Addresses, interviews, lectures, messages and speeches

1. Welcome message by the President of the Constitutional Court, Mr Marian Enache, on the occasion of the opening of the formal session of the celebration of the Centenary of the Romanian Constitution of 1923, 27 March 2023

Ladies and gentlemen,
Dear guests,

I open the solemn session of the celebration of the Centenary of the 1923 Constitution of Romania by the intonation of the National Anthem of Romania, which is interpreted by artists of the Romanian National Opera in Bucharest.

I thank the artists for this vibrant interpretation!
Your Excellency, Mr President of Romania KLAUS-WERNER IOHANNIS,
Your Beatitude Father Patriarch Daniel,
Madam President of the Senate, Alina Gorghiu,
Mr President of the Chamber of Deputies, Marcel Ciolacu,
M Prime Minister Nicolae Ciucă,
Madam President of the High Court of Cassation and Justice, Corina Corbu,
Your Beatitude Father Mihai Frățile, the Greek Catholic Bishop of Bucharest,
Distinguished representatives of Roman Catholic and Muslim religions,
Mr President of the Court of Justice of the European Union, Koen Lenaerts
Madam President of the Venice Commission, Claire Bazy Malaurie,
Madam President of the Constitutional Court of the Republic of Moldova and President of the Conference of European Constitutional Courts, Domnica Manole,
Mr President of the Association of Constitutional Courts using the French language, Mamadou Camara and Madam Secretary General of the Association, Caroline Pétillon,
Esteemed Professor Rainer Arnold of the University of Regensburg, Germany,
Distinguished Presidents of the Constitutional Courts and judges of the friendly Constitutional Courts of Europe,
Honourable guests, representatives of Romanian State institutions and distinguished representatives of the public, academia, legal field, representatives of the media and other fields of activity,
Your Excellencies, representatives of the accredited diplomatic missions in Bucharest,

Dear colleagues,

I would like to extend to you, both personally, and on behalf of the judges of the Constitutional Court of Romania, a cordial welcome, accompanied by sincere thanks for the honourable presence of Your Excellencies at the anniversary of the Centenary of the 1923 Constitution, which, for all us Romanians, is a historical moment and is a genuine holiday of the Romanian Constitution and constitutionalism, seen in terms of both evolution and contemporaneity.

Romania's Constitutional Court unanimously decided in its Plenum to declare 2023 as the year of the Centenary of the 1923 Constitution, which would begin with a festive and official moment, i.e. the launch of a stamp emission, followed throughout the year by actions with professional and scientific content, debates, communications, exhibitions aimed at highlighting the eminent meaning of the 1923 Constitution. Today, as part of this anniversary event, we open together

The Year of the Centenary of the 1923 Constitution

It is a joy for all of us to be together at this solemn Assembly and to be able to share in such a select national and, at the same time, European environment the ideas and meanings expressed in speeches and commemorative messages dedicated to evoking the role and value of the 1923 Constitution for the political history of Romania, whose state development took place in the context of European historical processes during the formation and crystallisation of nations.

Why an anniversary moment for the Centenary of the 1923 Constitution, why did we decide to celebrate this moment as a special event of Romanian constitutionalism? Because the 1923 Constitution, following the 1866 Constitution, laid the foundations for the Unified Romania. Through the aim and content of this Constitution, Romanians aspirations to be united and live in a united and sovereign Romania came true.

The 1923 Constitution, which we celebrate today, is essentially a founding constitutional document of Romania and its political identity among other nations of that historic time. Romania's Unification Act of 1918 was a historic act of exceptional political and constitutional importance, and in the perception of all Romanians, it was an act of historical justice. This crucial achievement of the 1918 Unification Act was enshrined in the 1923 Constitution.

In the same Basic Act, the following were enshrined at constitutional rank: Romanian, as an official language of the Romanian State, the introduction of a judicial review of the constitutionality of laws, Romania being one of the few States in Europe implementing this type of review prefiguring the current requirements of the rule of law and constitutional democracy; the establishment of administrative litigation, the principle of separation of powers, the civil rights of women were recognized and the freedom of the press, the freedom of assembly, the rights, freedoms and equality before the law, including those of national minorities, regardless of ethnic origin, language or religion, were guaranteed; the Christian and Greek-Catholic Church were recognised as Romanian churches.

In a general sense, the 1923 Constitution was considered one of Romania's landmark constitutions, which received at the time of its realisation the ideas of European constitutional liberalism, which it integrated with the historical needs for the development of Romanian society, thus being a legal document of national value.

The 1923 Constitution is an intangible value of our constitutional culture and tradition that we must cherish and honour properly, because it expresses an essential moment in the formation of the the statehood and identity of the Romanian people in its historic becoming, as well as a living testimony of its political-constitutional civilisation.

100 years later, we pay tribute today to our forefathers listed in the bright chronics of the past for their contribution to the construction of the monument of the Constitution of 1923.

The 1866 Constitution, as well as the 1923 Constitution, were used as direct sources and in the drafting of the 1991 Constitution.

The process of drafting this Constitution was inspired by the traditions of Romanian constitutionalism and anchored in the conquests and progress of European constitutional democracy. The Romanian pre- and inter-war constitutions were authentic sources for the 1991 Constituent, who also took into account the most advanced constitutional models that existed at the time in Europe. All this is a peremptory proof that Romania is part of the European constitutional space, playing an important role in structuring Europe’s cultural, political and geostrategic landscape also in view of its membership of Euro-Atlantic structures.

So we can imagine an arch over time between Romania's historic democratic constitutions and the country's current constitution. We can also say that there are interactions between Romania's current Constitution and European Constitutionalism, manifested as a living, innovative and inclusive movement of European Union law and of the universalism of human rights, as well as the of case-law standards developed by the Court of Justice of the European Union and the European Court of Human Rights.

For the Constitutional Court, remembrance of the traditions of Romanian constitutionalism becomes a duty of conscience towards present and future generations. Knowledge of the history of Romanian constitutionalism and its timeliness is necessary in order to make young people aware of their membership of a nation that has shaped its ideals and values in the matrix of European law and legal culture.

Any Constitution, as the supreme social Pact regulating the socio-political system, must achieve both the balance, the proportionality between state authority and freedom as a universal value inherent to the human condition, of the legal and constitutional status of every citizen, and the limitation of State power in relations with its citizens. The strength of the constitutions lies in maintaining social peace through the establishment of the constitutional order, as the foundation of the legal system and the democratic regime of a country.

We all know that a constitution belongs to a political community and, above all, to free and equal citizens in terms of their rights. That is why every citizen has a moral, political and legal duty to comply with the Constitution as a sovereign manifestation of the holder of the political power, as law of the entire nation, which provides the foundation for social harmony, political unity and cohesion of our society.

That is also the prevailing sentiment of Romanian citizens when it comes to their relationship with the Basic Law. For them, the constitution represents a “shield” for defending rights and freedoms, a guarantee of the value of their dignity.

I will conclude my intervention by quoting a spirit of broad European inspiration, Victor Hugo, who already in the 19th century said that: “A day will come when you all, nations of the continent, without losing your distinct qualities and your glorious individuality, will be merged closely within a superior unit and you will form the European brotherhood”.

President of the Constitutional Court of Romania
Marian Enache

2. Speech by the President of the Constitutional Court of Romania, Mr Marian Enache, on the occasion of his participation in the event organized by the National Bank of Romania marking the issue for numismatic purposes of the coins dedicated to the celebration of the Centenary of the 1923 Constitution, 29 March 2023

I would like to thank Mr Mugur Isărescu, Governor of the National Bank of Romania and member of the Romanian Academy, as well as the board of this important and fundamental institution in the architecture of the Romanian State, for the flattering invitation to attend this event, on behalf of the Constitutional Court of Romania, together with my colleague, Judge Laura-Iuliana Scântei.

On this special occasion, I would like to point out, and also appraise, the cooperation and solidarity between the fundamental institutions and important authorities of the Romanian State, as regards the marking of baseline events and values in the history and moments of conscience of the Romanian people, the constant preoccupation, on the part of these institutions, with underlining their special significance for the existence, continuity and endurance of our national identity among other nations of the civilized world.

Such remarkable cooperation and solidarity between institutions could also be seen during the event celebrating the 1923 Constitution, organized on 27 March 2023, by the Constitutional Court of Romania, in the Plenary Hall of the Senate, and attended by the President of Romania, Mr Klaus Werner Iohannis, the Patriarch of the Romanian Orthodox Church, His Beatitude Patriarch Daniel, the Acting President of the Senate, Mrs Alina Ștefania Gorghiu, the President of the Chamber of Deputies, Mr Ion-Marcel Ciolacu, the Prime Minister of Romania, Mr Nicolae-Ionel Ciucă, the President of the High Court of Cassation and Justice, Judge Corina-Alina Corbu, the President of the Court of Accounts, Mr Mihai Busuioc, Ministers, representatives of the National Bank and of other important public institutions, the President of the Court of Justice of the European Union, Mr Koen Lenaerts, the President of the Venice Commission, Mrs Claire Bazy Malaurie, the President of the Constitutional Court of the Republic of Moldova, Mrs Domnica Manole, the President of the Association of Francophone Constitutional Courts, Mr Mamadou Badio Camara, and Prof. dr.h.c. Rainer Arnold, from the University of Regensburg (Germany). Other personalities of the Romanian, European and international legal field were also present at this anniversary event.

On the occasion of today's gathering, I would like to thank them once again for their interest and real support in the unfolding of this event. I felt, as I was saying, that solidarity and cooperation turned it into a celebration of the Romanian Constitution and Romanian constitutionalism.

Here we are, on this day, at the National Bank of Romania, for another remarkable moment related to the anniversary of the Centenary of this historical document of an exceptional national importance, i.e., the Constitution of 1923, the founding act of our statehood, unity and national identity.

I congratulate the Governor of the National Bank of Romania, Mr Mugur Isărescu, and his colleagues for organizing this anniversary event. We congratulate them for the initiative of having issued the two jubilee coins, as a tribute but also as an anchoring in the current Romanian historical consciousness of the centenary of the adoption of the Constitution of Unified Romania in 1923.

The same Basic Act enshrined the following at constitutional level: the national character of our State, Romanian language as the official language of the Romanian State, the introduction of the constitutional review of laws – Romania being one of the few States in Europe that implemented this type of control that anticipated the current requirements of the rule of law and constitutional democracy –, the establishment of administrative litigation proceedings, the principle of separation of State powers, etc. Moreover, it also safeguarded civil rights for women and freedom of the press, freedom of assembly, rights, freedoms and equality before the law, including in the case of national minorities, without distinction of ethnic origin, language or religion, and the Christian and Greek-Catholic churches were recognized as Romanian churches.

As for our forefathers, to whom we pay homage today for their contribution to the construction of the monument of the 1923 Constitution, we can say that, when looking back at this glorious period in Romanian history, we will find important figures who have marked the bright chronicles of the past:

King Ferdinand, Prime Minister Ion I.C. Brătianu, Constantin C. Dissescu, Vespasian Pella, Dimitrie Ioanițescu, Dimitrie Gusti, Nicolae Iorga, Alexandru-Dimitrie Xenopol, Mircea Djuvara, Virgil Madgearu.

In fact, the National Bank of Romania is also to be congratulated because – regardless of the fact that it is a pillar institution, supporting monetary and healthy policies and the national economy – it has also dedicated itself, for a while now, to activities of restitution and promotion of our historical traditions, of a series of baseline achievements, and of an entire galaxy of cultural and scientific personalities who have contributed, through their creations and valuable efforts, to the foundation and development of the Romanian State and society. It is an undeniable merit and an intelligent patronage of our National Bank, materialized in the realization of distinctive commemorative, jubilee coins and other forms of promotion, documentary materials, books, albums, exhibitions, etc.

Through all these actions and achievements, we can say that, while observing the Romanian traditions and science, the National Bank has become a true keeper, a depository of the values of these traditions, thus treasuring both the material values and cultural-spiritual and scientific values of the Romanian people.

In conclusion, I would like to congratulate the board of the National Bank of Romania, a prestigious institution of the Romanian State, on my behalf and on that of the Constitutional Court, for all that they undertake, and wish them many successes in their rich and complex activity.

President of the Constitutional Court of Romania
Marian Enache

3. Speech by the President of the Constitutional Court of Romania, Mr Marian Enache, on the occasion of his participation in the Conference "Romania looking towards the future. A century of history from the 1923 Constitution to this day", 23 May 2023

I would like to express my sincere thanks to His Excellency, Ambassador Alfredo Durante Mangoni, on behalf of the judges of the Constitutional Court and on my own behalf, for the invitation to participate in the Conference "Romania looking towards the future. A century of history from the Constitution of 1923 to this day", which enjoys the presence and participation of prestigious specialists in the field of constitutional law, history and political science from Romania and from our friend-country Italy. I also congratulate the initiators and organizers of this scientific event that marks the celebration of the Centenary of the 1923 Constitution. This anniversary gathering is another important moment that adds to the series of events organized in Romania to mark the Centenary of the 1923 Constitution, which the Constitutional Court of Romania has celebrated in March of this year, an event that enjoyed the participation and contribution of representatives from the fundamental institutions of the Romanian State, as well as of personalities from the scientific field and representatives of European and international institutions.

We believe that this conference, organized by the Italian Embassy in Bucharest together with the Romanian Academy, which takes place under the patronage of the Constitutional Court of Romania, is an inspired event and a proof of the cooperation and friendship between the two countries, Romania and Italy, between the Constitutional Court of Romania and that of Italy, which we want to further develop and strengthen.

It has been one hundred years since the Constituent Assembly of interwar Romania voted the Constitution of 1923. This Fundamental Law has acquired for Romanians a distinct and special legal, political, moral and civic value, which prompts us to give it all due importance during this anniversary event.

The adoption of the 1923 Constitution represents a landmark moment in Romania's constitutional and State history, because this fundamental document has consolidated and perfected the national project of all Romanians to achieve a unitary national State. The Constitution of 1923, symbol of Greater Romania and stemming directly from the Constitution of 1866, harmoniously integrated the constitutional and democratic traditions of all Romanians, and managed to transfer some of its principles and values of the Constitution of 1991, thus, achieving a constitutional arc over time.

The elements of continuity, as well as the lessons conferred by this fundamental law, have both symbolic dimensions and essential components that have been capitalized on in the current Romanian constitutionalism. For today's generations, knowing how the Basic Law of 1923 fulfilled its purpose, as the supreme law of the State, enshrining the union of all Romanians, represents a crucial historical moment, with implications and structuring effects for the current development of the Romanian State. Based on this fundamental law, Romania's interwar political elite was a model to follow, through the way in which it integrated the national

aspirations of the Romanian people into the political-legal practice, established and promoted new institutions and adequate Western-style legislation, stated and manifested democratic conducts, shaped and transformed new political and civic behaviours. This Constitution enshrined, in Article 103, after the American model, the concentrated constitutional review performed by the Court of Cassation.

The 1923 Constitution guided the Romanian society towards the declaration of liberal-European ideas, and the integration of constitutionalism amounted, in our political consciousness, to the rapid connection to the values of Western democracy.

The principles, values and institutions of modern European constitutionalism have been assimilated and adapted to Romanian realities, becoming an organic part of the constitutional culture and practice to this day. In fact, constitutions, all constitutions, are a product of the historical development, expressing both the general principles of State construction and organization existing at a given historical moment, and the essential state of mind and mentality of the respective nation.

In evaluating the process of drafting and adopting the 1923 Constitution, we must also take into account certain specific historical factors, which left their mark on the unfolding of events and influenced the options and mindset of the Romanians of that historical period. First of all, the State was going through the period of formation and consolidation of territorial unity, of ensuring the political unity of the State; secondly, the existence of differences in organization and way of life at the level of the Romanian provinces that had been separated for centuries and had many elements of their own, which all had to be integrated into a single unitary State: a unified Romania; thirdly, the external turmoil, the territorial claims, manifested in the form of Revisionism, especially during the crisis period of 1929-1933. It is worth noting that, at the end of the fourth decade, despite the pressure of authoritarian or totalitarian ideologies, in Eastern Europe, only Romania and Czechoslovakia had managed to preserve their established constitutional structures.

One hundred years after the drafting and adoption of the 1923 Constitution, we can say that it has had the role to represent in Romania's constitutional history the political and legal document of Unification, of structural political, territorial and cultural cohesion of the Unified Romania. In this context, we would stress the crucial importance of this fundamental constitutional act for the speedy completion of the entire process of legislative unification of Romania, which is essentially liberal-European.

Following the Romanian constitutional process, in 1991 Romania adopted a new Constitution. This is a democratic constitution, contrary to the totalitarian constitution of the old regime. The source of the Romanian Constitution of 1991 is a powerful and authentic one, expressing Romanians' aspirations and ideals after leaving the Communist dictatorship. The strongest source generating the design of the new Constitution of 1 991 lied in the aspirations of freedom and social justice of the Romanian people. This Constitution was a constitution of the power of freedom.

The 1991 Constituent Assembly was more inspired by the realisation of the idea of freedom than that of power, as this constitutional forum was inspired by the ideals of a profound change in the political system and believed that democracy existed where those loving freedom dominate those who love power.

We can say that it was a time of openness to the culture and knowledge of the European constitutionalism. In this context, we evoke the support of European experts, especially Italian ones, in the drafting of the Romanian Constitution of 1991. I would mention, with affection, the late Professor Antonio la Pergola, whom I knew personally and who has had a major contribution as concerns the consultations he offered us for the drafting of the new Constitution He is the one who convinced us, based on sound arguments, of the need to establish a constitutional court as "the key to opening up Europe's sympathy for Romania".

A constitution deemed successful by its proponents can be a failure if it does not find the echo in civic consciousness and if it does not inspire citizens' confidence that it guarantees their rights, freedoms and legitimate interests.

We believe that Romanians express their complex identity continuously and through the identity of the principles and values enshrined in the Basic Law, and that crucially we can talk about an ideal tenure of the spirit of the Constitution in their own conscience.

The essence of the Constitution consists in the permanent link between the people, the holder of the power, and its representatives, the Social Pact of Reference under which laws can legitimately be adopted and social peace can be achieved. The Constitution must correspond to the social state, which is why the law can only express a general will in accordance with the Constitution, which is the expression of the majority will of citizens affirmed in referendum.

The Constitutional Court, as guarantor for the supremacy of the Constitution, has the role of ensuring constitutionality in our legal system. Constitutional justice brings about the constitutionalisation of the legal system and the political and democratic process, which establishes and defends the constitutional order.

The Constitutional Court of Romania, as the sole authority of constitutional jurisdiction, exercises *a priori* and *a posteriori* constitutionality review. The Court's consolidated case-law in its 30 years of existence shows that the interpretation of the Basic Law takes place within the parameters and requirements of constitutional democracy.

