consequence, whenever the High Court imposes a certain interpretation of the law, and irrespective of the fact that through that ruling the High Court already took into account the standard of protection of the Convention, the Constitutional Court will acquire the competence to verify if the meaning provided to the Convention by the High Court matches to the way in which the Constitutional Court understands to "translate" at the national level, and in constitutional language, the requests of the Convention[11].

An exception to such a constitutionality review competence is going to apply whenever the High Court demands that the ordinary courts must refrain from directly applying ECHR provisions, as it has done in Decision no. 27/2011[12] – this type of decision escaping, for the moment, a constitutionality review[13].

3. Decision no. 265/2014

The reasoning provided by the the Constitutional Court in relation to its competence to control the *erga omnes* interpretation given by the High Court was restated in Decision no. 265/2014[14] where the Court underlined that such a competence concerns not only the *res interpretata* provided as a result of an appeal in

[10] In relation to the definition provided by the Constitutional Court to the notion of "principle of law", see Decision no. 1470/2011: "the principle represents a fundamental or primary on which an idea or law is based, an axiom".

[11] See also Decision no. 1470/2011 published in Official Journal of Romania, Part I, no. 853 from 2 December 2011: "even if in a decision handed down in an appeal in interest of law the Supreme Court gives a binding solution in relation to the way in which a certain legal provision must be interpreted and applied, this does not imply that the constitutional judge cannot review the constitutionality of that legal provision as interpreted in that binding ruling".

[12] Published in the Official Journal of Romania, Part I, no. 120 from 17th of February 2012.

[13] Even though the interpretative ruling of the High Court can be contested either in front of the Strasbourg Court, in an indirect manner through a claim for breach of article 13 of the Convention, either in front of an ordinary national court whenever the ordinary judge would be asked to verify the conformity of Decision no. 27/2011 with article 13 of the Convention, the ordinary court having the competence on the basis of Article 20 para. (2) of the Constitution – if a non-conformity is firstly established – to set aside the judicial recitals considered to be contrary to the Convention. However, such a demand to review the conventionality of an interpretative decision of the Supreme Court would have not been possible to be introduced in front of the ordinary courts if Constitutional Court would have had already the opportunity to check the constitutionality and conventionality of that interpretative ruling, confirming therefore the conformity with the Convention – for this *case scenario*, see Decision no. 174/2014 in which the Constitutional Court of Romania ("CCR") confirms, with majority, that the interpretation provided by the High Court in decision no. 18/2011 was in conformity with article 1 from Protocol no. 1 to the Convention (but do also read the separated opinion of judge Petru Lăzăroiu). Decision no. 174/204 was confirmed also in Decision no. 367/2014 published in the Official Journal of Romania, no. 669 from 11 september 2014.

[14] Published in Official Journal of Romania, no. 372 from 20 May 2014. For a legal debate in relation to the consequences of this decision, see also *CCR v. ICCJ. Legea penală mai favorabilă*, accesible on-line at *www.dezbateri.juridice.ro/arhiva* [last time checked in 16th of March 2016].

the interest of the law, but also the *res interpretata* given under the procedure for preliminary rulings and issued for clarifying specific legal aspects[15]. Therefore, the Court points out that "the fact that through a decision issued in an appeal on points of law a given provision acquires a certain interpretation is not likely to be converted to a plea of inadmissibility that would oblige the Court, despite its role as a guarantor for the supremacy of the Constitution, to not examine the text in question in the light of the interpretation provided by the Supreme Court"[16]; and "the content of that legal norm, as interpreted by the that [preliminary] ruling is also subject to constitutionality review in the same manner as the interpretations provided in decisions handed down in appeals in the interest of the law"[17].

