

INTERNAL AND INTERNATIONAL ACTIVITY OF THE CONSTITUTIONAL COURT – SEMESTER II/2021

JULY

On Friday, 2 July 2021, the Constitutional Court of Romania and the Constitutional Court of the Republic of Moldova organized, as part of the joint program dedicated to the constitutional review exercised by the two jurisdictions, the webinar with the theme of the Interpretation of the Constitution – between originalism and living law. The program is addressed to assistant magistrates of the Constitutional Court of Romania and judicial assistants of the Constitutional Court of the Republic of Moldova and is coordinated by Mr. Benke Károly, chief assistant magistrate of the Constitutional Court of Romania, and Mr. Teodor Papuc, deputy chief secretary of the Court Constitution of the Republic of Moldova.

During the webinar, on behalf of the Constitutional Court of the Republic of Moldova, Mr. Marcel Lupu, judicial assistant, gave the presentation The Misconceived Quest for Original Understanding – P. Brest.

On behalf of the Constitutional Court of Romania, the following presentations were given:

- Originalism and living law. Conceptual clarifications, presented by Mr. Cosmin-Marian Văduva, assistant magistrate;
- Interpretation of the Constitution – originalism vs. living law, presented by Mrs. Ramona Daniela Marițiu, assistant magistrate.
- Overview of the concept of "living law" in the conception of E. Ehrlich developed in the work "Fundamentals of the sociology of law", presented by Mr. Benke Károly.

The workshop was well attended by assistant magistrates/judicial assistants, and the legal issues that were the subject of the presentations were discussed and debated.

Both sides appreciated the usefulness of the workshop and the need to continue the collaboration program started in September 2020.

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On 8 July 2021, Mrs. Elena-Simina Tănăsescu, judge, and Mr. Fabian Niculae, assistant magistrate, participated in the proceedings of the Meeting of the Bureau of the Association of Francophone Constitutional Courts (A.C.C.F.), held online.

AUGUST

On 11 August 2021, the President of the Constitutional Court of Romania, Prof. Dr. Valer Dorneanu, received the visit of the President of the Supreme Court of the Czech Republic, Mr. Petr Angyalossi. The meeting was also attended by Mr. Aleš Pavel, director of the cabinet

of the president of the Supreme Court of the Czech Republic, and Mr. Benke Károly, chief assistant magistrate at the Constitutional Court of Romania.

During the meeting, the president of the Constitutional Court of Romania presented the legal regulations regarding the role and powers of the constitutional court. In the presentation made, some concrete clarifications were made regarding the conditions under which the decisions of the High Court of Cassation and Justice pronounced in the second appeal in the interest of the law or its prior decisions can form the object of the constitutionality review through the exception of unconstitutionality.

The President of the Supreme Court of the Czech Republic presented aspects related to the complaint of unconstitutionality formulated against the court decisions and emphasized the binding character of the decisions of the Constitutional Court on the pronounced court decisions. Also, the distinguished guest made a short presentation regarding the criteria and procedure for appointing judges at common law courts and the national regulations in the field of their professional ethics.

SEPTEMBER

On 2 and 3 September 2021, prof. dr. Valer Dorneanu, President of the Constitutional Court of Romania and Mrs. Claudia-Margareta Krupenschi, Chief Assistant Magistrate, Director of the President's Cabinet participated in the proceedings of the International Conference on the theme "EU-nited in diversity: between common constitutional traditions and national identities", organized by the Constitutional Court of the Republic of Latvia and the Court of Justice of the European Union, carried out in a hybrid manner.

The proceedings were opened by the President of the Court of Justice of the European Union, Mr. Koen Lenaerts and the President of the Constitutional Court of the Republic of Latvia, Ms. Sanita Osipova, and were attended by representatives of the constitutional courts of Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Poland, Slovakia, Slovenia, Spain and Hungary.

The event was structured in 4 sessions, with the following themes: *Discovery and definition of common constitutional traditions of member states, Fundamental rights: Scope, powers and harmonization, Level of protection of fundamental rights and Limitations of the exercise of fundamental rights.*

In the section dedicated to the discussions on the first day of the Conference, the President of the Constitutional Court of Romania had an intervention in which he emphasized that the exchange of experience and the discussions held between the distinguished participants, which reflect the need and desire for harmonization at the level of the jurisprudence of the constitutional courts and the CJEU, should also acquire concrete traits, which should lead, on the one hand, to the identification of the traditional constitutional values of each EU member state and, on the other hand, to the recognition of European identity values, common to all member states. In this context, he referred to the need for a concrete procedural instrument, regulated in the procedure before the Court of Justice of the European Union,

which would make it possible to express a point of view by a constitutional court when the discussion of the Luxembourg court refers, directly or indirectly, a decision of the respective constitutional court. At the same time, a practical way to avoid the legal conflict should be the referral of preliminary questions to the CJEU, by the constitutional courts.

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On 7 and 8 September 2021, Mrs. Marieta SAFTA, first assistant magistrate, and Mrs. Cristina Titirișcă, assistant magistrate, participated in the proceedings of the 9th edition of the Summer School organized by the Center for Training and Development of Human Resources of the Asian Association of Constitutional Courts and Equivalent Institutions (AACC), with the theme "*Current Issues in the Enforcement of Judgments: Constitutional Justice*", hosted online by the Constitutional Court of the Republic of Turkey.