The Court understood that a mechanistic interpretation, ad litteram, may defeat the spirit of the Constitution, the original intention of the constituent, while an evolutionary interpretation, in its spirit, renews and permanently adapts it to socio-political realities and needs always dynamic, and values its strength superior to the other rules of the legal system In the absence of constitutional review of laws, the Constitution would be a mere normative act, even if the principle of the sovereignty of the people and the constituent power were recognised. The supremacy of the Constitution over the other rules of the State depends on the way in which the capacity to produce that specific effect is organised, by establishing an effective mechanism of judicial review carried out by the constitutional courts.

The letter of the Constitution is legal, the spirit of the Constitution is democratic. If we do not interpret the legal letter of the Constitution in its democratic spirit, we can affect the essence and deep meaning of the values of the Constitution. Any decision of the Constitutional Court is both a legal act and an expression of a democratic act. In applying the Basic Law, in order to ensure that the Constitution takes precedence over the law, the Constitutional Court makes reference in its decisions to the standards of the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), as well as the Venice Commission.

In this reference framework, we reaffirm the importance of the principle of stability of the Constitution, which ensures the soundness of the political and social order and which must temper the temptation of a permanent change of the Constitution. The Constitution is a politico-legal work in which, if we amend a note in a particular sheet music structure, if we do not know to accord all the other notes with the amended one, the effect is divisive, false, and the harmony of the notes that make up the whole sheet music is disrupted.

Therefore, a Constitution, any constitution is a sensitive sheet music which must be "handled" carefully. In a more empirical wording: after building a construction, you do not "adjust", to use a common term, all the time its foundation, but only when it is absolutely necessary and inevitable to ensure the development and progress of a society, which could not be achieved without constitutional changes or reforms. These prerequisites existed in 2003, when our Constitution was revised, with the essential aim of integrating Romania into the Euro-Atlantic structures.

In recent years there have been some intentions to change the Constitution both in the sphere of political decision-makers as well as in that of civil society. Any constitution is revisable, obviously within the limits pre-established by the Basic Law, and this process is determined and must reflect new developments, cultural trends and political and economic transformations of society, changes in the sphere of social realities.

Now, 30 years later, we can talk about the vitality but also the maturity of our Constitution, inspired by the European tradition, values and institutions, which are a healthy and sustainable foundation for the construction of democracy and the rule of law in Romania. It is undeniable that the experience and knowledge of our forerunners in constitutional matters constitute a real basis for a deeper understanding of Romania's present and future, the need to develop new mentalitarian structures in society and to promote a new, inclusive vision that is permanently linked to the dynamics of the European Union's demands, as the common area of freedom, justice and democracy.

I wish you every success in the debates and proceedings of your session!

President of the Constitutional Court of Romania
Marian Enache

4. Speech by the President of the Constitutional Court of Romania, Mr Marian Enache, at the opening of the exhibition of the Centenary of the Unified Constitution of Romania, at the National Museum of History of Moldova, Chisinau, 6 December 2023

Your Excellencies,
Ladies and gentlemen,
Distinguished representatives of the political, scientific and cultural life,
Dear guests,

The Constitution is essentially national consciousness codified in fundamental structures, values and principles of state organisation together with the ideals of a people seen as a community of free people, equal in rights.

Am honoured to attend this special event as President of the Romanian Constitutional Court, to celebrate together with you, here in Chisinau, 100 years since the adoption of the 1923 Constitution, the Constitution of Unified Romania. It is a common celebration and an important moment for the constitutional history of Romania and the Republic of Moldova.

I will start by mentioning that the Plenum of the Romanian Constitutional Court decided, at its meeting on 18 January 2023, unanimously, to declare 2023 as the Year of the Centenary of the Constitution of Unified Romania, in which sense it assumed the role of promoting, through a diversity of anniversary and scientific actions, the constitutional traditions of the Romanian people.

The Centenary of the Constitution of Unified Romania (1923-2023) was celebrated on 27 March 2023 at the Solemn Assembly organised by the Constitutional Court of Romania at the Palace of the Parliament, the Plenary Hall of the Senate, 'King Michael I of Romania', and was attended by over 200 representatives of the Romanian State and from Europe.

I underline that the event was attended by representatives of the Romanian State at the highest level, as well as the President of the Court of Justice of the European Union, Mr Koen Lenaerts, the President of the Venice Commission, Ms Claire Bazy Malaurie, the President of the Constitutional Court of the Republic of Moldova, Ms Domnica Manole, the President of the Association of Constitutional Courts using the French language, Mr Mamadou Badio Camara, and prof. dr.h.c. Rainer Arnold, from the University of Regensburg (Germany).

Representatives of 19 constitutional jurisdictions in Europe also participated, namely Albania, Austria, Belgium, Bulgaria, Croatia, Czechia, Germany, Georgia, Lithuania, Luxembourg, Moldova, North Macedonia, Poland, Portugal, Serbia, Slovakia, Slovenia, Spain, eight of which were represented by their presidents.

The exhibition of documents dedicated to the Centenary mirrored the evolution of constitutionalism in Romania, with the Constitution of 1923 at its core, and contained its original exhibits and the 1866 Constitution, and it represented a première in the field. On this occasion, the anniversary volume 'the Constitution of the 1923 Unified Romania – a documentary retrospective' was launched, which, for the first time, brought the spotlight on

1922-1923 documents concerning the work of the Constituent Assembly. A stamp emission on the Centenary was also launched on the same date.

Today, 6 December 2023, we came to the end of these events dedicated to the 1923 Constitution and have chosen to end these here in Chisinau, the Republic of Moldova.

For the Constitutional Court of Romania, remembrance of the traditions of Romanian constitutionalism represents a duty of conscience towards present and future generations. Knowledge of the history of Romanian constitutionalism and its timeliness is necessary in order to inform and make young people aware of their membership of a nation that has shaped its ideals and values in the matrix of European law and legal culture.

The words of a great man of culture, Dimitrie Gusti, come to my mind: "a constitution is for the state what is the conscience for the human soul". The words were spoken by the great man of culture at the beginning of the 23 public lectures, in which the nation's most important intellectuals from both sides of the Prut and the rest of the historical provinces united with Romania on 1 December 1918 critically debated the most important provisions of the constitutional draft adopted in 1923.

We can therefore summarise in a simple formula the fact that a Constitution is essentially national consciousness codified in fundamental structures, values and principles of state organisation together with the ideals of a people seen as a community of free people, equal in rights.

Promulgated by King Ferdinand I of Romania on 28 March 1923, by Royal Decree No 1360, the Constitution of 1923 is the fundamental politico-legal act which consolidated the Romanian national, sovereign, unitary and indivisible State, and allowed the legislative and administrative unification of the Romanian State after the Grand Unification of 1 December 1918. Moreover, from a perspective of constitutional history, Romania and the Republic of Moldova found in the 1923 Constitution a common constitutional place of reference which they have taken over, adapted and subsequently used in their own fundamental laws, in force today, to strengthen constitutional democracy and the rule of law.

Drawn up at a time when European thinking was completing by the values of liberalism the democratic systems of nowadays, the Romanian Constitution of 1923 incorporated the most advanced ideas affirmed into the political and legal conceptions of time, linked to the traditional and cultural values of the Romanian people, integrating them in an organic and eminently civilising way. The 1923 Constitution is an intellectual, political and legal creation that has definitively marked our common constitutional history. Repudiated by authoritarian political regimes established at various times of our history for the Western democratic principles it contained, the 1923 Constitution was restored to its reputation and recognised qualities by the Romanian Constitution of 1991 and, similarly, by the Constitution of the Republic of Moldova of 29 July 1994.

The history of 100 years since its adoption has been marked on both sides of the Prut by movements of political, social and economic renaissance of the new democratic regime. The common homeland, Romania, gained on 1 December 1918 and subsequently broken down on 23 August 1939, in breach of international law, was followed on the two banks of the Prut by the establishment of regimes incompatible with the historical aspirations of the Romanian

nation. Despite these historical circumstances, the aspirations of freedom, independence and national unity could not be destroyed by any political regime. All these aspirations of the nation were enshrined in our first common constitution adopted in 1923, and the anniversary of its Centenary is in fact the celebration of the most important democratic values of the Romanian nation, which have survived in the last era to all the experiences characteristic to outdated regimes, condemned by history to obsolescence.

The 1923 Constitution is a cardinal moment throughout this continuous process of political, social, economic and cultural modernisation of Romania, as a nation-state, founded on a democratic basis of European inspiration, having as major premiss the great legal and political principle of self-determination of the people.

After the fall of the communist regime, Romania returned to the great European family and restarted a major integration project in the transatlantic political and economic space. At the beginning of 1990-1991, we adopted a new Constitution, whose democratic values and ideals originated in the 1923 Constitution, as the 1923 Constitution complemented and developed the 1866 Constitution, as well as in the constitutional models of the civilised and free world of that time.

The Republic of Moldova, through its Declaration of Independence of 27 August 1991 and the Constitution of 29 July 1994, started its path of transformation into a democratic and European State governed by the rule of law. But as 100 years ago, this complex process of strengthening the rule of law requires not only a firm, consistent political decision, but a modern European constitutional structure and profile of universal inspiration, capable of guaranteeing human and citizens' fundamental rights and freedoms. The Republic of Moldova is now experiencing the intensity of this historic moment favourable for its European integration and we hope that the final decision of the European Council of 15 December 2023 will formally confirm the start of negotiations for Moldova's accession to the European Union.

Distinguished officials,
Ladies and gentlemen,

We could discuss very much about the practical and symbolic importance of the 1923 Constitution. However, for readily understandable reasons, I will simply mention those provisions which have represented and represent the most priced heritage of interwar Romanian constitutionalism, which still find their place in our fundamental laws.

The 1923 Constitution enshrined, as fundamental norm, the universal suffrage for the election of the nation's representatives, the democratic premise of any democratic society. It laid down, for the first time, an obligation for the legislator to determine the conditions under which women can exercise their political rights (the right to vote/the right to stand as a candidate), i.e. full equality between men and women with regard to civil rights.

The 1923 Constitution laid down a deeply democratic and European normative content by stating that 'Romanians, regardless of ethnic origin, language or religion, enjoy freedom of conscience, freedom of education, freedom of the press, freedom of assembly, freedom of association and all freedoms and rights established by laws'.

Promoted in case-law since 16 March 1912, constitutional review of laws was enshrined for the first time in the Basic Law adopted in 1923, a key issue for any rule of law in which power is limited by law, guaranteeing both the prestige of laws and fundamental rights and freedoms. Last but not least, the 1923 Basic Act strengthened the independence and role of the judiciary by establishing the irremovability of judges and put unlawful acts of public administration authorities under judicial review.

But the most important provision, from a practical point of view, for the then historical context for the future of the nation, was that of Article 1, which established that Romania was a national, unitary and indivisible State.

All these values enshrined in constitutional norms, institutions and rules have contributed to the democratic consolidation of the State and have been integrated into society, in our national conscience, and could not be removed by authoritarian and totalitarian regimes that hindered the development and modernisation of Romania.

The 1923 Constitution is in itself an intangible value of our constitutional culture and tradition that we must cherish and honour properly, because it expresses an essential moment in the formation of the identity of the Romanian people in its historic becoming, as well as a living testimony of its political-constitutional civilisation.

Our constitutional roots are identified with European ones and attest to the fact that Romania was interconnected with the European constitutional movement, that we have organically assimilated and applied the conquests of constitutionalism promoted in the European States of that time.

The 1923 Constitution was a success because it endured. Its values have been perpetuated, finally taken up in institutional practice and the case law of our Constitutional Courts and have developed so far and will continue to develop.

The Romanian pre- and inter-war constitutions were authentic sources for the 1991 Constituent, who also took into account the most advanced constitutional models that existed at the time in Europe. All this is a peremptory proof that Romania is part of the European constitutional space, playing an important role in structuring Europe's cultural, political and geostrategic landscape also in view of its membership of Euro-Atlantic structures.

The 1923 Constitution remains historically the Constitution of the united Romanian nation, which reflected the identity and ethos of the Romanian people, a broad spirit of tolerance and European values.

Romania and the Republic of Moldova are united through deep affinities related to the common history, faith, language and traditions, as well as the memory of a communion of constitutional and state history. For Romania and the Republic of Moldova, the 1923 Constitution represents a valuable heritage of Western constitutionalism, reminiscent of our common constitutional roots and indicative of a common European future.

This exhibition includes sequences of documentary history, from the Developing Statute of the Paris Convention (1864), the Constitution of 1866 and the Constitution of 1923, to highlight the road of Romanian constitutionalism in the context of European legal culture.

This exhibition restores, in particular, the process of adoption of the 1923 Constitution, the visitors having access to original, unusual documents, systematised in the chronological

order in which they were drawn up/adopted. The aim was to develop a logical thread, a documentary deployer of the events in the Constituent Assembly, by exploiting the archivistic stock existing at the National Archives of Romania, as well as at other depositories of such documents.

Finally, it seems to me that such an exhibition attests both to the existence of common constitutional values and to the continuity of constitutional life with historical roots and contemporary European aspirations.

As the winter holidays are near and a new year full of hope for the citizens of the Republic of Moldova is to begin, I wish you good health, many achievements on a personal and national note, as well as prosperity for our fellow citizens.

Many happy returns!

President of the Constitutional Court of Romania
Marian Enache

5. The interview given by the President of the Constitutional Court of Romania, Mr Marian Enache, for Juridice.ro, 20 September 2023

Alina Matei (juridice.ro): Mr President Marian Enache, please brief us on the recent activity of the Constitutional Court (CCR).

Marian Enache: Since the renewal of the Constitutional Court on 11 June 2022 and the assumption of the office as president of this institution, the activity of the CCR has had three main directions, namely judicial, managerial and inter-institutional cooperation, both domestically and internationally.

In relation to judicial activity, the CCR exercises the powers laid down in Article 146 of the Constitution and those laid down in its Organic Law. The constitutional review of laws represents the centre of gravity of the work of the CCR, and it is through this review that the Court carries out its role as guarantor of the supremacy of the Constitution. The provisions of the first sentence of Article 146 (a) and of Article 146 (d) of the Constitution govern the two main forms of constitutional review of the laws, namely *a priori* and *a posteriori*.

The *a priori* constitutional review concerns the verification of the constitutionality of laws before their promulgation and entry into force, and the second one is carried out on the basis of exceptions of unconstitutionality raised by the parties/prosecutor or the ordinary court, of its own motion, in the context of a judicial dispute and consists of examining the grounds of unconstitutionality raised in relation to the laws entered into force. Following the exercise of the *a posteriori* constitutional review, the Court pronounces a decision by which it settles the contrasting relationship between a law/legal text and the Basic Law, thus making it possible for the citizen/courts to clarify the constitutionality of the criticised regulatory act. The CCR's decision contributes to a fair understanding of the principles and values of the Constitution, so that both lawmaking and law enforcement and interpretation are permanently connected and carried out in accordance with them. Where the CCR issues decisions of unconstitutionality, whether pure and simple, or subject to interpretation, Parliament must bring the legislative solution found unconstitutional into accord with the CCR's decision and the courts must apply the law in the light of the CCR's decision.

From 2022 to 2023, the CCR was referred to and called on to rule on almost most of the cases in the context of its duties as referred to in Article 146(a), first sentence and (d) of the Constitution. For example, in the first 8 months of 2023, we already had 2,244 files, i.e. an increased number compared to the same period in 2022. In that period, 467 decisions were handed down.

The share of exceptions of unconstitutionality in criminal matters/criminal procedural matters is declining, at around 10%. It is therefore noted that the highest proportion of the Court's files is represented by civil matters, whether civil law/civil procedure law, or administrative law, minor offences, salaries and pensions. This is the current structure of areas in which referrals of unconstitutionality are raised.

I do not want to present a statistic of our work on each individual power, but we have to point out that the average pace of resolving the files over the past 3 years is about 1.700

per year, meaning that there is an imbalance between the two indices: entries and exits. As such, in 2023 we are still resolving cases registered in 2019 and are show increased diligence to solve them by the end of the year.

Alina Matei: There is therefore an increase in the number of cases pending before the CCR. What is the solution you see to unlock the activity?

Marian Enache: Given the number of assistant-magistrates in office, which has been around 20 over the past 20 years, it can be observed that over time the Court has maintained a relatively steady pace of handling referrals of unconstitutionality. But the large number of registered exceptions of unconstitutionality leads to an exponential increase in the outstanding causes. The situation could change as legislative changes are promoted in line with the new realities. It can be noted that the Law on the organisation and operation of the CCR has not been changed since 1997 with respect to the actual procedure for resolving exceptions of unconstitutionality. The changes made in 2004 by Law No 232/2004, or in 2010, by Law No 177/2010, did not bring any change to the previous procedure.

Of course, all systems of law (both national and supranational/international) face a slow handling of the cases. We must not be complacent in this situation, but, on the contrary, it is necessary for the judge to be concerned and have the procedural possibilities for the decision to reach the litigant and the institutions of the State in good time. Otherwise, the act of justice risks losing its specific purpose. As such, the adage of Justice delayed is justice denied is an increasingly current one, even in Romanian society. Personally, I always have in mind the classic example given by Charles Dickens in the Bleak House – the 'case' of Jarndyce vs. Jarndyce – which is a parabola about the deprivation of citizens from justice.

In this context, a legal mechanism is needed to speed up the resolution of cases, in which a filter procedure is more than timely. Repetitive cases, those which are inadmissible or have become inadmissible as a result of an earlier admission decision, do not justify a direct decision in the Plenum of the CCR, which also involves carrying out a cumbersome preliminary procedure. The current legal procedures generate an extraordinary waste of effort, time and resources – human and material – to resolve these cases. However, not only reasons of speed but also the requirements of the rule of law require that the procedure for reviewing the constitutionality of laws be linked to the dynamics of the society in which we live, so that the individual has a prompt response to his or her request in order to be able to assert his or her rights, freedoms and legitimate interests.

There is therefore an urgent need for Parliament to find consistent procedural solutions in the design of a filter procedure, liberating both the Plenum and the CCR's specialised services from a routine activity.

Furthermore, I consider that the ruling on exceptions of unconstitutionality at a public hearing should take place if the Plenum considers it necessary in the light of the nature, legal situation and complexity of the case.

There is therefore a need for a twofold action, namely the introduction of simpler and more flexible procedures capable of absorbing the large number of cases pending before the CCR, as well as an increase in the number of assistant-magistrates propotional to the volume of work carried out by the CCR.

Alina Matei: Regarding your managerial activity, what were your priorities?