Consequently, the High Court *res interpretata* rulings are not excluded at the first hand from the field of application of a constitutionality review. In addition "irrespective of the interpretation provided to a legal text, when the Constitutional Court has decided that only a certain version of legal interpretation is in conformity with the Constitution, and therefore preserving the constitutionality of that legal provision in that specific version of interpretation, the ordinary courts must respect the decision of the Court and apply it accordingly"[18] while "any other interpretation that the judicial practice will give to that legal provision is going to be affected by unconstitutionality vices"[19]. This *ratio*

[15] For an explanation of this competence, see also D.C. Dănișor, *Restrângerea excesivă a obiectului controlului de constituționalitate prin jurisprudența Curții Constituționale* [Excessively tightening the object of constitutional review by the case law of the Constitutional Court], in Revista Română de Jurisprudență no. 4/2009, read on-line at *www.idrept.ro*: "I stated above that an act that interprets a primary norm and which is general obligatory is an act that was issued in the exercise of a legislative function, therefore capable to form the object of a constitutionality review. Moreover, it is commonly accepted in the theory of law that authentic interpretation of a law is made through a law. If the legislature transmits the competence to give an authentic interpretation of the law to another body, then that body exercises, by issuing that authentic interpretation, a function of the lawmaker: a legislative function. Thus, if the lawmaker gave to the High Court of Justice and Cassation the power to interpret laws through rulings given in their interest, and these decisions are binding on courts and the courts have the general power to control administrative acts and to settle all legal disputes, then the interpretative judgments of the High Court of Cassation and Justice are binding and therefore the Court's interpretation is authentic, being done in the exercise of its legislative function, not of its judicial one. As a result, the Constitutional Court could have the competence to control the constitutionality of such rulings if the Constitutional Court decides to interpret the notion of law that is mentioned in article 146 of the Constitution in the manner pointed out above".

[16] Para. 51 sending to Decision no. 8/2011, published in the Official Journal of Romania, Part I, no. 186 from 17 March 2011.

[17] Para. 53.

[18] Para. 55. Please also observe that this type of obligation imposed on the ordinary courts, namely to respect the interpretative ruling provided by the Constitutional Court and through which it was modified the obligatory interpretation given by the High Court in a decision pronounced as a result of an appeal in the interest of the law or as a result of a preliminary ruling cannot be sanctioned in any way if not respected, as the Constitutional Court does not have the means to sanction ordinary courts for disrespecting this obligation as the litigant cannot contest in front of the Constitutional Court a final decision of an ordinary court, even though this final decision was adopted on the basis of an interpretation that would risk being contrary to the Constitution, and therefore contrary to the interpretative decision of the Constitutional Court.

[19] Para. 55. As a consequence, the Court repeals the effects of Decision no. 2/2014 of the High Court of Justice and Cassation from the moment of the publishing of the recitals of its decision in the Official Journal of Romania (see para. 56 of this decision).

decidendi of the Constitutional Court was later confirmed by the High Court when it ruled that "the decision given by the Supreme Court in order to ensure the uniform interpretation and application of the law shall lapse not only when a declaration of unconstitutionality followed concerning the same legal provision as the one that gave rise to the legal issues, but also in the case in which the Constitutional Court has established that that legal provision has acquired unconstitutionality aspects as a result of the interpretation given in a decision issued in an appeal in the interest of the law or in a preliminary request, as the lawmaker has used the expression «finding of unconstitutionality» [*constatarea neconstituționalității*], and not that of «declaration of unconstitutionality» [*declararea neconstituționalității*]"[20].

4. Conclusions

First of all, we are to conclude that the Constitutional Court of Romania – by choosing to interpret the provisions of the Convention[21] – imposes her own interpretation of the Convention on the interpretative decisions provided by the High Court of Cassation and Justice, ensuring therefore that at the national level there is going to be an uniform understanding in relation to both the Convention provisions and to the obligations that could result from the need to ensure the observance of the Convention at the level of the ordinary courts and this whenever these ordinary courts are asked by a litigator to ensure that when applying the legal provisions to the case at hand, the Convention is going to be observed[22].