The event was well attended, with 27 constitutional courts or equivalent courts from Europe, Asia and Africa represented. During the event, the Romanian magistrates presented "*Theoretical and practical aspects regarding the enforcement of the decisions of the Constitutional Court of Romania*".

The participants appreciated the importance of the cooperation of the constitutional courts, the event being a good opportunity for the sharing of experience regarding the challenges that, in practice, the activity of the constitutional jurisdiction authorities entails.

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On 9 September 2021, the President of the Constitutional Court of Romania, Prof. Dr. Valer DORNEANU and Mrs. Claudia-Margareta KRUPENSCHI, Chief Assistant Magistrate, Director of the President's Cabinet, represented the Constitutional Court of Romania at the events dedicated to the 230th anniversary of the adoption of the Constitution of Poland, organized by the Constitutional Court of Poland. The main theme of the presentations and discussions was "*Constitutional identity*".

During the video conference, the president of the Constitutional Court made a presentation about the elements of constitutional identity from a historical perspective and up to now, with the need to observe them in the context of integration into the European legal order.

OCTOBER

On 15 October 2021, Mrs. Claudia Margareta Krupenschi, chief assistant magistrate, director of the cabinet of the President of the Constitutional Court of Romania, attended the 4th workshop, as a representative of the CCR, at the Forum of the Network of Supreme and Constitutional Courts (SCN) within the European Court of Human Rights, held in the form of a webinar with the theme "*Mass protests*".

The debates were mainly conducted on the relevant case-law of the Strasbourg Court, which analyzed the right to peaceful assembly and/or the right to free expression (guaranteed by art. 10 and art. 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms), the proportionality of restrictions on the exercise of these rights and the government's margin of appreciation in order to maintain legitimate goals.

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On Friday, 15 October 2021, Mrs. Valentina Bărbăţeanu, assistant magistrate and Mrs. Andreea Costin, assistant magistrate participated in the International Conference on the topic "*Case-law of courts and tribunals in the matter of sexual and gender minorities vs. human well-being*", hosted by the Ministry of Justice of the Republic of Poland and Prof. Przemysław Ostojcki from the Higher School of Justice (N.I.M. correspondent).

The event was held in Warsaw, in a hybrid format, with the participation of experts from Poland and the United States of America, representing academia, the judiciary and practitioners.

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On 30 October 2021, Mr. Benke Károly, Chief Assistant Magistrate, participated online in the International Conference "*Contradictions of the Contemporary Law*", organized by the Faculty of Law of the Sarajevo East University, and made the presentation "*Originalism, textualism and living law in the case-law of the Constitutional Court of Romania*". The works presented at the conference will be published in the volume dedicated to it. The event took place in Pale (Bosnia-Herzegovina), in a hybrid format, with the participation of academic and university representatives from 14 countries.

DECEMBER

On 2 and 3 December 2021, prof. univ. dr. Elena Simina Tănăsescu, judge of the Constitutional Court of Romania, participated online, in the proceedings of the World Congress of Law and those of the XXIII International Congress on European and Comparative Constitutional Law, organized in Colombia, Barranquilla, by the World Association of Jurists and prof.dr.h.c. Rainer Arnold – University of Regensburg, Federal Republic of Germany. On this occasion, on the first day of proceedings, Judge Elena Simina Tănăsescu gave her presentation in the session *Fundamental rights and constitutional jurisdiction in the state of emergency*.

The event enjoyed a wide international participation, high representatives of the judiciary, presidents, judges of supreme and constitutional courts, other jurisdictional courts and international bodies from Europe, Africa, Asia and North America, eminent jurists and academics.

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Between 9-11 December 2021, within the framework of bilateral relations and at its invitation, the Constitutional Court of Romania received the working visit of the delegation of the Constitutional Court of the Republic of Moldova, led by Mrs. Domnica Manole, president, and composed of Mr. Vladimir Țurcan, Mr. Serghei Țurcan, Mr. Nicolae Roșca, judges, Mr. Teodor Papuc, deputy chief secretary, Mr. Dumitru Avornic, head of the Legal Assistance Department and Mr. Marcel Lupu, judicial assistant.

On Friday 10 December 2021, the working meeting with the distinguished guests took place at the headquarters of the Constitutional Court, attended by the President of the Court, Mr. Valer Dorneanu, Judge Mona-Maria Pivniceru, Judge Daniel-Marius Morar, Mrs. Marieta Safta, first-delegated assistant magistrate, Mrs. Claudia Margareta Krupenschi, director of the president's cabinet, chief delegated assistant magistrate, Mrs. Mihaela Senia Costinescu and Mr. Benke Károly, delegated chief assistant magistrates. The representatives of the two constitutional courts held discussions on current issues of common interest, such as the independence of the judiciary, respect for fundamental rights and freedoms, ways to make the act of constitutional justice more efficient and transparent, and the status of the constitutional judge. Also, certain relevant decisions pronounced in the field of criminal procedure, constitutional relations between public authorities and relations between European Union law and domestic law were presented.

The friendship and close collaboration between the two courts of constitutional jurisdiction led to the idea of jointly celebrating the 30th anniversary of the adoption of the Declaration of Independence of the Republic of Moldova – an act with constitutional value – and the approval of the Romanian Constitution, on this occasion a joint tribute volume was launched, entitled *Constitutional Heritage and Democratic Values*, published under the coordination of the two presidents of the two Constitutional Courts.