Marian Enache: To distinguish things, we need to clarify a simple issue. The CCR is composed of the 9 judges plus 21 assistant-magistrates and other staff involved in the specific activities of the institution. A total of 93 people are currently active within the RCC. Following the assessments carried out during my mandate, there is a need to increase and develop the organisational and functional potential of this important Romanian State institution. To this end, new legal rules are needed to improve the status of CCR staff and to reconfigure and streamline the work of individual departments in order to provide administrative and logistical support appropriate to the CCR's judicial work.

Alina Matei: What are your concerns for the digitalisation of the CCR's work?

Marian Enache: Digitalisation is one of the priorities of my mandate as President of the CCR, as I also pointed out at the time of my appointment to office, because it contributes to the operationalisation and enhancement of the CCR's activity. In this respect, the CCR filemanagement application (SIGADOC) has been developed by adding a case-law module and an automatic generation of the session register, solutions and minutes, which will be signed digitally only. At present, the case-law module is fully implemented, and with regard to the other module, we are in a period of reconciliation with the new developments achieved and we hope that as of 1 January 2024 we will effectively apply it. The aim is to make the CCR file a fully digital one, with the removal of any handwritten notes on it. We are also thinking about the possibility, in the case of exceptions of unconstitutionality, for the courts to upload their complaints into our application – of course with a digital signature – without communicating them in letric format, and for our system to automatically create the file (with registration number, file number and other necessary information). In the area of digitalisation everything is possible, it is only necessary to look for the efforts to materialise IT novelties.

Alina Matei: What can you tell us about the third direction of the CCR's activity?

Marian Enache: During this period, the Plenum of the CCR promoted relations of principled and loyal cooperation with the institutions of the Romanian State – while preserving the integrity of their respective competences –, with representatives of the academic and diplomatic world, and promoted greater openness to representatives of the media and civil society by using new IT means of communication. We have also initiated some actions for the knowledge of the competences and work of the CCR by pupils and students as part of the informal project "Young Friends of the CCR".

We have initiated and conducted bilateral meetings with some constitutional courts; the last such meeting, which I consider to be particularly important, took place in Chisinau in July 2023, at the invitation of the Constitutional Court of the Republic of Moldova, on the occasion of the 29th anniversary of the adoption of the Constitution of the Republic of Moldova. At a bilateral meeting between representatives of the two constitutional courts, there was a fruitful exchange of ideas and experiences in view of the Republic of Moldova's integration into the EU.

The CCR also organised during 2023 the anniversary of the Centenary of the 1923 Constitution, an event attended by presidents and judges of European constitutional courts,

the president of the Court of Justice of the European Union, the president of the Venice Commission, and the president of the Association of Constitutional Courts using the French languages. The event was streamed live on Youtube and Facebook and was also promoted at the level of the European constitutional courts.

Judicial dialogue has been developed with the Court of Justice of the European Union (ECJ) and other representatives of international institutions, universities and associations.

I therefore consider that our Constitutional Court must be subject to an institutional development consistent with the needs of its judicial activity and be active also in terms of judicial diplomacy in order to be connected to the debates and guidelines of European constitutional justice.

Alina Matei: Are the CCR's decisions applied by public authorities? How can the Constitutional Court verify this issue concerning the application of its decisions?

Marian Enache: As you know, the CCR's decisions produce *erga omnes* effects and are generally binding.

Failure to comply with the decisions of the CCR's decisions in the legislative process leads to the sanctioning with a decision of unconstitutionality of legislative acts or provisions thereof, and the Parliament or the Government, as the case may be, must bring the unconstitutional legislative solutions into line with the decision of the CCR. As such, the Constitutional Court verifies compliance with its decisions by means of a review of constitutionality, and in this regard, I refer to Decision No 419/2005 on justice reform or, more recently, Decisions No 283/2023 or No 284/2023 on the laws implementing the Criminal Code and the Code of Criminal Procedure.

As regards the judicial system, it should be stressed that the failure, in bad faith or gross negligence, by the judge/prosecutor, to apply the decisions of the CCR constitutes a disciplinary offence punishable by the Superior Council of Magistracy. In its relations with the courts, the CCR has jurisdiction to rule on exception of unconstitutionality, that is to say, on a procedural issue in the proceedings, and not on the judicial outcome derived from the decision of unconstitutionality. The Court does not have the power to review the constitutionality of the judgment in terrms of compliance with the constitutional values, principles and guarantees.

Alina Matei: In these circumstances, do you consider the level of protection of fundamental rights and freedoms to be correctly dimensioned in our constitutional system?

Marian Enache: After the 1990s, with the change of the political regime in Romania, we can speak of a turning point, a paradigm shift in Romanian law and justice, by Romania's turning to European standards. This moment can be compared to 1864, when, with the reforms promoted by Alexandru Ioan Cuza and continued by King Carol I, a Byzantine-style law system was abandoned and a new law system was established, with Western-style legislation and institutions, a new legal culture, as a preamble to Romania's modernisation process. In 1990, with its option for democracy and the rule of law, Romania gave up its Socialist and Marxist-Leninist ideology for a new type of law, expressed in the norms and principles of the Council of Europe and then of the European Union.

The current system meets the standards and safeguards for the protection of fundamental rights and freedoms. In this context, I would like to make it particularly clear that in some

constitutional systems the competence of constitutional courts to deal with individual complaints of unconstitutionality with regard to judicial decisions is regulated. In many countries – including Germany, Czechia, Serbia, Slovakia, Slovenia, Spain (appeal amparo), Türkiye, Hungary, even South Korea – this instrument of constitutional litigation is regulated. Furthermore, we can see that such an instrument would be of real interest to the citizen in achieving his/her fundamental rights, as well as in reducing the number of applications filed before the European Court of Human Rights (ECtHR), with Romania placed on the fourth place in terms of the number of individual applications filed against the Romanian State.

Alina Matei: What does a complaint of unconstitutionality mean by Mr President?

Marian Enache: This procedure involves a means by which the litigant addresses directly the CCR once ordinary/extraordinary remedies have been exhausted, as the case may be. This does not involve a determination of the facts of the case, but an assessment of the manner in which the CCR's decisions, the fundamental rights and freedoms, as well as the procedural safeguards provided for by the Constitution in conducting a fair trial within a reasonable time, have been respected in the judicial proceedings. The resolution of the complaint of unconstitutionality concerns issues of constitutional law and does not concern the adjudication and legal classification of the facts in the context of the judicial dispute. This procedure has a certain advantage in facilitating the citizen's direct access to constitutional jurisdiction and may be a mandatory phase in accessing ECtHR jurisdiction. Such a procedure was classified as 'excellent' by a former President of the ECtHR, Dean Spielmann, and was also supported by the former Romanian judge of the ECtHR, Iulia Antoanella Motoc, ever since 2012. Moreover, following the ratification in 2022 of Protocol No 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, access to the jurisdiction of the ECtHR would also open up the possibility of access to the jurisdiction of the ECtHR in relation to the files created following the lodging of individual complaints, with the result that an effective institutional dialogue with the ECtHR could already be carried out at this stage by seeking an advisory opinion on questions of law which raise issues of infringement of the ECHR.

This individual complaint of unconstitutionality, by which every citizen may request the CCR to verify the constitutionality of a judicial decision with regard to respect for fundamental rights and freedoms, is a procedure that could be regulated in our legal system by supplementing the law on the organisation and functioning of the CCR and would, in my view, constitute a full guarantee of the protection of fundamental rights and freedoms for every citizen, attaining the desideratum of full protection of the individual by constitutional justice. Such legislation would make constitutional justice complete for the protection of fundamental rights and freedoms.

Alina Matei: Do you think that Parliament attaches the necessary importance to the case-law of the CCR in the law-making activity?

Marian Enache: The Constitution is the Basic Law of the State, so the Parliament has a constitutional obligation to incorporate the content of the case-law of the CCR into the legislative process as an expression of the constitutionalisation of the regulation of the law system. The CCR's decisions guarantee and ensure the imperative of constitutional order and, lastly, social peace within the framework of constitutional democracy.

I would point out that this year, that two very important decisions have been issued this year on the laws aimed to bring the Criminal Code and the Code of Criminal Procedure into line with previous decisions of the CCR. I mention that, although in the period 2016-2022 the CCR found that more than 50 legal provisions of the two codes were unconstitutional, it was only in 2023 that the legislature adopted the laws bringing the codes into line with those decisions. Those laws were subject to the *a priori* constitutionality review and the Court has established that they largely complied with its previous decisions. Subsequently, the Parliament re-examined the two laws in order to comply with the latter two decisions of the CFR, with the result that, in July 2023, those laws entered into force.

Moreover, regardless of the area in which it intervenes, the CCR is called upon to ensure compliance with the provisions of the Basic Law and the protection of fundamental rights and freedoms with European standards, according to the Article. 20 of the Romanian Constitution, which states expressly that the interpretation of the constitutional provisions relating to them is to be carried out in accordance with the international treaties to which Romania is a party and with the case-law of the CJEU and the ECHR.

Alina Matei: What is the relationship between the constitutional courts and the CJEU?

Marian Enache: Constitutional courts are a fundamental political and constitutional structure of the Member States of the European Union and their role is to review the constitutionality of legal rules, to apply the general principles, values and legal categories for shaping and guiding basic processes within society and institutions, as well as their relations with citizens, in line with the requirements of constitutional democracy. National constitutional courts have this role because national constitutions remain primary sources of legitimacy and legality. Of course, they operate within the framework of the so-called 'ius constitutionale commune' also composed of international (the system of the Council of Europe) and supranational (European Union) rules, procedures and guarantees.

The relationship between constitutional courts and the CJEU is a complex one, in which diplomacy and judicial dialogue play a decisive role. The two legal orders, national and European, are autonomous, complementary and cooperative, which means that the relationship between the highest jurisdictions requires constant communication and an exchange of appropriate judicial proceedings, which contributes to preserving the legal stability of the entire Union construction. In this respect, its law and hermeneutics must be valued not only as a cultural foundation of Europe, but also as a body of normative and institutional means, as a way of shaping and consolidating the developments of the European Union and the referencing values on which it is founded, i.e. rule of law and Western democracy.

German professor Armin von Bogdandy believes there are two models of dialogue between the constitutional courts and the CJEU, namely the German and Italian models. The German model (followed by other respectable constitutional jurisdictions, such as the Supreme Court of Denmark or the Czech Constitutional Court) uses a potentially more categorical approach, which insists in principle on the right to the last word of the national constitutional court. In general, the principle concerns at least one hard core of sovereignty embedded in the Basic Law, the exercise of which cannot be delegated (Lisbon Decision of 2009 of the German Federal Constitutional Court). Such an approach is difficult to avoid in the case of constitutions

containing limits to revision, so-called eternity clauses(Article 79 (3) of the Basic Law of Germany (Grundgesetz) or Article 152 of the Romanian Constitution), which could have been overcome in the French system due to the general normative framework of the Constitution of the Fifth Republic.

By contrast to the German style of dialogue, the Italian model is one of the more minimal and affirmable diplomatic judicial diplomacy arising from the Taricco 1 and Taricco 2 cases, which concerned the application of criminal liability limitation periods in respect of fraud offences affecting the financial interests of the European Union.

I note, however, that in practice both institutions engage in dialogue, even if the styles differ somewhat. The German Federal Constitutional Court removed the effect of European law only once (Decision of 5 May 2020 on the secondary market public sector asset purchase programme – PSPP), constantly trying to use less abrasive methods, in particular the extraction of 'unconstitutional venom' by interpreting national rules in such a way that direct contradictions between the two jurisdictions are avoided (see the Lisbon decision or the repeated decisions on the validity and interpretation of the German law transposing Framework Decision 2002/584 JHA on the European arrest warrant). Since the Solange I case (1974), therefore for decades, the German court has consistently shown openness to the CJEU. We must stress that both the German and Italian approaches allow constructive management of conflicts between national jurisdictions and the CJEU. Moreover, both approaches are perfectly legitimate from the point of view of both national constitutional law and European law, as provided under Article 4 (2) of the Treaty on European Union states that "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State."

Alina Matei: What is the specific experience of the CCR in relation to the CJEU?

Marian Enache: With regard to the experience of the CCR with the CJEU, I should stress that it extends over a period of almost 20 years, during which the decisions of the European Court of Justice have been a milestone in the development of national case-law. In this regard, it should be remembered that, even before the accession of our country to the European Union, the CCR used the case-law of the CJEU in the substantiation of its decisions; I refer here to the considerations underlying the Mangold judgment on non-discrimination on grounds of age (CCR Decision No 513/2006). Since the Romanian Constitution does not expressly provide for age as a criterion of non-discrimination, the decision of the CCR, receiving the case-law of the CJEU, included that criterion among the other such criteria expressly provided for by the Constitution, thereby extending its scope of protection.

Another referencing point is the judicial dialogue between the two courts through the question referred for a preliminary ruling. To date, the CCR has raised such a question only once, in 2016, in the context of the a posteriori review of constitutionality, in a case concerning the principle of freedom of residence laid down in Article 21 of the Treaty on the Functioning of the European Union. Following that referral, the CJEU ruled, in June 2018,

that that Treaty text precludes the competent authorities of the Member State of which the Union citizen is a national from refusing to grant a right of residence in the territory of that State to a third-country national of the same sex, on the ground that the law of that Member State does not provide for same-sex marriage. The decision adopted by the CJEU was also followed by the CCR, which held that the relevant national provisions are constitutional in so far as they allow the judgment of the CJEU to be applied, thus guaranteeing, at regulatory level, the right of residence of the same-sex partner of the Romanian citizen in Romania (CCR Decision No 534/2018).

As you know, we are a Europeanisation model in this regard, with a reference for a preliminary ruling a decade after accession. Constitutional courts generally avoid such references for understandable reasons. The first reference by the German Federal Constitutional Court was made in 2014, that is to say, more than six decades after the founding of the Communities, while the Spanish Constitutional Court referred the CJEU in 2011 (Melloni) and the French Constitutional Council postponed the dialogue until 2013 (Jeremy F).

Alina Matei: Has the relationship between the two courts become more tense since 2018?

Marian Enache: After 2018, there was some judicial tension between the two courts, which has now been overcome and resolved. The relationship between the CCR and the CJEU is seeing an upward development, in which sense I mention the study visit that the CCR's assistant-magistrates will carry out in October 2023 at the CJEU, and that a working meeting between CCR judges and CJEU judges will also be organised in the near future.

Nonetheless, I consider that, between 2018 and 2022, a useful dialogue took place between the two constitutional courts – because the CJEU is also such a court – in which the main issue discussed was how the two legal orders interact at the highest level. Of course, the solutions reached by these courts have not always been consistent in terms of the relationship between the Constitution and European Union law or between the application of the decisions of the CCR and those of the CJEU. In this context, I wish to highlight only one aspect arising from the judgment of the CJEU of 21 December 2021, which held, in essence, that a decision of the CCR could not be applied if it was liable to create a systemic risk of impunity for acts constituting serious offences of fraud affecting the financial interests of the European Union or corruption in general. I wonder, even rhetorically, to what extent the judge of the case may assess in objective and concrete terms the systemic nature of the risk of impunity since he naturally does not have the real possibility of an overall assessment of the phenomenon in its entirety, but is merely conducting a judgment on a particular cause, without the existence of a basic study showing a systemic risk.

Alina Matei: Mr President, there is considerable discussion in the legal area about the effects of the CCR's decisions on the unconstitutionality of the provisions of the Criminal Code on interruption of the limitation period for criminal liability. Why do these decisions give rise to such an emotion in the legal world?

Marian Enache: The Court delivered two decisions on the unconstitutionality of the provisions of the Criminal Code on interruption of the limitation period for criminal liability. By Decision No 297/2018, the CCR established that the legislative solution providing for the

interruption of the limitation period for criminal liability by carrying out 'any procedural act in the case', contained in Article 155 (1) of the Criminal Code, was unconstitutional. Judicial practice perceived that decision as one subject to interpretation, in the sense that only procedural documents served on the suspect/accused person may be time-barred. By Decision No 358/2022, the Court clarified that the 2018 decision was a clear and straightforward decision and not an interpretative one, as wrongly perceived and applied. As such, since 2018 there no longer was any cause interrupting the limitation period for criminal liability in positive law. The Court found that, in the absence of regulation by the legislator of such interruptive causes, during the period from 2018 to 2022, the active substance of the legislation did not contain any case allowing the limitation period for criminal liability to be interrupted. However, throughout that time (2018-2022), the judicial authority considered that the concept of interruption of the limitation period continued to exist in positive law and applied it as such.

The effect of CCR Decision No 297/2018 must be analysed from a twofold perspective. It is of direct concern to the period 2018-2022, in that acts deemed interruptive of the limitation period carried out within the reference time-limit could not have that effect, as such the limitation period would continue to run, without being interrupted.

As a result of the CCR's decision, the interruption of the limitation period for criminal liability has been eliminated, the new regulatory situation being equivalent to a more lenient criminal law, since the statute of limitation is a substantive, rather than procedural, criminal law, as in other legal systems. Irrespective of how a substantive rule 'unfavourable' to the suspect/accused person leaves the active substance of the legislation, the new legal framework thus created is clearly more favourable to him or her. As such, the HCCJ, by Decision No 67/2022, considered that, by effect of the CCR's decision, a criminal rule 'unfavourable' to the suspect/accused person had been removed from the active substance of the legislation, a situation in which the resulting new legislative reality must be classified as a more favourable criminal law, which applies retroactively and therefore also has effects on the limitation periods interrupted between 2014 and 2018.

That decision of the HCCJ is the expression of valid reasoning derived from our legal system, given the nature of the limitation as a substantive rule and not a procedural rule.

Alina Matei: In this jurisprudential context, the CJEU delivered a judgment on 24 July 2023 on the application of the interruption of the limitation period for criminal liability …

Marian Enache: When this judgment of the CJEU was issued, there was a certain febrility and uncertainty as to the viability of its application in Romanian law. In the national legal area, we faced the natural problem of the resonance of this judgment in national law. There have been, and are still, a number of approaches in terms of reception and interpretation, in particular at the level of judicial bodies. In my view, irrespective of the existence of different perceptions of, the interpretation and application of CJEU case-law must be viewed from an inclusive perspective, respecting the supremacy of the Romanian Constitution, law an statutes of European essence, ultimately compatible with the European order in the letter and spirit of the European Treaties which form part of the national law of the Romanian State. The application of European Union law and CJEU judgments contributes to achieving a higher

degree of integration of national law into the European system. The phenomenon of relativising the interpretation and application of decisions according to the professional community responsible for implementing them must be avoided, since the interpretation and application of any legal act is carried out in the light of the general principles of law and pre-existing national and European consistent case-law.