Consequently, the Constitutional Court of Romania has declared that it has the competence[23] to impose at the national level the only legal meaning of a legal provision[24] that demands to be presumed to be constitutional and this whenever the only meaning was already established – in a provisory manner – by the High Court, with the consequence that any other different interpretation that the judicial practice will

[20] Decision no. 21/2014 published in the Official Journal of Romania no. 829 from 13 November 2014, issued by the High Court of Cassation and Justice – The Panel competent to resolve law issues in criminal matters.

[21] *Exempli gratia*, Article 7 of the Convention (in Decision no. 265/2914, paras. 39-41) and the additional relevant ECHR case law.

[22] The Constitutional Court of Romania seems to follow the advice of professor Kelsen: "Il est en effet preferable, et d'un facon generale, de reduire le plus possible le nombre des autorites supremes chargées de dire le droit" [*It is actually preferable, and in principle, to reduce as much as possible the number of supreme authorities that are competent to state the law* – t.a.] H. Kelsen, *La garantie juridictionnelle de la Constitution (La justice constitutionnelle)*, in Revue du Droit Public et de la Science Politique, 1928, 197-257, p. 234.

[23] See also Decision no. 349/2014 published in the Official Journal of Romania, no. 582 from 4 August 2014, para. 13: "From the perspective of the Constitution, the Constitutional Court has the competence to review the constitutionality of legal provisions applied in accordance with their interpretation established in decisions given in appeals in the interest of the law. Accepting a contrary view is against the reason why the Constitutional Court exists in the first place, as it would mean for the Constitutional Court to deny its constitutional role if it has to accept that a legal text could be applied in ways that would enter in collision with the Fundamental Law" (t.a.).

[24] See para. 57, *fine*.

provide to the law, different from the one chosen by the Constitutional Court to be the only one in accordance with the Constitution, is *eo ipso* unconstitutional[25]. In addition, the unique given interpretation of the law by the Constitutional Court is not only obligatory for all the national ordinary courts – here included the High Court – but also for all the administrative authorities at those are also asked to apply the legal provisions as interpreted by the Constitutional Court through an interpretative decision[26]. Therefore, to the possible desires of the ordinary courts to "unlock" themselves from the *erga omnes* interpretation imposed by the High Court[27], the Constitutional Court establishes a correlative obligation, namely the obligation to obey its interpretation.

Secondly, whenever the Convention is used by the Constitutional Court in order to maintain the validity of a certain legal provision, pronouncing interpretative decisions in this regard[28] – the recitals of such a decision being obligatory for all state authorithies –

[25] Notwithstanding, the Constitutional Court does not mention a precise mechanism that would allow the Court to analyze the possible unconstitutionality of a judicial practice that would prove to be different than the only allowed interpretation of a legal provision already established by the Constitutional Court. In addition, the Court seems to presume that a legal text can only receive one single interpretation that could be in conformity with the Constitution, without pointing out from where it assumes this presumption. For all that, a possible sanction could nevertheless be applied in the *case scenario* in which there is going to be a future decision given on an appeal in the interest of the law or in a preliminary ruling, and in which the High Court would not respect the single interpretation chosen by the Constitutional Court in a previous ruling, and an example in this direction can be found in Decision no. 161/2015, published in the Official Journal of Romania, no. 352 from 21st of May 2015, para. 34, where the Constitutional Court concludes that "the interpretation provided by the High Court of Cassation and Justice [in decision no. 21 from 18th of November 2013] respected the decisions of the Constitutional Court, being given within the constitutional framework specified by these decisions".

[26] See Decision no. 1.064/2012, published in the Official Journal of Romania, no. 79 from 1st of February 2013: "[i]rrespective of the various interpretations that a text could admit, when the Constitutional Court has decided that only a certain interpretation is in accordance with the Constitution and therefore maintaing the constitutionality presumption of that legal text within the framework of that interpretation, the courts and the administrative entities must comply with the Court's decision by applying it accordingly. In the interpretation of the law, the courts, including the High Court of Cassation and Justice must respect the constitutional framework, and the competence to sanction the overcoming/disrespect of this framework belongs exclusively to the Constitutional Cour[t]" (t.a.).