Alina Matei: How do you assess the impact and significance of the CJEU judgement?

Marian Enache: I consider that this judgment of the CJEU of 24 July 2023 represents a real step forward and shows openness to the case-law of the CCR, while respecting the effects which an earlier decision of the CCR (Decision No 297/2018) has had on the interruption of the limitation period for criminal liability between 2018 and 2022. With this judgment, the CJUE effectively applied the Taricco 2 model.

That judgment merely establishes that the interruptive effect of the limitation period of acts carried out before 2018 must be recognised since the decision of the CCR finding that that effect was unconstitutional was delivered and published in 2018.

What is essential in this CJEU ruling is, however, the rethinking of the constitutional principle of retroactivity of the more lenient criminal law applied by HCCJ Decision No 67/2022. Thus, in the light of the CJEU's judgement on the statute of limitation, the lex mitior principle – which has been used, however, by the HCCJ, in accordance with national law – is relativised, since it is linked to the principle of legal certainty. In other words, making such a constitutional standard compatible with EU law would require that a more favourable criminal law or a decision of the CCR on the limitation periods does not produce the specific effects of the constitutional principle of the retroactivity of the more lenient criminal law.

Therefore, we do not have a problem in terms of the effects of the CCR's decision, but in terms of the scale of the principle of retroactive application of the more lenient criminal law. However, the judgment of the CJEU appears to be rather a case-specific, rather than one which lays down a basic guideline as regards the limitation of the retroactive application of the more lenient criminal law relating to the statute of limitation.

In order to avoid relativising the latter constitutional concept, contained in Article 15 (2) of the Constitution, we consider it necessary to examine whether the concept of limitation period for criminal liability falls within the scope of procedural law (as in some Member States of the European Union: Germany, Belgium, France) or is to be attributed a mixed legal nature, thus being removed from the scope of pure substantive law. In this case, there would be consistency between the European and national standards regarding the retroactive application of more favourable criminal law.

Alina Matei: I have noted that in the decision on service pensions, you invoked as grounds for the decision pronounced the principle of non-retroactivity of the law.

Marian Enache: Not everything that may constitute a political or legal interest at a given point in time is also legitimate from a constitutional perspective. However, the Constitution always prevails over any legislative act. Non-retroactivity is an old principle of law and is intended to protect the certainty and stability of legal relations, as well as fundamental rights and freedoms. Initially regulated in the Civil Code of 1864 – Article 1 of which established that 'the law provides only for the future; it does not have a retroactive effect' – the

principle of non-retroactivity of the law was given constitutional status by the 1991 Constitution, which enshrines it in terminis. The inclusion of this principle in the Constitution gives it the meaning of a constitutional guarantee which the judges of the CCR can neither ignore nor vary. It must be applied as such in relation to any legal regulation as a constant system of law.

I would point out that the principles of law are not negotiable. The laws of the State must respect these principles, which have become universal values through their victories obtained throughout history.

Another principle discussed in that decision is the principle of equality of rights and before public authorities (isonomy). Constitutional justice has established that equality of rights inherently presupposes the right to a difference in determining the effectiveness of the rights to which the various socio-professional categories are entitled. Equality, in a democratic society, requires specific differences, rather than mechanistic and sterile egalitarianism between activities, professions, competences and responsibilities.

Another constitutional requirement raised in the decision you referred to is compliance with the requirements of the quality of the law. The rules of law must be clear, precise and predictable in order to be understood by the addressees, who are ultimately the citizens. Most of them do not have legal knowledge or legal studies that would enable them to discern the meaning of the legislative acts entered into force.

I would point out that laws enjoy the rebuttable presumption of constitutionality, but when they are subject to constitutional review and are found to be unconstitutional in whole or in part, they are removed from the active substance of the legislation and thus no longer produce legal effects.

These are all intangible principles of general law and constitutional law, and their respect establishes a climate of constitutionality in the rule of law which ensures the conduct of the activities of the fundamental institutions of the state, other public institutions and, in particular, the protection of citizens' rights and interests in relation to government. State institutions must co-operate, must be present in the life of the citizen and work together and consortiously for the public good.

Alina Matei: In this context, what can you tell us about the principle of judicial independence, constantly invoked in the case-law of the CCR?

Marian Enache: The principle of judicial independence is a constitutional principle, the foundation for the organisation and conduct of the activity of administration of justice and, at the same time, the guarantee for the protection of the interests of the litigant. In its entire case-law relating to the judicial system, the RCC gave due weight to the affirmation and development of that principle, while strengthening the role of the Superior Council of Magistracy (SCM), which is, institutionally and functionally, the guarantor of the independence of the judiciary.

A more elaborate answer to this question is superfluous, whereas, since Romania opted for the civilisation model of Western-type democracies, this founding principle of the status of the judiciary has been upheld in line with the European States' developments in this area.

Moreover, up to the organisation and crystallisation of the judiciary within the new democratic political system in Romania, there has been a series of stages in which the entire

construction of Romanian justice was guided and bound by the principle of judicial independence. That principle constituted a "seismograph" and a synthetic indicator of continued measurement of the functioning of that power in the State and of the degree of independence of that power from the legislative and executive powers. The independence of the judiciary is crucial to the functioning and credibility of the judiciary.

While representatives of the legislative and executive powers carry out representation activities resulting from free elections or derived from their democratic legitimacy, the judiciary is a distinct branch of State power in terms of activity and powers, in which its representatives perform the public service of justice and must meet certain conditions of access and promotion specific to a professional career, which requires specialist training, promotion examination, etc. As such, a well-defined status is necessary to ensure independence in decision-making.

It has been observed in history that whenever there was turmoil or social unrest that culminated even in a change of the political regime, the judiciary was the most stable, even during these events and social turmoil, and had, through its judicial activity, the role to balance the social system and strengthen the new established political power.

The Cooperation and Verification Mechanism (CVM) itself monitored the judiciary mainly in the light of the principle of independence of judges and thus of the judiciary, given that the first CVM benchmark for Romania was essentially to guarantee an independent and efficient judiciary, in particular by strengthening the independence and accountability of the SCM.

Alina Matei: How is the lifting of the CVM felt at the level of the courts?

Marian Enache: The CVM was tasked with monitoring compliance with the independence of the judiciary and ensuring the stability and efficiency of some institutions and reforms, especially in the area of the fight against corruption (National Integrity Agency, National Anti-Corruption Directorate, local government).

The establishment of that mechanism took into account the crucial importance of that principle for the functioning of the judiciary and its function as a guarantee of independence extended to the entire judiciary in relation to the other two powers of the State. As a principle of the rule of law, the independence of judges must be guaranteed by constitutional and legal means. In a democratic society, the judiciary cannot be more or less independent depending on the variability of political regimes or transitional ideologies, it must simply be independent, invariably independent and unaffected by other ways of designing its functioning. Compliance with and safeguarding of this fundamental principle of justice is ensured in a number of ways, namely irremovability, incompatibility, financial stability, career predictability or a stable, adequate and predictable retirement system.

As you well know, this sui generis mechanism was originally meant to be lifted after three years in 2010. Croatia, which joined the EU six years after Romania, has not undergone post-accession monitoring. In the case of Bulgaria, it was raised in 2019. In his Opinion of 23 September 2020 in Joined Cases C - 83/19, C - 127/19 and C - 195/19 (paragraph 140), even Advocate General Michal Bobek questioned, obiter dictum, the proportionality and legitimacy of the preservation sine die of an instrument created provisionally, intended in principle to

be applicable only for three years and then extended, for a single Member State, to 13 years (then!) after the accession of that State. It was only on 15 September 2023 that the European Commission formally lifted the CVM.

The CVM, which was only applicable to Romania and Bulgaria, has been replaced by the general rule of law mechanism, which is equally applicable to all Member States of the European Union, as an expression of the principle of equality of the States, which is a basic principle of EU constitutional law. In this context, the supreme judicial institutions of the Member States have a major responsibility to ensure the stability, confidence and efficiency of justice, which meets European standards.

Alina Matei: Can constitutionalism be an effective remedy against populism?

Marian Enache: Populism, demagoguery, extremism, ideological purism, xenophobia and other disproportionate, vindictive and perpetuity manifestations that can simultaneously occur in society constitute distorted forms of genuine democracy and contain potential risks to the law and constitutional order, as they can strike and pervert the value system. Populism and its direct aftermath, demagoguery, promote a public speech mainly known as one of the content-free forms, "an army of somptuous and triumphalistic phrases, crossing the air in search of an idea". The most disturbing aspect in the conduct of public activity is that our attitudes and behaviours may contradict the values we claim to be attached to. I believe that we should be cautious with deviations and phenomena that are generally exacerbated with any kind of "ism" and keep our actions in line with rationality, the conscious mind, uninfluenced by unconscious unrest.

The constitutionalism relates to the order of principles, values and requirements of constitutional democracy regulated by the Basic Law - essentially expressing the broad pact of society, approved by referendum - establishes a general validation requirement for the whole legal system of a State and for maintaining a democratic constitutional life, while countering manifestations contrary to democracy. The protection of the core of rights and freedoms, as well as the respect for the supremacy of the Constitution, lie within the very law-making limits of the legislative forum. These are the minimum requirements of constitutional democracy, which, after World War II, imposed the emergence of constitutional courts and of constitutional review of laws. The essential role of the constitutional court is to determine whether laws and other legislative acts, adopted by the legislative authority, fall within the limits laid down in the Constitution.

As the German constitutionalist Dieter Grimm (former judge of the German Federal Constitutional Tribunal) rightly observes, the modern constitutional state relies on complementary legal and democratic guarantees: democracy and rule of law; both elements are necessary and need to be harmonised.

Constitutionalism has become in all democratic states a means of limiting the excesses of power that distort and devaluate the decision-making process and are also contrary to the rule of law. Guaranteeing the balance and loyal cooperation of the three powers in the State is one of the major directions of constitutionalism as, in fact, these powers compete sometimes beyond their powers, with the tendency that one power dominates the other, generating tensions, deadlocks and conflicts within the political and governing process. The

resolution of these 'slippages' is carried out by arbitration of the constitutional courts. As such, the functioning of State powers in a balanced and co-operative manner ultimately ensures the fulfillment of the "social contract" objectivized in the country's Basic Law.

The balance between powers must come from within institutions, if they function within the parameters set out in the Constitution. By maintaining the limits of the powers conferred on each power, in accordance with the just measure in the exercise of their powers, the intervention of the constitutional courts in regulating such disturbances in the system of the functioning of the powers of the State must constitute an exception. I emphasise that there must be no dividing walls between State powers, but mechanisms for communicating and regulating the functioning of the relationship between them.

Alina Matei: Mr President, there has been a widespread idea of a possible conflict of interest in which the CCR judges would have found themselves in settling the objection of unconstitutionality concerning service pensions, since most of them are beneficiaries of this category of pensions …

Marian Enache: This is a strictly procedural issue of the activity of the CCR. In accordance with Article 55 of Law No 47/1992, judges of the CCR may not be recused. They are obliged to attend the hearings, without the procedural possibility of abstaining from participation in the hearing and in the vote.

Therefore, this issue that arose in the public sphere, i.e. that the judges of the CCR would have been in conflict of interest, is one that has no basis in the Constitution/Law.

Alina Matei: It was also discussed in the public arena that the constitutional court would have ruled only on service pensions in the justice system and that it would have avoided ruling on the service pensions of other occupational categories …

Marian Enache: I must point out that, in accordance with its case-law, the CCR rules only within the limits of referral, which is highlighted in paragraph 86 of the decision. In accordance with the first sentence of Article 146 (a) of the Constitution, the HCCJ brought an action before the Constitutional Court only in respect of the provisions of the Law on service pensions in the field of justice, and not the service pensions of the other socio-professional categories covered by that law (staff of the Court of Auditors, the diplomatic and consular corps, professional civil aviation air crew, parliamentary civil servants or military personnel). The CCR could not rule on the legal regime governing the service pensions of the latter, since it cannot, of its own motion, undertake an examination of the constitutionality of legal provisions which are not the subject matter of the proceedings brought before it in the case under review of constitutionality. It is therefore mandatory for the constitutional court to rule solely on the complaints of unconstitutionality raised before it. It cannot therefore be argued that the CCR favoured the staff of the justice system, since there was no specific referral to the other categories of staff authorising the CCR to proceed as such.

Alina Matei: Mr President, do you think that we now need to revise our Constitution?

Marian Enache: The concepts, notions and requirements of the Constitution are in continuous modelling process through the case-law of the CCR and the case-law of the European Courts, which must continuously adapt to the requirements and challenges of the present and the future of society. The CCR cannot remain isolated — in a crystal globe — so

it must combine the “original elements” of interpretation of the Constitution with those of “evolutionary interpretation” to reflect trends and changes in society. We have a relatively rigid constitution, the change of which requires a complex procedure, completed by a national referendum. A major revision requires a “constitutional moment” to borrow the wording of the famous American constitutionalist Bruce Ackerman. Overall, the stability of constitutional rules and good faith in their interpretation and application are nevertheless stronger guarantees than the adoption of new rules.

The Constitution establishes constitutional relationships through key legal concepts/ principles/procedures, of great generality, without specifically regulating the aspects they involved in them. That is why the political option for revising the Constitution must also take into account the innovative developments of the Constitution through the interpretation of constitutional principles and values by the CCR as guarantor and interpreter of the Constitution.

In other areas of law, legislative changes are quite frequent. On the contrary, it is imperative in the constitutional life of the State to respect the principles of stability and viability of the Constitution as basis for all State activity, a precondition of the rule of law. In this context, we emphasise the major role of Constitutional Courts in the flexible interpretation of constitutional law rules in order to avoid voluntary or arbitrary revisions of the Constitution. The revision can obviously be required whenever the transformation in society is profound, which necessarily leads to the need to ensure the consistency of the Constitution with such transformation. In this respect, I believe that more attention should be paid to the experience of Western States, which by the way they relate to the existence, value and application of a constitution ensure the functioning of balanced and co-operative societies.

Alina Matei: As president of the CCR, do you have any plans for the institution you are running?

Marian Enache: I do. It's not even complicated. I wish, along with the constitutional judges, that constitutional justice be as close as possible to the citizens in order to raise a broad constitutional awareness in Romanian society, a awareness of the fundamental and essential values of a democratic society.

6. Lecture by the President of the Constitutional Court, Mr Marian Enache, on the occasion of his participation in the Annual Session of Scientific Communications organised by the Romanian Academy of Legal Sciences, 20 October 2023

Mr President of the Romanian Academy of Legal Sciences,
Honorable Presidium of the Academy,
Distinguished officials,
Honourable Guests,

I am particularly pleased to attend, as a representative of the Constitutional Court, together with you, the opening of the annual session of scientific communications entitled "The crisis of law in the contemporary world". This initiative is part of the existing efforts in the field of legal science at academic, national and international level, which constitute an essential prerequisite for the development of research and culture of contemporary Romanian law.

On this particular occasion, I congratulate Professor Bogdan CIUCĂ, Professor Ovidiu Predescu, Secretary General, and all members of the Presidium of the Romanian Academy of Legal Sciences, who manage to organise high-ranking scientific events, and I strongly appreciate their efforts.

I would like to thank them cordially for the invitation to this event, and I also welcome the presence of distinguished figures - professors, researchers, magistrates, lawyers, law professionals.

The title of the conference brings to the debate the concept of crisis, which, in my view, although bivalent in nature, must rather be seen as a moment in the development of a field of scientific or institutional activity, which offers the opportunity to reset and rethink a new creative potential under new conditions. It is necessary to perceive crises in these terms, because it is constructive to give crises a positive sense in order to achieve a beneficial outcome and effect, and not to consider them as an insurmountable turning point for the development of concepts, ideas, knowledge processes and social action.

Crises, which mark the evolution of any development phenomenon, can provide a momentum and a reconsideration of the knowledge process and in itself pose a real challenge for law professionals. These multifaceted challenges must be taken into account in research into the development processes/structures of each area in which, in our case, they are reflected in the various forms of expression of the legal phenomenon.

In the limited time I have at my disposal, I would like to mention, obviously in my view, some of the challenges that the legal world will have to face and solve. Without seeking an exhaustive list or analysis, I will only address three such challenges, namely:

1. The relationship between national law and European Union (EU) law;
2. Artificial intelligence;
3. Ensuring peace.

1. Relationship between national law and EU law

As of 1 January 2007, the date of Romania's accession to the EU, the law (ius) of this political union and the case-law of the Court of Justice of the European Union (CJEU) have become binding. We are facing a new legal order of international law in which States have limited their sovereign rights and whose subjects are not only Member States but also their citizens (Case CJEU van Gend & Loos – 1963).

With regard to the typology and content of the relationship between the two legal orders – national and European – there is a certain concern, at the level of certain segments of Romanian society, of specialists in the field or of practitioners of public institutions concerning the application of the principle of the primacy of EU law in relation to the supremacy of the national Constitution and, consequently, the impact on the sovereignty of the EU Member States.

The application of the two legal orders, in which, in fact, the source of the European legal order was the common political will of the EU Member States, must be understood in terms of their active and complementary interaction, not in separatist but in a congruent way, according to the competences assigned to the European order, by the Act of Accession.

Guaranteeing the balance and loyal cooperation of the three powers in the State is one of the major directions of constitutionalism as, in fact, these powers compete sometimes beyond their powers, with the tendency that one power dominates the other, generating tensions, deadlocks and conflicts within the political and governing process. The resolution of these 'slippages' is carried out by arbitration of the constitutional courts. As such, the functioning of State powers in a balanced and co-operative manner ultimately ensures the fulfillment of the "social contract" objectivized in the country's Basic Law.

Therefore, for the achievement of the process of interactive and complementary European constitutionalisation within the European Union, a decisive role lies with the Court of Justice of the European Union, on the one hand, and the constitutional courts and ordinary courts, on the other, which must promote a type of co-operative judicial conduct, without unnecessary competition and tendency that one order dominates over the other.

I stress that achieving the process of European constitutionalisation is also not an easy task for the CJEU, given that EU law also faces a major challenge, namely legal multilingualism. For the law to be expressed in a world united in diversity, the language barrier must be overcome, as language is the key to the interpreation of the law. The translingual process involves ensuring the conduct, purpose and application of the law in circumstances where European judges belong to different nationalities, which is a sine qua non precondition for the translingual justice promoted at the level of the CJEU.

2. Artificial intelligence

Contemporary technological developments bring about the constitutionalisation of new phenomena, relations and social processes. In the face of the unprecedented development of new information and communication technologies, the emergence of the fourth generation of rights, including the right to protection of personal data and privacy in cyberspace or the right to use artificial intelligence. This new generation of rights is already enshrined in the constitutions of some States (India, Brazil). The emergence of new technologies also required

them to be regulated in Romania's legislation. From a legal perspective (ius), the definition and understanding of artificial intelligence is a challenge. While it can perform tasks similar to those of humans, even better than humans, it is not governed by the same principles as human intelligence. For example, an algorithm of artificial intelligence has no conscience or free will, and is not experiencing human feelings.

On the other hand, while human intelligence is inherently autonomous and has the capacity to make moral choices, artificial intelligence depends on the codes and instructions it receives from its creators. Artificial intelligence acts according to a set of predetermined rules, and while it can learn and adapt to new situations, it cannot for the time being make decisions of independent ethical value.

3. Ensuring peace

The role of law is to ensure peace for the world and peoples, by creating the methods, tools and means to achieve the basis of political-diplomatic negotiations and by materialising them into treaties, with a binding value for States. Law (ius), which has a modelling and moderating role, is a means of ensuring national and international security, as it regulates not only the citizen-State conduct, allowing citizens to develop their personal skills and capacities by exercising fundamental rights and freedoms but also relations between States as subjects of international law.

These considerations are all the more current as we observe the current geopolitical context in which the means of law must play a major role in peacekeeping efforts.

In conclusion, we can take the view that the challenges of law science and its application represent a moment for the development of scientific knowledge and research and for the application thereof, and in no way a moment of concern about the how to face the new, which inexorably constitutes a prerequisite of progress in any human-type activity. I therefore regard the crisis as an appropriate circumstance for finding innovative solutions in the legal field and for developing new valences of the extension in the application of the law.

Paraphrasing a well-known Romanian philosopher, we can say that, in principle, the crisis of law, like any crisis in every field of activity, can be understood as a closure that opens, namely, the closure of a cycle and the opening of the next cycle on a upper step on the knowledge spiral.

I am convinced that the current exceptional intelligence accumulated in the heritage of legal thinking, as a paideia-like form of European knowledge, will solve crises and the ever contradictory issue of the evolution of law in the future.

*

Finally, I congratulate the leadership of the Romanian Academy of Legal Sciences on the organisation of this session of scientific communications and I consider that it constitutes a benchmark for promoting Romanian legal culture and science both internally and internationally.

Thank you and I wish you every success!

President of the Constitutional Court of Romania
Marian Enache

7. Speech by the President of the Constitutional Court, Mr Marian Enache, during his participation in the scientific event, entitled "The challenges of law in the contemporary world. Impact on the profession of jurists", organised by the Union of Romanian Jurists, 30 June 2023

Esteemed President of the Union of Jurists, Mr Ioan Chelaru,
Honoured Members of the Governing Board of the Union of Jurists,
Ladies and gentlemen, law professors and professionals
Distinguished colleagues and friends,

I want to begin by thanking Professor Ioan Chelaru, the president of the Union of Jurists, and the governing board of the Union for extending me the honouring invitation to attend this special meeting celebrating the *DAY OF JUSTICE* in Romania.

I take this opportunity to congratulate the governing board of the Union of Jurists for organising this event and, more generally, for the development and affirmation of this institution at the level of public and scientific life, managing in a relatively short time to transform this entity into a real forum of the Romanian community of jurists. It is known that the managerial and professional contribution and dedication of President Ioan CHELARU and of the governing board of the Union have created a prestigious profile for this representative and professional institution, bringing together legal professionals and providing them with a publishing space for expression and manifestation in dealing with topics of scientific interest.

At the same time, I would like to mention that I am really glad that I am here with you, today, on the *DAY OF JUSTICE* and that I was given the possibility to benefit of an exchange of views and mutual trust in such a highly professional and collegial framework.

Building on the generous topic that the Union of Jurists is proposing, I have opted for some consideration on *the New Age of contemporary law - digitalisation, artificial intelligence and human dimension in the process of digitalisation and implementation of artificial intelligence.* This complex and topic issue has been the subject of in-depth analyses/reflections and research at doctrinal and institutional level, as it is an issue of concern for human society in general and for us, jurists, in particular.

This topic was chosen in consideration of the fact that this issue will become more and more a reason of concern and a part of the activities carried out by all categories of legal professions. Of course, I do not intend to discuss issues that are absolutely new in this area, and I will limit myself to a short presentation on the evolution of this phenomenon and its possible effects, some already objectivized, some to be manifested in the future.

The new era of contemporary law - digitalisation, artificial intelligence and human dimension in the process of digitalisation and implementation of artificial intelligence

I. Introduction

Over the centuries, law was adapted and even catalysed social, political, economic and technological changes. Today, with the impact of digitalisation and exponential advancement

of technology, such as artificial intelligence and cyber security, a new era of law is emerging, so I deem that the debate on two issues becomes relevant: first, how these changes affect the substance of the law and, secondly, its impact on the legal professions.

While national and international laws continue to adapt to these new circumstances, it is necessary to question whether our traditional legal concepts are flexible enough to deal with the new digital world. In a recent ruling delivered in 2022, the US Supreme Court stressed the importance of interpreting the law in the current technological context. The Court stated that the interpretation of the legislation must take account of technological innovations rather than restricting the same to the technical understanding existing at the time the law was adopted. That decision is intended to open a new era of adaptability of law, which, in essence, recognises the need to continuously ensure the correlation between law and technological innovations.

The new technologies also have a direct impact on the way in which legal professions are exercised. In recent years, the automation of legal processes using artificial intelligence has become an objective reality. This, indisputably, raises questions about the future of the legal professions and how this category of professionals should relate to these changes.

At first glance, this may seem alarming to legal professionals, as automation can lead to a reduction in the human role in legal processes. However, it is essential to remember that these technologies, at least at their current level of development, do not eliminate the need for jurists, but rather transform their role. In the context of this transformation, adaptability and lifelong learning are of fundamental importance. Jurists will need to develop new skills to work together with artificial intelligence and to understand its impact on law and case-law.

Other challenges faced by legal law professionals in the digital era relate to data protection and cybersecurity. The right to privacy, guaranteed by Article 26 of the Romanian Constitution, is under pressure as a result of the rapid technological developments. Jurists must be prepared to protect and defend this right as concerns the cyber challenges.

II. A new generation of fundamental rights

Contemporary technological developments are generating the constitutionalisation of new phenomena, relationships and processes through the creation of new, fourth-generation rights, mirrored by the curtailment of their exercise for various reasons, such as public health, national security or national defence.

In the face of the unprecedented development of new information and communication technologies, the emergence of the fourth generation of rights, including the right to protection of personal data and privacy in cyberspace or the right to use artificial intelligence, etc., is imminent, with this new generation of rights already enshrined in the constitutions of certain States (India, Brazil). The emergence of new technologies also required them to be regulated in Romania's legislation. In that context, the Constitutional Court was asked to rule on the constitutionality of new concepts such as the “right to be forgotten” (Decision No 440 of 8 July 2014), cyber intelligence and security (Decision No 70 of 28 February 2023) or migration and interconnection of data into the government cloud and the protection of personal data in the cloud computing system (Decision No 335 of 14 June 2023).

In this context, it should be emphasised that the use of those technologies cannot be left outside the regulatory framework of the law, so that new category of rights must be regulated and subjected to predetermined limitations. Furthermore, in order to avoid creating a systemic risk with regard to fundamental rights and freedoms or national security, the legislator has the power, in exceptional circumstances, to apply Article 53 of the Constitution for the purpose of controlling the access to and use of those technologies. Recently, the legislator amended Government Emergency Ordinance No 1/1999 on the state of siege and state of emergency regime for the purpose of introducing complex cyber-attacks, which could affect critical infrastructures of national interest, as a cause for declaring the state of emergency or the state of siege. Thus, an area which until recently has been unregulated and used freely, partly criminalised only by criminal law rules, has become a cause for declaring exceptional situations, with constitutional valves.

It is very important to recall that not every legal measure or concept relating to new technologies implies a restriction on the exercise of fundamental rights and freedoms, which was also noted in the recent case-law of the Constitutional Court (Decision No 70 of 28 February 2023, paragraph 147). Such an approach falls within the philosophy of regulation of new technologies with the aim of protecting pre-existing fundamental rights, recognising new social relations, and the restriction on the exercise thereof can only be carried out in order to protect equally or more important rights than those whose exercise is restricted, in light of the principle of proportionality.

The importance of dealing, from a constitutional perspective, with the further expansion of new technologies, and thus the creation of subjective rights related to them, leads to significant changes at the level of social relations. Those social relations, on the one hand, must be governed by the legal rule and, on the other hand, be assessed in terms of their impact on other pre-existing fundamental rights and duties.

III. Cyber security in Romania

In Romania, the area of cyber security has experienced a sinuous process, as it was subject to several draft laws and objections of unconstitutionality upheld by the Romanian Constitutional Court. Currently, the general legal regime for cyber security in Romania is governed by Law No 58/2023. The cybersecurity concept is based on the following pillars:

1. National security of Romania;
2. National defence of Romania;
3. Ensuring the national resilience of the Romanian State: prevention, response, restoration, State's operational capacity, protection of society;
4. Compliance with the European Directive in this field;
5. Preventing and combating cybersecurity threats in the public and private sectors: hostile State and non-State actors, crime, conflicts and crises.

The Constitutional Court has established in its case-law that cyber security and defence *are elements of national security and defence and are designed to protect national security and national defence in cyberspace* (Decision No 70 of 28 February 2023, paragraph 41).

The legal professions became aware of the need to establish an appropriate framework so as to ensure the cybersecurity for digital professional platforms intended to facilitate the

exercise of their work, direct contact between legal professionals and citizens, as well as the integration of traditional legal services into the national digital space and of government efforts to create interoperability. Thus, as regards the specificity of the profession, cyber security is intended not only to prevent and combat the attack, but also to ensure professional secrecy and confidentiality in relation to litigants.

In the context of the COVID-19 pandemic, many jurisdictions around the world have adopted online court proceedings and, even though the pandemic is over, some of these practices continue to be used, due to the advantages they offer in terms of efficiency and accessibility. In the United States, the Supreme Court allowed hearings by teleconference for the first time in its history during the pandemic. In Australia, federal courts have allowed remote hearings for most cases, including criminal ones, and an online trial system has been put in place in the UK that allows video hearings for a number of civil, family and criminal cases. In Romania, in the judicial system, court sessions were held online and hearings were held by teleconference. Public hearings of the Constitutional Court were also held through the online participation of judges and the electronic file was developed and implemented.

IV. Regulation of Artificial Intelligence in Europe and Romania

Artificial intelligence is a field of computer science that focuses on the creation of systems capable of performing tasks that normally require human intelligence. These tasks can include learning, understanding of language, visual perception, recognition of speech, resolution of problems and decision-making. What artificial intelligence does not (yet) do is to show legal will, i.e. to generate, modify and extinguish legal relationships in order to produce legal effects.

From a legal point of view, the definition and understanding of artificial intelligence is a challenge. Although it can perform tasks similar to those of humans, it is not governed by the same principles as human intelligence. For example, an algorithm of artificial intelligence has no conscience or free will, and is not experiencing human feelings.

On the other hand, while human intelligence is inherently autonomous and has the capacity to make moral choices, artificial intelligence depends on the codes and instructions it receives from its creators. Artificial intelligence acts according to a set of predetermined rules, and while it can learn and adapt to new situations, it cannot for the time being make decisions of independent ethical value.

Artificial intelligence also raises issues related to fundamental rights and freedoms. For example, its use in the supervision of the individual or in the taking of court decisions may have implications for the right to privacy or the right to a fair trial, as appropriate.

The use of artificial intelligence in the European Union will be regulated by a European regulation, the first piece of legislation on artificial intelligence in the world. As part of its digital strategy, the European Union intends to regulate artificial intelligence in order to ensure better conditions for the development and use of this innovative technology.

As regards the regulation of artificial intelligence by law, at national level, the axiomatic premise thereof is that of laying down the rules under which programming language is created and the results produced by programming language. The regulation does not concern the actual content that an artificial intelligence programming language can produce, but the

limits within which it can produce the content. Obviously, these limits are and must be the constitutional ones. In other words, the challenge of the regulation is that programming language must be created so that it complies, for example, with the constitutional right to life, physical and mental integrity of the individual (Article 22 of the Constitution). That language should also be set in such a way that, in no way, it offers solutions to affect the constitutional order. The question of exceptions to the rule will obviously be raised; however, in this case exceptions must be rigorously specified and strictly interpreted and enforced; they must be used for reasons such as national security, public order or national defence (therefore also for the purpose of defending constitutional order) or for education and research, carried out in a controlled environment. Within this rigorously regulated framework, the individual will be able to make the decision to access and use artificial intelligence in an accountable and informed manner. In this context, "artificial intelligence ethics" is defined as a set of constitutional rules obliging programming language to respect the same fundamental rights and duties that citizens of that State themselves are obliged to respect. Furthermore, given that, in the current legal system, only the individual is the holder of rights and obligations, the language of artificial intelligence must also be programmed in such a way that its content does not produce legal effects beyond the will of a person.

V. Replacement of legal professions by artificial intelligence

Artificial intelligence is now used in many areas of activity, including the legal area. From document analysis and assessment and legal research to predicting process outcomes and automation of routine processes, artificial intelligence has the potential to streamline many of the practical aspects of the legal profession. However, at least at the current level of development of artificial intelligence, the idea that it could completely replace the work of jurists is unfounded, and this is due to several ethical, technical and legal reasons.

Although artificial intelligence has made significant progress, it still has, at least for the time being, and I need to stress this again, significant technical limitations. Artificial intelligence systems are based on algorithms and data sets to make predictions or perform tasks, but they may be fallacious or imprecise. For example, in the case of legal analysis, an algorithm may identify trends or models in previous judicial decisions, but cannot understand the nuances, exceptions or complexity of the legal context in the way a lawyer or an experienced judge does.

In the same context, there are legal obstacles to completely replacing law professionals with artificial intelligence. In many jurisdictions, legal professionals have legal and ethical obligations towards the litigants, including the obligation of confidentiality and due diligence, which so far cannot be met by an artificial intelligence system. For example, lawyers have an obligation to ensure the confidentiality of information, which an artificial intelligence system cannot fully guarantee given cyber security risks. Furthermore, in the event of a manifest legal error, in the context of the obligation of means, lawyers can be held personally responsible, whereas there is an *intuitu personae* professional responsibility, whereas in the case of artificial intelligence, establishing responsibility may be a challenge.

Concerns regarding the regulation of the use of artificial intelligence in the work of lawyers have also been expressed in Romania, and a legislative initiative on the valorisation of programming languages in lawyer-specific operations has been promoted in this regard.

It can therefore be concluded that artificial intelligence has the potential to transform many aspects of the legal profession, helping to make trials more efficient, improving access to justice and providing new tools and capacities for law professionals. However, artificial intelligence is a tool, not a substitute, for judgements of value that are intrinsic to human discernment and for the rational knowledge underlying any legal profession. Therefore, while artificial intelligence can help improve the efficiency and effectiveness of the legal profession, it cannot, for the time being, – and I emphasize this once more – replace the human's pivotal role in the interpretation of laws, the appreciation of rights and freedoms and the ethical and moral assessment.

VI. Conclusions

From a constitutional law perspective, technological developments and the rise of artificial intelligence represent both an opportunity and a challenge for the entire system of law. There is no doubt that technology can help to improve efficiency and expand access to legal services.

In recent years, there has been a real effervescence of legal regulation in the field of new technologies in Romania, which has created new legal challenges in terms of constitutional law. It is a matter of time and acceptance that access to new technologies requires the emergence of new basic rights and freedoms.

It is important, however, to emphasize the exponential role of the Constitutional Court in this equation, which, as guarantor of the supremacy of the Constitution, has the task of structuring and integrating the social relations emerging and consolidating around the idea of technology within a coherent case-law framework adapted to the existing reality, without those affecting or distorting the existence and content of other fundamental rights and freedoms.

In conclusion, the impact of technology on legal professions is complex and multi-dimensional. To successfully navigate this new era, the legal community will have to express openness, receptivity, to understand the potential of the technology, operate with it and acquire new technical skills to serve the idea of justice and its essential values, indispensable to a civilised human society, in full expansion in terms of its evolution, through the development of science and revolutionary technologies.

*

Finally, I wish the Romanian Justice, both personally and on behalf of my fellow judges at the Constitutional Court, on the celebration of its *DAY*, every success, and I convey our well-deserved respect and due trust, for the fulfilment of its noble duty of meeting the requirements of a justice for all, without privileges and without discrimination. At the same time, we pay tribute to the work and dedication of legal professionals in achieving a fair justice within the framework of constitutional democracy.

President of the Constitutional Court of Romania
Marian Enache

8. Lecture by the President of the Constitutional Court, Mr Marian Enache, for the postgraduate course "Internal Affairs Top Management", organized by the "Alexandru Ioan Cuza" Police Academy, 13 November 2023

Title of the lecture:

The Constitutional Court of Romania – the sole authority of constitutional jurisdiction. The role of the Constitutional Court in ensuring the balance of State powers

Thank you for inviting me to participate in the works of the postgraduate course "Internal Affairs Top Management", organized by the National College of Internal Affairs of the "Alexandru Ioan Cuza" Police Academy. This initiative fits into the existing academic concerns for the development of level-III managerial skills – strategic management, which is an essential premise for the training of future high-level civil servants and dignitaries of the Romanian State.

The topic proposed is exciting and cannot be exhausted in the relatively limited time allotted.

The principle of separation and collaboration of State powers, although frequently used and evoked, sometimes to the point of erosion, on institutional occasions or in academic contexts and in the doctrine, is a complex and very often complicated topic, if we take into account the fact that this principle refers to the organization of State power in accordance with the requirements of the rule of law, whose essence is the limitation of power in relation to human rights and citizens' freedoms.

The difficulty in tackling this issue, which concerns both the concept and reality, the phenomenology of power as such, lies in the fact that the functioning of the State according to the paradigm of Western democracy must ensure and guarantee, equally, both State authority and freedom as a fundamental value inherent in the dignity of human beings and their status as citizens.

On the one hand, the State, as a supra-structural political and legal organization, must coordinate its own structures and legal order so as to create the premises necessary to ensure the authority of its laws and decisions, and, on the other hand, these same State structures and legal system must limit their authority and guarantee compliance with the requirements of freedom as a referential value of the system.

Between these two imperative needs of any State governed by the rule of law, there are, objectively, but also subjectively, contradictions and tensions that the State, while keeping itself within the coordinates of a democratic State, must manage within a unitary, functional and legally organized framework in which it should exercise its institutionalized political power as a State power.