[27] For example, in Decision no. 393/2015, published in the Official Journal of Romania, no. 609 from 12th of August 2015, the exception of unconstitutionallity was *ex officio* raised and concerned the preliminary ruling of the High Court of Cassation and Justice given in Decision no. 12 from 12th of June 2014 that was published in the Official Journal of Romania no. 507 from 8 July 2014.

[28] For a history review of such interpretative decisions, and for a possible criticism in relation to the competence of the Constitutional Court to issue such decisions, see G. Gîrleşteanu, *Consideraţii privind Decizia nr. 558 din 24 mai 20121 referitoare la excepţia de neconstituţionalitate a dispoziţiilor art. V alin. (1) teza I din Ordonanţa de urgenţă a Guvernului nr. 15/2012 privind stabilirea unor măsuri financiare în domeniul asigurărilor sociale de sănătate şi al finanţelor publice,* in Pandectele Române, no. 6/2012, read on-line at *www.idrept.ro*: "The present decision represents, without doubt, an interpretative decision, but the actual legal and constitutional frameworks persists in making us doubt in relation to the competence of the Constitutional Court to issue such rulings. The last years case law of the Constitutional Court demonstrates that the Court arrogates, on the basis of article 3 para. (2) of the *Framework – Law of organisation and functioning,* the competence to issue interpretative decisions. What would be the basis for such an institutional practice?".For a classification of the different types of interpretative decisions into interpretative decisions with a neutralizing reserve, constructive reserve and directive reserve – decisions present in the case law of the Constitutional Council of France, see T. Toader, M. Safta, *Rolul deciziilor interpretative în procesul de constituţionalizare a dreptului*, Dreptul, nr. 9/2014, p. 79. See also I. Chelaru, C. Ionescu, *Consideraţii în legătură cu deciziile Curţii*

the Constitutional Court imposes additionaly its own interpretation of the Convention and of the case law of the Convention, the plaintiff losing the option to still ask the ordinary court to apply in an independent fashion a conventionality review that could, in certain situations, even contradict with *inter partes* effect the result of a constitutionality review. Besides, the interference of the constitutional judge in the conventionality review that it should be applied autonomously by an ordinary court was also ascertained in France[29].

Lastly, it can be presumed that the number of cases in which the ECHR law is invoked in front of the Constitutional Court has dramatically decreased in the last couple of years because the litigator has understood that it can first invoke the exception of unconventionality – thus obtaining the inapplication in the pending case of the national provisions considered to be contrary to the Convention, or at least the interpretation of that provision in conformity with the Convention, while losing any interest to ask for the same provision to be considered for a constitutionality review in front of the only authority that has constitutional jurisdiction, even though that provision – because is contrary to the Convention – is also contrary to the Constitution in accordance with article 20 of the Constitution, that legal text remainining still within the legal circuit and applicable for all the other situations in which it is not further contested in front of an ordinary court.

Constituționale și efectele acestora [Considerations in relation to the decisions of the Constitutional Court and their effects], Dreptul, no. 9/2015, p. 152: "The Constitutional Court must show prudence when giving interpretative decisions in order to avoird becoming a positive legislator" (t.a.).

[29] See S. Platon, *Les interferences entre l'office du juge ordinaire et celui du Conseil constitutionnel: "malaise dans le contentieux constitutionnel"?*, RfDA 2012, no, 4, juillet-aout, pp. 639-649, p. 641, sending to D. De Bechillon, *De quelques incidences du controle de la conventionnalite internationale des lois par le juge ordinaire (Malaise dans la Constitution*, RfdA 1998, p. 225.