In order to carry out an exercise of political power in which the State must ensure authority – respectively, its supremacy in its relations with those that it governs must, at the same time, guarantee the value of freedom –, a remedy has been resorted to in order to preserve the unity and uniqueness of State power, by dividing its functions and entrusting

the prerogatives of State power to distinct authorities, classically identified as: the legislative power, the executive power and the judiciary.

However, this division of power within the State has generated, through the force of things, another risk for the convergent exercise of power within the State, creating, through the relative autonomy of these authorities specialized in carrying out State functions, the possibility of an abuse of power through the tendencies of domination, of overordering expressed by one power over the other.

In order to counteract the tendency of one power to abuse power to the detriment of one of the other State powers, thus producing effects and phenomena of separatism and collisions within the State power system, the framers have imposed the mechanism of separation and the imperative of collaboration of the three fundamental powers so as to avoid deadlocks in the political process, as well as in what concerns the dispute resolution process specific to the activity carried out by the courts of law.

State power is and remains unique, unitary and indivisible. However, its implementation is entrusted to specialized and institutionally well-defined authorities. Any Constitution must take into account the fact that a democracy requires that the functions of State power be performed by separate authorities, without this meaning their total isolation or a lack of control or communication between them. Therefore, it is necessary for these authorities to operate under what the Anglo-Saxon doctrine calls the principle of checks and balances, in other words, a complex system of mutual control and balance between the powers of the authorities. Thus, the achievement of constitutional democracy is guaranteed, which implies the existence of a smoothly-operating system of powers exercised in order to ensure the proper functioning of the State and safeguard fundamental rights and freedoms.

The separation of State powers [1] is one of the fundamental principles of constitutional law and one of the premises of the rule of law. The principle of separation and balance of powers implies the existence of a mutual control between State powers as regards the exercise of their specific duties under the law, this being a mechanism specific to States governed by the rule of law and democracy, aimed at avoiding abuses by any of the State powers [2]. This principle is closely linked to the idea of a representative regime in which the danger of tyranny and of an abusive restriction and violation of individual rights and freedoms is eliminated [3]. It took shape in the life of the State when the need to introduce the constitutional regime appeared [4]. The current content of the notion of “separation of powers” is the result of a long historical and doctrinal process [5]: the principle of separation of powers could be anticipated ever since Antiquity, especially in the efforts of the political thinkers of those times aimed at finding the “secret of good government”. During the Middle Ages, the idea of separation of State powers was regarded as a means of limiting the arbitrary power of the head of State, power expressed by the absolutist regimes. We owe the theorizing of the separation of State powers as a fundamental principle in modern State organization to John Locke, Montesquieu and Rousseau.

This principle is the foundation of the political organization of the State, determining and circumstantiating the prerogatives and mode of action of public authorities and institutions. From an axiological point of view, the separation of powers is part of Romania’s constitutional

heritage, given that all the fundamental acts of democratic inspiration of the State, starting with the Statute expanding the Paris Convention of Alexandru Ioan Cuza (1864), have observed this principle, the entire State scaffolding being built accordingly and within its limits.

In order to improve the understanding and plenipotent application of this principle of State organization, the Constitutional Court, through its decisions, has developed and enriched, by jurisprudential means, the valences of this principle enshrined in the Romanian Constitution, inferring from the economy of this principle and of the other constitutional provisions two other principles, which are derived and correlative to the basic principle of separation and collaboration of State powers, namely the principle of constitutional loyalty and the principle of institutional loyalty, which means cooperation between and mutual control of State powers in order to achieve and enforce the requirements of separation, a rational balance necessary to the proper functioning of State powers.

In over three decades of existence, through the solutions delivered in accordance with the principles of constitutional jurisdiction, the Constitutional Court of Romania has shown that it was not a "substitute for a legislator", even though, through the force of things, its space for action is often placed at the confluence of law and politics, nor a "substitute for a judge", as it does not get involved in the substantive settlement of a case, which is a sovereign prerogative of the judiciary.

The Court is the guarantor for the supremacy of the Constitution and the sole authority of constitutional jurisdiction in Romania, it is independent from any other public authority and is subject only to the Constitution and its law of organization and functioning, and it carries out the constitutional review of laws, international treaties, regulations and decisions of Parliament, as well as of Government ordinances [6]. As such, through the constitutional review, the Court examines normative texts or acts that violate constitutional provisions or principles and, consequently, seeks their removal from the legislation in force or their remedy by the legislator. Furthermore, the Court's activity also takes into account possible violations of human rights, as enshrined in the Constitution, by reference to the international treaties to which Romania is a party. In 2003, by revising the Basic Law, Article 142 (1) of the Romanian Constitution, republished, strengthened the role of the Constitutional Court as guarantor for the supremacy of the Constitution, granting it new powers [7].

As regards the first democratic Constitution of Romania of 1991, as held by the Constitutional Court in its case-law [8], although the Basic Law did not enshrine *expressis verbis* the principle of separation of powers, this resulted from the way in which public authorities and their prerogatives were regulated. Moreover, "a legal provision prohibiting – even if only temporarily – the enforcement of a court decision would represent an interference of the legislative power in the process of achieving justice, being contrary to the constitutional principle of separation of powers" [9], and "any summoning of any judges by a parliamentary committee to provide information of any kind is unconstitutional, for it clearly violates the constitutional provisions which establish, albeit implicitly, the separation of State powers and, of course, the independence of judges and the fact that they are subject only to the law" [10]. Following the revision of the Basic Law [11], in order to put an end to a series of public, speculative criticisms regarding the "absence" of the principle of separation

of State powers in the text of the 1991 Constitution, the revising legislator explicitly enshrined this principle in Article 1 (4) of the Romanian Constitution.

The difficulties noted in the functioning of a pure model, of a rigid separation of powers, have directed attention and shifted the centre of mass of the classical theory towards the idea of a balance and collaboration between State powers, which must be governed by mutual respect and constitutional loyalty. This is, in fact, one of the meanings of the interpretation that the Constitutional Court of Romania has given, in its case-law, to the principle of separation of State powers, especially after 2003, when the Constitution was revised and a new power of the Constitutional Court was enshrined, i.e., that of solving legal conflicts of a constitutional nature between public authorities.

Thus, according to Article 146 (e) of the Romanian Constitution, the Constitutional Court "settles legal conflicts of a constitutional nature between public authorities, at the request of the President of Romania, one of the presidents of the two Chambers, the Prime Minister or of the President of the Superior Council of Magistracy". Following, mainly, the complaints to settle such conflicts, the Constitutional Court found conducts of representatives of the three powers which, although formally within the letter of the Constitution, were nevertheless likely to cause an imbalance from the perspective of the regime of separation of State powers or create institutional blockages, which required the identification of remedies. In such cases, the interpretation of the constitutional texts and the identification of the procedure and conduct to be followed require a certain attitude both towards the spirit of the Constitution and towards the institutions that it enshrines, an attitude that can be characterized, in a broad sense, by the concept of constitutional loyalty. Asked to settle the legal conflicts of a constitutional nature caused by such deadlocks, the Constitutional Court of Romania gave the constitutional texts the appropriate interpretation, established the conduct to be followed by the conflicting public authorities, emphasizing, when appropriate, their obligation of constitutional loyalty.

By exercising its duty to settle legal conflicts of a constitutional nature, the Constitutional Court undertakes a major role in ensuring and maintaining the separation and balance of State powers. It does not adjudicate on laws, but on the conduct of public authorities, evaluating and analysing their mode of action/inaction according to the prerogatives that the Constitution sets for them. As such, the constitutional review of laws concerns abstract normative aspects, while the review of the conduct of public authorities aims to assess how they apply the provisions of the Constitution and relate to each other through the constitutional powers conferred on them. In other words, the Constitutional Court carries out a review of the factual aspects resulting from the conduct of the public authorities in applying constitutional texts, which gives the Constitutional Court the role of judge of the facts that it always relates to the Constitution, the only norm of reference in its activity.

We emphasize that the notion of "legal conflict of a constitutional nature" is not defined by the Constitution; as such, it was up to the Constitutional Court to establish, through its case-law, which public authorities could be involved in such a conflict, but also the content and scope of such conflicts, which first occurred between 2005 and 2006 [12]. Thus, it was the Constitutional Court that ruled that parties to a legal conflict of a constitutional

nature could be only the authorities included in Title III of the Constitution, namely: the Parliament, composed of the Chamber of Deputies and the Senate, the President of Romania, as a single-person public authority, the Government, the bodies of the central and local public administration, as well as the bodies of the judiciary. Also, it was stated that such conflicts may not include only conflicts of competence, positive or negative, which can lead to institutional blockages [13], but also cases of conflicting interpretations of the provisions of the Constitution by public authorities [14], respectively any conflicting legal situation whose origin lies directly in the text of the Constitution [15].

As an example, we recall here the content of a series of decisions delivered by the Constitutional Court when settling legal conflicts of a constitutional nature:

1. The legal conflict of a constitutional nature between the judicial authority, represented by the High Court of Cassation and Justice, on the one hand, and the Romanian Parliament and the Romanian Government, on the other hand, triggered by the High Court of Cassation and Justice by issuing court decisions reinstating legal norms expressly repealed by the legislative authority [16]. When ruling on matters of law determined by the non-unitary practice of the judicial authority regarding the granting of salary rights to magistrates, the High Court of Cassation and Justice did not limit itself to clarifying the meaning of certain legal norms or their scope. By invoking flaws of legislative technique – non-compliance with the provisions of Law No 24/2000 on the norms of legislative technique for drafting normative acts – or flaws of unconstitutionality – violation of the norms contained in Article 115 of the Constitution on the legislative delegation granted by Parliament to the Government –, the Supreme Court reinstated norms that had ceased to apply, being repealed by normative acts issued by the legislative authority. However, such a legal operation can only be carried out by the legislative authority (Parliament or Government, as the case may be), which alone is empowered to decide on the necessary solutions in this matter. Therefore, after finding the existence of a legal conflict between the public authorities, the Court ruled that, in exercising the power provided for by Article 126 (3) of the Constitution, the High Court of Cassation and Justice was bound to ensure the unitary interpretation and application of the law by all courts of law, while observing the fundamental principle of separation and balance of State powers, enshrined in Article 1 (4) of the Romanian Constitution. The High Court of Cassation and Justice has no constitutional competence to establish, amend or repeal legal norms with the force of law or to carry out the constitutional review thereof.

2. The legal conflict of a constitutional nature between the President of Romania, who has the power to nominate a candidate for the position of Prime Minister, and the Parliament of Romania, which has the power to grant the vote of confidence regarding the Government program and the entire list of Government members and to withdraw the confidence granted to the Government by adopting a motion of no confidence, generated by the fact that the President of Romania appointed a certain candidate for the position of Prime Minister, although, just one day before, the Chamber of Deputies and the Senate, in joint session, had withdrawn the confidence granted to the Government led by the same person subsequently designated as candidate for the position of Prime Minister, by adopting a motion of no confidence [17]. Finding the existence of a legal conflict of a constitutional nature, the Court

underlined that the appointment appeared as an act of unilateral will, an expression of the exclusive will of the President of Romania, which is thus positioned outside the logic of the constitutional relationships of separation and balance of State powers and of the effects that this logic attaches to the act of appointing a candidate for the position of Prime Minister, in violation of the obligation of constitutional loyalty governing the interpretation and application of the Constitution and the relationships1 between public authorities of constitutional rank.

3. The legal conflict of a constitutional nature between the Romanian Parliament, on the one hand, and the Romanian Government, on the other hand, generated by the violation of the constitutional provisions regarding the manner in which the motion of censure was initiated and submitted, respectively by the violation of the constitutional provisions regarding the manner in which the motion of censure initiated and submitted in violation of the Constitution was subsequently notified to the Government [18]. The Court found that Parliament's action to delay the entire procedure of the vote of no confidence, which put the Government in the situation of no longer being able to fulfil its constitutional role in optimal conditions and prolonged the state of political and legal uncertainty, represented a rupture of the balance that must exist between State powers. However, the principle of balance of State powers also applies to the function of parliamentary control over the Executive, and the Parliament's position, during this procedure, does not place the Government under its subordination. By violating the procedural safeguards of the conduct of the vote of no confidence, Parliament broke the balance of power between the two authorities and, thus, violated the principle of balance of State powers provided for by Article 1 (4) of the Constitution.

We emphasize that, throughout its activity, the Constitutional Court contributed to the establishment and affirmation of the principles of constitutionalism and the rule of law. The obligation of constitutional loyalty, which is not expressly enshrined in the Constitution, was promoted by the Constitutional Court by interpreting the norms of the Basic Law. The principle of loyalty – which requires collaboration and mutual respect between State bodies – was first substantiated by the German Federal Constitutional Court [19]. The case-law of the Constitutional Court of Romania has evolved from a simple enunciation of the concepts of "loyalty" and "loyal behaviour" to the definition of a series of "norms of constitutional loyalty" deriving from a principle expressly enshrined in the Constitution – that of separation and balance of State powers [20].

The concept of "constitutional loyalty" was defined and developed in several decisions that settled complaints related to legal conflicts of a constitutional nature between the President and the Government, between the judiciary and the legislative power, as well as between the Government and the Prosecutor's Office attached to the High Court of Cassation and Justice – the National Anticorruption Directorate.

Thus, the Court held [21] that a first component of the rule of law was the implementation of explicit and formal provisions of the law and the Constitution. In other words, in terms of loyal collaboration between State institutions/authorities, a first meaning of the concept refers to the observance of the norms of positive law in force during a certain period, which expressly or implicitly regulate competences, prerogatives, powers, obligations or duties of State institutions/authorities. The Court found that respect for the rule of law was not limited to

this component, but implied, on the part of public authorities, constitutional behaviours and practices, which have their origin in the constitutional normative order, regarded as a set of principles that substantiate the social, political, legal relationships in a society. In other words, this constitutional normative order has a broader significance than the positive norms enacted by the legislator, forming the constitutional culture of a national community. Therefore, loyal collaboration means, beyond observance of the laws, mutual respect between State authorities/ institutions, as an expression of a series of constitutional values assimilated, undertaken and promoted, in order to ensure balance between State powers. Constitutional loyalty can therefore be characterized as a principle-value intrinsic to the Basic Law, while loyal collaboration between State authorities/institutions has a defining role in the implementation of the Constitution. As the Venice Commission pointed out, "respect for a Constitution cannot be limited to the literal execution of its operational provisions. The very nature of a Constitution is that, in addition to guaranteeing human rights, it provides a framework for the State institutions, sets out their powers and their obligations. The purpose of these provisions is to enable a smooth functioning of the institutions based on their loyal co-operation. The Head of State, Parliament, Government, the judiciary, all serve the common purpose of furthering the interests of the country as a whole, not the narrow interests of a single institution or the political party having nominated the office holder. Even if an institution is in a situation of power, when it is able to influence other State institutions, it has to do so with the interest of the State as a whole in mind, including, as a consequence, the interests of the other institutions and those of the parliamentary minority" [22]. Therefore, the institutional conduct that defines loyal collaboration has an *extra legem* component, based on constitutional practices, which have as their primary purpose the proper functioning of State authorities, the good administration of public interests and respect for the fundamental rights and freedoms of citizens. The secondary aim is to avoid interinstitutional conflicts and remove bottlenecks in the exercise of their legal prerogatives. The instruments that contribute to achieving these goals and that prove a loyal behaviour towards the constitutional values are institutional dialogue and the establishment of mutually accepted practices. These instruments must be the basis for settling "together", "by agreement of the parties", and not "against", "to the detriment" of one party or the other, any disputes arising between authorities, caused by confusing, equivocal factual or legal situations. By virtue of the principle of loyal cooperation between authorities, it is therefore necessary for each of them to exercise rational and enhanced diligence in their legal institutional dialogue in order to avoid, to the extent possible, generating legal conflicts of a constitutional nature. Undoubtedly, loyal cooperation requires only solutions that comply with the constitutional normative order, given that their basis may be *extra legem* but not *contra legem*. Thus, the parties' conduct, which consists in adopting a solution contrary to the legal or constitutional norms in force, for the purpose of avoiding a conflict, cannot be classified as loyal collaboration. It is obvious that a clear, strict, predictable and exhaustive legislative framework is likely to avoid such potential interinstitutional conflicts, but the legislator, even the constitutional one, cannot be blamed for the fact that the legislative solutions adopted do not include in their normative hypotheses all possible situations that reality (social, political, legal), mutable in its essence, can generate. From this

perspective, the notion of "loyal collaboration" cannot have a stable, specific, quantifiable content; on the contrary, it is dynamic, it varies from one case to the other, depending on the actors involved, but also from one era to another, depending on the evolution of the legislative framework governing interinstitutional relationships or on the existence of good practices/customs governing these relationships. But what can be established with certainty is the fact that the loyalty of State institutions/authorities must always be manifested towards constitutional principles and values, while interinstitutional relationships must be governed by dialogue, balance and mutual respect.

In view of these considerations, the Court noted that the role of contributing to the shaping of the principle of loyal collaboration and mutual respect was mainly played by institutions/authorities in a position to collaborate. They have the task of outlining/structuring all possible forms that a loyal conduct can take, depending on the legal competences of each of the institutions/authorities in a collaborative relationship and depending on the values and constitutional principles applicable to that collaboration. Cooperation must unfold in the forms provided for by law, and where the law is silent, public authorities must identify and establish, in good faith, those forms of collaboration that capitalise on the constitutional normative order and that do not harm the constitutional principles under which they operate and relate, nor the fundamental rights or freedoms of the citizens in whose service they operate. Good faith must therefore be displayed in order to find solutions for overcoming any institutional blockage and for ensuring the effective functioning of each individual authority, according to the competences assigned to it by law. If the identification of these best practices is difficult to achieve and the settlement of interinstitutional disputes fails, public authorities have the possibility to resort to constitutional mediation instruments, respectively to the procedure of settling legal conflicts of a constitutional nature, provided for by Article 146 (e) of the Constitution, which aims precisely to restore the constitutional normative order, by interpreting the applicable norms of the Basic Law and by establishing concrete benchmarks of loyal conduct towards the constitutional values and principles.

In conclusion, I would like to emphasize that our constitutional court has positioned itself so as to fulfil its constitutional role, as guarantor for the supremacy of the Basic Law, above the political interests and conditions that characterise the conflicting public authorities and has manifested itself as an impartial arbitrator, always inviting the parties to display loyal constitutional behaviour, cooperation and mutual respect. State authorities must cooperate loyally with each other, maintain a fair and rational dialogue, possibly by using the path of constructive compromise to find solutions that suit everyone's interests, all this in order to avoid conflicts. Therefore, the Court did more than just ascertaining the existence of a legal conflict and has always shown the conduct to be followed by the conflicting parties, in order to overcome the constitutional conflict having arisen between them.

President of the Constitutional Court of Romania
Marian Enache

[1] See Alin-Gheorghe Gavrilescu, *Separaţia puterilor în stat – condiţie a funcţionării optime a societăţii*, in the volume *Legislaţia şi educaţia în perspectiva integrării europene*, Universitaria Craiova Publishing House, p. 263 et seq., apud Elena-Roxana Dobriţoiu, *Aspecte privind originea separaţiei puterilor în stat într-o abordare istorico-juridică*, in the Annals of the "Constantin Brâncuşi" University of Târgu Jiu, Ştiinţe Juridice Series, No 1/2014, p. 83 et seq.

[2] Decision of the Constitutional Court No 1109 of 8 September 2011, published in the Official Gazette of Romania, Part I, No 773 of 2 November 2011.

[3] Laura Magdalena Trocan, *Quelques considérations sur la Loi No 298/2008 par rapport aux prévoyances constitutionnelles de la Roumanie et aux documents internationaux de garantie et de protection des droits de l'homme*, Proceedings of the 1st International Scientific Conference "The Role and Place of Law in a Society Based on Knowledge", organized by the "Constantin Brâncuşi" University of Târgu Jiu, Faculty of Legal Sciences, in partnership with Masaryk University of Brno, Faculty of Law, Brâncuşi Academica Publishing House, Târgu Jiu, 2009, pp. 578-579, apud Elena-Roxana Dobriţoiu, op. cit., p. 83 et seq.

[4] Laura Magdalena Trocan, *The citizen rights and liberties within the constitutional evolution of Romania*, in the Annals of the "Constantin Brâncuşi" University of Târgu Jiu, Litere şi Ştiinţe Sociale Series, No 4/2013, apud Elena-Roxana Dobriţoiu, op. cit., p. 83 et seq.

[5] Elena-Roxana Dobriţoiu, *Aspecte privind originea separaţiei puterilor în stat într-o abordare istorico-juridică*, in the Annals of the "Constantin Brâncuşi" University of Târgu Jiu, Ştiinţe Juridice Series, No 1/2014, p. 83 et seq.

[6] See Articles 1 and 2 of Law No 47/1992 on the organization and operation of the Constitutional Court, republished in the Official Gazette of Romania, Part I, No 807 of 3 December 2010, as subsequently amended and supplemented.

[7] The new tasks refer to: the verification of the constitutionality of treaties or other international agreements; the settlement of legal conflicts of a constitutional nature between public authorities; the possibility to perform other duties provided for by the organic law of the Court [these are the verification of the constitutionality of the laws of revision of the Constitution, as well as of the decisions of the Plenary of the Chamber of Deputies, of the Plenary of the Senate and of the Plenary of the joint Chambers of Parliament]. Thus, according to Article 146 of the revised Constitution, the Constitutional Court: adjudicates on the constitutionality of laws, before their promulgation, as well as, *ex officio*, on the initiatives to revise the Constitution; adjudicates on the constitutionality of treaties or other international agreements; adjudicates on the constitutionality of Parliament's Standing Orders; decides on exceptions of unconstitutionality regarding laws and ordinances, raised before courts of law or of commercial arbitration or directly, by the Ombudsperson; settles legal conflicts of a constitutional nature between public authorities; ensures observance of the procedure for the election of the President of Romania and confirms the ballot returns; ascertains the existence of the circumstances justifying the interim in the exercise of the office of President of Romania and reports its findings to Parliament and the Government; gives advisory opinions on the proposal to suspend the President of Romania from office; ensures compliance with the procedure for organizing and conducting the referendum and confirms its returns; verifies compliance with the conditions for citizens to exercise legislative initiative; decides

on appeals concerning the constitutionality of a political party; exercises the constitutional review of the decisions of the Plenary of the Chamber of Deputies, of the Plenary of the Senate and of the Plenary of the two joint Chambers of Parliament.

[8] Decision No 27 of 25 May 1993, published in the Official Gazette of Romania, Part I, No 163 of 15 July 1993.

[9] Decision No 50 of 21 March 2000, published in the Official Gazette of Romania, Part I, No 277 of 20 June 2000.

[10] Decision No 45 of 17 May 1994, published in the Official Gazette of Romania, Part I, No 131 of 27 May 1994.

[11] See Law No 429/2003 on the revision of the Constitution of Romania, published in the Official Gazette of Romania, Part I, No 758 of 29 October 2003.

[12] Decision No 53 of 28 January 2005, published in the Official Gazette of Romania, Part I, No 144 of 17 February 2005, and Decision No 435 of 26 May 2006, published in the Official Gazette of Romania, Part I, No 576 of 4 July 2006.

[13] Decision No 97 of 7 February 2008, published in the Official Gazette of Romania, Part I, No 169 of 5 March 2008.

[14] Decision No 270 of 10 March 2008, published in the Official Gazette of Romania, Part I, No 290 of 15 April 2008.

[15] Decision No 901 of 17 June 2009, published in the Official Gazette of Romania, Part I, No 503 of 21 July 2009.

[16] Decision No 838 of 27 May 2009, published in the Official Gazette of Romania, Part I, No 461 of 3 July 2009.

[17] Decision No 85 of 24 February 2020, published in the Official Gazette of Romania, Part I, No 195 of 11 March 2020.

[18] Decision No 589 of 28 September 2021, published in the Official Gazette of Romania, Part I, No 986 of 15 October 2021.

[19] Source: www.ccr.ro – extract from the National Report for the XVth Congress of the Conference of European Constitutional Courts, presented by the Federal Constitutional Court of Germany, rapporteurs: Prof. Dr. Gertrude Lübbe-Wolff, Prof. Dr. h.c. Rudolf Mellinghoff, Prof. Dr. Reinhard Gaier, Judges at the Federal Constitutional Court of Germany.

[20] Decision No 972 of 21 November 2012, published in the Official Gazette of Romania, Part I, No 800 of 28 November 2012, or Decision No 449 of 6 November 2013, published in the Official Gazette of Romania, Part I, No 784 of 14 December 2013.

[21] Decision No 611 of 3 October 2017, published in the Official Gazette of Romania, Part I, No 877 of 7 November 2017.

[22] Opinion on the compatibility with constitutional principles and the rule of law of actions taken by the Government and the Parliament of Romanian in respect of other State institutions and on the Government Emergency Ordinance on amendment to the Law No 47/1992 regarding the organization and functioning of the Constitutional Court and the Government Emergency Ordinance on amending and completing the Law No 3/2000 regarding the organization of a referendum of Romania, adopted by the Venice Commission at its 93rd Plenary Session, Venice, 14-15 December 2012, paragraph 87.

9. The speech given by the President of the Constitutional Court of Romania, Mr Marian Enache, on the occasion of his participation in the opening ceremony of the THEMIS 2023 Grand Final, organised by the National Institute of Magistracy and the European Justice Training Network – 6 December 2023

Madam, Director of the National Institute of Magistracy, Simona-Camelia Marcu
Distinguished representatives of the European Justice Training Network,
Dear guests and competitors,

I am honoured to participate, as President of the Constitutional Court, together with your lordships, at the opening ceremony of the THEMIS 2023 Grand Final, organized by the National Institute of Magistracy (NIM) and the European Justice Training Network (EJTN).

In this context, I congratulate the organizers of this event, the director of the NIM, Mrs Simona-Camelia MARCU, as well as the representatives of the EJTN, who, through their joint efforts and endeavours, have created the organizational and functional premises necessary for conducting this competition. Furthermore, I would also like to congratulate the members of Romania's THEMIS 2022 team, who, by winning the Grand Final held in Belgrade (Serbia), made it possible to organize the 2023 final in Bucharest.

This competition, named after the goddess of justice, Themis, is organized under the auspices of the European schools of magistracy and the EJTN, and aims to bring together future judges and prosecutors from different European States in a joint effort to capitalize on the ideas and principles that are part of the European judicial heritage. Such initiatives are indicative of the European focus on training a professional body of highly qualified magistrates, on creating deep links between the different legal orders and on strengthening the professional relations between the participants. Competitions at European level have, by excellence, a translingual nature and represent exchanges of experience and best practices – in this case, in the field of law – which facilitate the need for specialized dialogue both between national legal orders and between these and the legal order of European Union. The need for knowledge of young legal specialists is satisfied even through competitions, which do not have winners or losers, but only winners of knowledge.

The schools of magistracy play a primary role in shaping the idea of justice and the valences that it implies. They must assure European citizens that the values on which the European Union is built are observed everywhere in Europe. They also have the role of training future judges/prosecutors and identifying the best methods and tools to promote knowledge among the members of the professional body themselves and the understanding of the challenges posed by the application and interpretation of the legal norms and principles. Law is not a static and dogmatic phenomenon; on the contrary, it is dynamic and creative, it operates more and more often with new evolutionary or autonomous conceptual contents, and adapts to the demands of society; therefore, young legal specialists as well must be permanently connected to these challenges and, at the same time, conduct, at European level, a necessary

exchange of good practices, and discuss, even at an axiological level, new perspectives in areas of general interest. And what could be more beautiful and exciting than having such an effort take the form of a competition at European level between young people willing to start a career in the judicial field?

But what is even more important is the fact that these exchanges of experience, in their various forms, carried out through the schools of magistracy, contribute to the development of a European legal consciousness in which the values on which the European Union is built are brought to the centre of our concerns.

The European society is characterized, as stipulated by Article 2 of the Treaty on the European Union, by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. These values guide not only the legal order of the European Union, but also the national legal orders.

In this context, we recall that the Basic Law of Romania regulates the supreme values of the State. As such, the reason and purpose of the existence of the democratic State are based on the supreme values enshrined in Article 1 (3) of the Constitution, which include justice, a value with a dense content, which ensures not only the proper functioning of the State, but also society's trust in its actions and, in this case, in the act of justice. Society, reasonably, demands justice, and the State, through its authorities, has the task of imposing and capitalising on it. That is why the training of judges, respectively of the servants of the goddess Themis – *themistopóloi* –, if we are to stay in the same mythological context, is crucial for the State and society. A systematic and qualitative training of trainee judges can only lead to a higher degree of confidence in the act of justice, as its intrinsic value, as well as in its concrete execution.

The theme of the THEMIS 2023 competition – *Access to justice* – is well-chosen, especially because this concept is of constitutional essence, being part of the common European constitutional heritage, as evidenced by its enshrinement both in the Convention for the Protection of Human Rights and Fundamental Freedoms and in the Charter of Fundamental Rights of the European Union. Without engaging in the analysis of this fundamental right, we highlight the fact that it has implicitly accepted limitations (see also the *Golder* case – 1975, issued by the European Court of Human Rights), an aspect that makes it necessary to evaluate these limitations through from the perspective of the principle of proportionality. As such, through their decisions, constitutional courts must evaluate the proportionality of the measures related to access to justice and establish the fair balance between the means used and the legitimate goal pursued.

On this occasion, we also note the fact that constitutional law is a subject in the educational curriculum of the NIM, and that the department of constitutional law, which comprises three Assistant-Magistrates of the Constitutional Court, is coordinated by Mr Benke Károly, First Assistant-Magistrate of the Constitutional Court.

In conclusion, we congratulate the management of the SCM, NIM and EJTN for organizing this competition, which has already become a tradition, taking into account the fact that its first edition took place in 2006. I wish good luck to the eight teams that have reached this final and that come from – in alphabetical order – France, Italy, the Netherlands and Romania.

As already discussed, Wednesday, 6 December 2023, at 10:00 a.m., we invite all the participants to visit the headquarters of the Constitutional Court and learn more about the organization and activity of our constitutional court, an invitation addressed considering the good cooperation between the Constitutional Court of Romania and the National Institute of Magistracy.

Thank you and good luck with your event, to you and to all the competitors!

President of the Constitutional Court of Romania
Marian Enache

10. Speech given by the President of the Constitutional Court of Romania, Mr Marian Enache, on the occasion of his participation in the opening session of the annual conference of the Competition Council – "Competition in key sectors", 27 October 2023

Mister President of the Competition Council,
Distinguished officials,
Dear guests,

I am honoured to be here with you today for the annual conference "*Competition in key sectors*", organized by the Competition Council. This initiative reflects the institutional concerns existing at State level for identifying new solutions, both of a legislative and administrative nature, to ensure the fair nature of competition and protect the citizens as subjects of the economic relationships in which they participate.

On this occasion, we congratulate and appreciate the efforts of President Bogdan Chiriţoiu and the team of the Competition Council, who have succeeded in implementing a managerial approach as concerns their entire activity, which is adapted to the economic and social realities that Romanian society is going through. I thank the President of the Competition Council for the invitation to participate in this event, which marks a special institutional moment for the activity of this entity.

As a model of political civilization, Romania is a democracy with a functional market economy in which the protection of fair competition is an objective of a constitutional nature, the State having the positive obligation to establish a compatible, fair and balanced legislative framework for implementing this constitutional requirement.

Although the Competition Council is not an entity expressly regulated in the text of the Constitution, this, however, does state that the specialized bodies of the central public administration can organize themselves as autonomous administrative authorities. Such a flexible constitutional regulation allows the legislator to establish a set of bodies with appropriate powers to enforce the law in the most important areas of State life. One such example is the Competition Council, which is an autonomous administrative authority in the field of competition, with legal personality, and which was endowed with the prerogative of ensuring the functioning of one of the fundamental fields of the country's economy, i.e., competition, a field enshrined at constitutional level.

The Constitution of Romania expressly provides that Romania's economy is a market economy, based on free enterprise and competition, and that the State must ensure the freedom of trade, the protection of fair competition and the creation of a favourable framework for the capitalisation of every factor of production. The constitutional provisions do not have a declarative or abstract nature; on the contrary, they have a normative and binding value for public authorities.

We must highlight the fact that the case-law of the Constitutional Court has characterised market economy as an evolutionary concept. The Constitutional Court has noted the transformations that Romanian society has gone through since 1991 and emphasized that

market economy was a living, evolutionary concept, its content being determined depending on the socioeconomic situation of the State. In this respect, on the one hand, the State must prove a flexible attitude and stimulate economic operators in promoting progress, as concerns the freedom to undertake and increase efficiency, to give buyers the opportunity to make choices on a free market, which should be an expression of the methods used for orienting human action towards satisfying the system of needs and requirements, and, on the other hand, economic operators must undertake the trade acts for which they were authorized, while observing the requirements of fair competition.

It is in this frame of reference that the institution of the Competition Council plays a major role, by investigating and settling, from an administrative point of view, all cases of violations of the competition rules. In order to exercise its role as a supervisor of how economic operators understand to comply with the competition policies and the existing legal framework in the field, the Council carries out complex investigative activities, contributing to the development of the market and competition and to the removal of the dysfunctions found.

Furthermore, we note that violations of the competition rules have serious consequences both on the economy as a whole and, directly, on consumers and the other businesses on the market and, in order to be effective, sanctions must convey a strong message of deterring offenders and be in the amount necessary to achieve this dissuasive effect.

As the national competition authority, just like all State institutions involved in the EU law enforcement mechanism, the Competition Council goes through an extensive process of institutional development and consolidation. This must be in line with the requirements imposed by the European Commission, in its capacity as guarantor for the EU competition-related rules. In this context, we indicate that the establishment of the competition rules necessary for the proper functioning of the internal market is an exclusive competence of the EU, according to the Treaty on the Functioning of the European Union. That is why close collaboration is needed both at national level and, above all, at European level.

Furthermore, considering that, on 23 June 2022, the European Council granted the Republic of Moldova the candidate country status as regards its accession to the European Union, we note the efforts of the Competition Council to actively support the authorities of the Republic of Moldova in its field of competence for the purpose of achieving legislative harmonisation and that of their administrative actions in relation to the EU imperatives.

In conclusion, we congratulate the board of the Competition Council for the good institutional collaboration that it promotes in the best interest of citizens, as well as for the way in which it understands to exercise the skills and know-how that it has acquired in its 30 years of existence. We also believe that the improvement of the activity of the Competition Council shall become a permanent objective of the political decision-makers interested in providing the management of this institution with the necessary legislative and logistical support that is best adapted to the dynamics of Romanian socioeconomic realities.

Thank you and I wish you success with your conference!

President of the Constitutional Court of Romania
Marian Enache

11. Message conveyed by Mr Marian Enache, President of the Constitutional Court of Romania, on the occasion of the 16th anniversary of the enthronement of His Beatitude, Father Patriarch Daniel, 2 October 2023

Your Beatitude,
Your Eminences and Graces,
Distinguished guests,

Thank you, Your Beatitude, Father Patriarch Daniel, for the honouring invitation to attend, together with Your Graces, this event of the Romanian Orthodox Church.

I confess that I entered humbly and shyly this epicentre of the Romanian orthodoxy, a space of faith and service, of sacrificial service, actually, on many occasions.

The 16th anniversary of the enthronement of Your Beatitude, Father Patriarch Daniel, gives me the privilege to convey, both in my capacity as an Orthodox Christian and, ephemerally, President of the Constitutional Court, and on behalf of my colleagues, a message for Your Beatitude, and present our reverence to the entire Romanian Orthodox Church.

I am happy to address to You my wishes of success, good health and fruitful pastoral care of all Romanian orthodox believers on the occasion of the 16th anniversary of Your enthronement as Patriarch of the Romanian Orthodox Church, whose values, specific to the Christian faith and culture, You cultivate, defend and promote through the prodigious, inspiring and wise guidance of the Romanian Christian Orthodox spirituality, for the purpose of ensuring their continuity and consolidation.

The mission of Your Beatitude, a genuine profession of faith, during these years marked by many achievements not only for the Orthodox Church but also for the entire Romanian society, is a source of inspiration for those who dedicate their lives and work to serving a nation. I warmly congratulate You on the exemplary involvement of the Romanian Patriarchy in the social, cultural and educational spheres of our society, particularly for the attention and balance shown by Your Beatitude in matters of religious freedom and tolerance enshrined and guaranteed in the Romanian Constitution.

Your fatherly care towards all Romanians in the country and the diaspora is well-known. We appreciate Your remarkable spirit and action, anchored in the contemporary cultural, religious and social realities, together with Your devotion to the enduring traditions and values, as well as the dedication of Your Beatitude to the attainment of the most precious dream of our deserving forefathers, that of having a national cathedral, symbolising the altruistic sacrifice of our heroes. We witness, under the patronage of Your Beatitude, Your Eminences and Your Graces, the development of a traditional Christian religious movement, which is the expression of a living Church, a Church of the People, of all the Romanians of Orthodox faith, and which is aimed at substantial material achievements directed towards the needs of the believers, the growth and renewal of monastic and spiritual life. This could all be seen as easy accomplishments, but in fact we see a huge and consistent effort in finalising them, for which we sincerely congratulate You on this anniversary occasion.

We all know that the cultural and national identity profile of a nation cannot endure without traditions, beliefs, family and language as an ethno-cultural phenomenon that gives the ethno-cultural unity of a people who validate their existence by interiorising and living the absolute value of transcendence.

A man or a people without faith and without God is destined, sooner or later, to moral degradation and weakened dignity and self-consciousness.

The Romanian Orthodox Church, an integral and symbiotic part of the national conscience, has, over time, accompanied and shaped the life, spirit and culture of the Romanian people, who has intertwined its destiny, throughout history, with that of this fundamental spiritual institution of our nation.

The ancestral Christian Orthodox faith is merged with the very ethnogenesis and evolution of the Romanian people regardless of all the vicissitudes and advances that it has experienced over time. The Romanian Orthodox Church is not a mere institution providing religious services or charity services; it is, in essence, a key institution of the spiritual dimension, ensuring the building and cohesion of a human community of free and equal citizens, in which freedom of religion and belief constitute the core of freedom as a feature inherent to every human being.

The separation between the State and the church, entrenched by the country's Basic Law, must be understood in the sense of political organisation of the State. But, as regards the communion of spiritual, cultural and ethical-religious awareness, these are, in fact, in real life, indestructible and unitary, considering that freedom, tolerance and belief-related values represent one of the cultural foundations of European civilisation, alongside Greek philosophy and Roman law.

Science without conscience is said to be the ruin of the soul. By paraphrasing this well-known adage, one could say that knowledge without faith, without conscience of faith is the ruin of the human soul, as commanded by the Book. "Rejoice always and pray without ceasing".

Human beings cannot live, in their metaphysical depth, without faith and the communion between love and prayer. As the Romanian writer and scholar Mircea Eliade said, the entire apparent order of the world is nothing more than sacred camouflaged in the profane.

Your Beatitude, Father Patriarch Daniel, Your Eminences and Graces, Distinguished guests,

May the years to come be filled with joy and bring all Romanians choicest blessings! So help us God!

And now, if you allow me, Father Patriarch, I shall say a prayer and ask for Your blessing.

"Lord Jesus Christ, Son of God, have mercy on me, for I am Your sinful servant!"

President of the Constitutional Court of Romania
Marian Enache

12. The message of the President of the Constitutional Court of Romania, Mr Marian Enache, on the occasion of the release of the volume "*După 30 de ani: Justiția constituțională în România*" (*30 Years Later: The Constitutional Justice in Romania*), 5 October 2023

Distinguished Rector of the University of Bucharest,
Distinguished Dean of the Faculty of Law of the University of Bucharest,
Mister President of the Senate,
Distinguished Professors,
Honoured guests,
Dear students,

Hello everyone!

I would like to begin by thanking the organizers for the invitation to be present to such a prestigious professional event, a veritable empyrean of legal sciences, for the release of the collective volume entitled "*După 30 de ani: Justiția constituțională în România*" (*30 Years Later: The Constitutional Justice in Romania*), coordinated by professors Bogdan Dima and Vlad Perju.

I sincerely congratulate the coordinators and the authors of the studies in this volume for the merits and worthiness of their work. I congratulate them for their endeavour of bringing to the attention of the public topics and ideas specific to constitutional justice and for having managed to capture the main issues and aspects that characterise the jurisprudential evolution of the Constitutional Court of Romania.

Furthermore, I would like to express my special appreciation for Humanitas Publishing House, which, through its editorial targets, promotes excellence, making a strict and rigorous selection of the titles and materials published, paying special attention to good-quality intellectual, scientific and artistic works.

My brief intervention in front of Your Lordships is only a *Welcome speech*, which does not give me a real opportunity to refer to the content and complexity of the issues and aspects dealt with in this work – nor do I think that this is the purpose of today's event.

However, I cannot help but note that the studies in this volume reveal the concern of the authors for the dissemination and evaluation of the activities in the field of constitutional justice in Romania. In this context, I would like to emphasize, with satisfaction, the fact that the decisions, judgments and opinions of the Constitutional Court are the subject of analysis of the hermeneutics of constitutional law and its application.

Critical approaches of a scientific nature are always welcome and I believe that the Constitutional Court must be sensitive, open and receptive to them and design a dialogic framework between its activity, in its substance, and the systematic examination of its results; as such, we value and respect critical thinking and the conclusions of researchers in the field of law, because such a rational judgment underlies the process of awareness, of understanding the complexity of the matter and of an accurate perception of the results of

the activity of the Constitutional Court, with direct impact on improving the quality of its case-law, as well as regarding the development of a constitutional conduct in the case of public authorities and institutions, the emergence of a conscience, of a constitutional responsibility of the leaders of the structures of State power.

After going through this work – which is both critical and analytical, I found that, in essence, the contributions of the authors were not a tribute to partisan positions but presented the institutional and jurisprudential reality objectively, from an individual research perspective. It is obvious that the Constitutional Court, like any other institution of a pluralistic society and within a constitutional democracy, does not claim infallibility and exhaustiveness, as an expression of an outdated and deforming triumphalism, being aware that such "unfounded claims" annihilate creativity and the innovative jurisprudential development of the norms of the Basic Law.

The topics addressed by the authors of this volume are reflective, of public interest, and refer to the role and exercise of the powers of the Constitutional Court, as well as to the interaction of this institution with other public authorities and to the importance of the effects of its decisions in the process of constitutionalization of the legal system. Among these topics, I would like to mention, by way of example, a few presented in this volume: the Constitutional Court's relationship with the High Court of Cassation and Justice, constitutional identity, law predictability, fundamental rights and freedoms, constitutional procedural law, independence of the Constitutional Court, its role as arbiter between State powers, transparency of its decisions and dissenting opinions, etc.

The research conducted in the volume being released today, in the presence of such a highly specialised audience, proves the plurality of the positions expressed, as well as the approaches and methods specific to the field of doctrinal research, where the freedom of expression of ideas, arguments and conceptions enjoys a more generous space. The doctrine, as a rational intellectual activity, plays an important role because it can measure a certain type of institutional activity and propose grounded and creative solutions with extended freedom of analysis and with the tools for the scientific determination of the institutional results and effectiveness. The fruit of these researches, materialized in editorial efforts, is proof of the interest and attention that the scientific community gives to the results of the activity of the Constitutional Court and to their impact on the political and constitutional life of the Romanian society.

I must add that the Constitutional Court of Romania was first regulated in the constitutional history of our country by the 1991 Constitution, as an expression of the European model of constitutional review. The Italian constitutionalist Antonio La Pergola told us, during the consultations that we had regarding the drafting of the 1991 Constitution, that, I quote: "the introduction, in the Romanian constitutional system, of a constitutional court according to the European model is a key that will open Europe's sympathy for Romanian democracy". We recall that, during the process of adoption of the new Constitution, there were heated debates within the original Constituent Assembly regarding the need to create an autonomous, special body, specialized in the constitutional review of laws, as such a vision brought into discussion a new paradigm, different from the one in force during the inter-war period, in

which the constitutional review was exercised, according to the Constitutions of 1923 and 1938, by the Court of Cassation in its Joint Sections. I consider that, in reality, this does not represent a discontinuity of our constitutional tradition, but its continuation, adapted to the new European developments in the field of constitutional review.

The Constitutional Court is an indispensable institution of the rule of law, and its independence is intrinsic to its status, representing a guarantee of the supremacy of the Constitution, of the observance of the principle of separation and balance of State powers, and of the loyal collaboration of State institutions.

Over its 30 years of existence, both theoreticians and practitioners of law have been members of the Constitutional Court. Moreover, the legitimacy of the appointment of constitutional judges has been ensured, as it stemmed from the representative legitimacy of the authorities that appoint them.

The Constitutional Court has established itself in the Romanian institutional ensemble as a viable authority, being an intrinsic structure in the institutional architecture of the Romanian State, established by the Constitution.

It is connected to the ideas and case-law of modern constitutionalism, and here I am referring directly to those of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), and the plasticity and flexibility of the principles and norms of constitutional law have ensured their development through the case-law of the Constitutional Court, which, through an innovative and evolutionary interpretation of the norms and concepts of constitutional law, has adapted them to the demands of modern society. Moreover, such jurisprudential orientation is an expression of the doctrine of "living law", which the Constitutional Court is promoting and developing through its decisions.

I would like to emphasize that, through its competences and institutional position, the Constitutional Court has always been in a position to debate and settle the most important problems of constitutional law arising in the law-making activity, in the constitutional relationships between public authorities and in ensuring the omnipotence of fundamental rights and freedoms. I must confess – in fact, this is the secret of Polichinelle – that it is not an easy task to arbitrate conflicts between various public institutions and authorities. Regardless of the mastering of the legal issues, balance, moderation and an understanding of the democratic mechanisms are needed to counteract excesses of power, sometimes passionate, and to limit power in the State's relationship with the citizens.

The Court's activity also had its moments of inherent, intra-institutional tensions, and here I am referring, in particular, to the events of 2012 (the referendum for the dismissal of the President of Romania), 2018 (the case regarding the dismissal from office of the Chief Prosecutor of the National Anti-Corruption Directorate) or 2021 (the case regarding the relationship between national law and EU law), which had to be handled by the Constitutional Court despite certain contradictory currents of opinion in society.

Following the ratification of the Convention for the Protection of Human Rights and Fundamental Freedoms (1994) and Romania's accession to the EU (2007), the main challenges for the Constitutional Court's case-law concerned the organic integration of ECtHR case-law and the clarification of the relations between domestic law and EU law, between the

constitutional court and the CJEU, reflected in the decisions of principle or case-based of the constitutional authority.

References to the ECtHR case-law have become constant in our Court's decisions, the interpretation of the constitutional provisions on human rights being carried out in accordance with the jurisprudential requirements of the Court of Strasbourg.

As regards the Court's relationship with the CJEU, there have been certain incongruent positions and discrepancies regarding the prevalence of the principle of supremacy of the national Constitution and of the principle of primacy of EU law; similar situations can be found in other EU Member States as well, where the constitutional courts have enshrined, as concerns their relationship with the CJEU, the theory of counter-limits in applying EU law.

As concerns the CJEU, our Court has currently reached a balanced relationship of cooperation, ensuring the autonomy and complementarity of the two constitutional legal orders, and promoted a structured judicial dialogue between the two courts through specific mechanisms, namely the mechanism of preliminary references. Recently, there have been meetings, consultations, effective exchanges of experience and a fruitful dialogue between the Constitutional Court of Romania and the CJEU.

Being a court of rights and liberties, through its decisions, the Constitutional Court gave consistency to the constitutional framework with regard to the entire catalogue of rights and liberties. In this context, we should also mention its well-established practice regarding the Criminal Code and the Criminal Procedure Code – complex pieces of legislation that also included a series of regulations incompatible with the European standards for the protection of rights and freedoms. These were remedied through the case-law of the Constitutional Court.

Ladies and gentlemen, distinguished assistance,

Personally, I find that the general orientation of this volume of studies as a whole, and of each study separately, is based on a constructive and, to the extent possible, objective criticism, and that it captures and deepens certain important topics, components and controversies concerning the activity of the Constitutional Court. Things could not have been different, because the scientific training of the researchers who prepared this volume requires, for the objectivity of the analysis, both the revelation of the inconsistencies or deficiencies and the highlighting of the role and functions of a constitutional court within a Western-type democracy.

The intellectual perspective that this interesting volume is offering us, and which we commend on the occasion of its release, can be a sthenic stimulus for the initiation, by the Constitutional Court, of a series of meetings/debates/conferences, carried out together with renowned specialists in the field, professors, researchers, experts from the country and abroad, to ensure a useful exchange of ideas between practitioners and theoreticians in the field of constitutional law and contemporary constitutionalism.

President of the Constitutional Court of Romania
Marian Enache

13. Speech by the President of the Constitutional Court of Romania, Mr Marian Enache, during his participation in the event marking the launch of the silver coin dedicated to the 100th anniversary of the establishment of the National Military Museum "King Ferdinand I" and the opening of the exhibition organised on this occasion, 7 December 2023

The establishment of the National Military Museum in 1923 was an explicit corollary in the symbolisation of the National Pantheon, as a Pantheon of the ultimate sacrifice of the troops on the front of the Great War, where the Romanian army, despite its technical and numerical disproportion to the enemy, had the strategic and combat initiative as it was in the case of the Mărăști – Mărășești – Oituz fire triangle, with that everlasting "They shall not pass!", a landmark slogan of courage and firm valiantly in the military consciousness of the Romanian people.

Those who are passionate about history would be tempted to make, on the occasion of this centenary anniversary of the National Military Museum, a broader incursion in the era of risks and avatars that Romania went through in the period preceding the unification of the country, and also to highlight the specific role of the National Bank of Romania (NBR) in strengthening national unity and the path to Great Romania.

In this regard, I would recall only the huge efforts made by the NBR in the context of the historic unfortunate time brought about by the Grand War *to stabilise the national currency (leu) of the unified Romanian State* in the context of the circulation, in addition to the 'false' leu issued by the German occupying authorities, of banknotes from the provinces integrated into Romania, 'dodoloață', such as, for example, for Basarabia, the Lvov and Romanov roubles, which came in addition to the economic and financial effects of the early enforcement of the Bucharest Treaty of 7 May 1918, since the document had not been ratified by the Iași Parliament and had not been promulgated by King Ferdinand I by decree.

The national memory of the Great War in the Romanian space, or of the *War for National Unification,* was rooted in the interwar public spirit through a series of symbolic gratitude actions worthy of preserving the collective memory of the *heroes who fell* on the battle fields of the union. Thus, in the mind-set of society became settled the *perception of the sacrifice* of the soldier in all the provinces of the country, resulting in a movement of ideas and an artistic projection brought together in a genuine *Pantheon of the Romanian Nation*.

The blood of the soldiers who fought in the battles of Mărăști – Mărășești – Oituz and in the battles represented on the eternal effigy of the Triumphal Arch *symbolically ratified the unification of Transylvania, Bucovina and Basarabia* with their motherland through the seal of the supreme sacrifice of an entire generation of forerunners for a fulfilled national ideal and the exit of these provinces from the jurisdiction of some autocratic empires, named in the rhetoric of time, the "black hawks" of modern history.

In that *Pantheon of the Romanian Nation*, mentioned above, the establishment of a *national military museum* that would gather the war effort of the Romanian people from the foundation of medieval states to state independence and the unification of all the provinces

of the same *nation and blood* was a public permanence and an institutional historical search, particularly from the first decade of the 20th century, through the initiatives of General Radu Rosetti and Nicolae Iorga, the historian who wished that the "Romanian Cultural League" would have a dimension in the applied research of autochthonous military history. It was hoped that after World War I *the army* would be *continuously* celebrated by displaying the combat technique, by conducting research into the resistance doctrine against the imperial German occupation, by the individualisation o*f simple heroes*, but also of *great commanders*, such as generals David Praporgescu or Eremia Grigorescu, by eternal remembrance of the *names of crucial battles* such as Mărășeștii, names given to the internal military structures as divisions or corps of army, by the presentation of glimpses of the *German war machine* where future strategies have distinguished themselves, such as captain Erwin Rommel, an officer present on the Romanian front.

This *spiritual treasuring* of the tribute of the Romanian Army in the unification war intended to shape its *profile* as an *actor of the Great Unification*, first of all if we think of the unionist political movement of Transylvanian volunteers through the *Darnița Proclamation* (near Kiev, 26 April 1917), symbolically called, "The First Alba Iulia", as this document was the result of a *unionistic plebiscite by militaries* in the integrated provinces of the Dual Monarchy of Austria-Hungary.

The establishment of the *National Military Museum* in 1923 was an explicit corollary in the symbolisation of the *National Pantheon*, as a *Pantheon of the ultimate sacrifice* of the troops on the front of the Great War, where the Romanian army, despite its technical and numerical disproportion to the enemy, had the strategic and combat initiative as it was in the case of the Mărăști – Mărășești – Oituz fire triangle, with that everlasting "They shall not pass!", a landmark slogan of courage and firm valiantly in the military consciousness of the Romanian people.

The name given, in the post-revolutionary contemporaneity, to the National Military Museum, "King Ferdinand I" is intended to be a reminder of the cultivation of the "spirit of the tranches" by *Ferdinand the Victorious and the Unifier*, the monarch who, together with Ionel Brătianu, projected the agricultural reform whereby *soldiers – peasants* gradually became *citizens*, and through the progressive association of voting rights.

In the symbolic construction of the *National Pantheon* after the *War for National Unification*, a distinctive place is occupied by the tomb of the "unknown soldier", a monument dedicated to the memory of simple and anonymous heroes, soldiers who have fallen on the front and who could not be identified.

In fact, this monument is a real *stone-encrypted ode* to the *His Greatness the Romanian Soldier*, *which praises the latter's guiding* power of ultimate sacrifice that depicts in the social imagination the *collective identity* of the fallen soldiers, the real heroes who built the national altar of the Great Unification of 1918.

This monument of the Unknown Soldier, a fighter for the country's unification cause, was built in the *Capital* of all the historical provinces, *for the commemoration of all the country's heroes* because, as Ioan Slavici said, "for all Romanians, the sun rises in Bucharest!". For this social reason, the funeral monument of the "unknown soldier" in the Carol Park in

Bucharest suggests a symbiosis between the *dorobanț* who fought in the Siege of Plevna, which marked the independence of the Romanian State, and the soldier who participated in the bayonet attack of the "*white shirts"* in Mărășești, and the machine-gunners-heroes who campaigned under captain Ignat.

The fact that the NBR issues, as part of its numismatic programme, a currency dedicated to the 100th anniversary of the establishment of the National Military Museum "King Ferdinand I" and launches an exhibition together with this important institution within the Ministry of National Defence demonstrates the consistency in meeting the NBR's objective, which has now become well-known, of celebrating events and personalities that marked Romania's becoming as state and nation (quoted from the NBR's programme of objectives).

The Constitutional Court had several beneficial collaborations with the NBR, which hosted the opening of the exhibition of history of Romanian constitutionalism organised by the CCR. I would also highlight the NBR's support in the organisation of the same exhibition in Chișinău, Republic of Moldova, which opening took place yesterday, 6 December 2023, at the National History Museum of Moldova. The exhibition was excellently received by officials, specialist historians as well as the public. It was a real success and, to mark the celebration of the 1923 Constitution Centenary and the exhibition dedicated to this event, the Academy of Sciences of the Republic of Moldova awarded us its highest distinction: "The Dimitrie Cantemir Merit Diploma". We enjoyed greatly this achievement, especially due to the appreciation expressed by an academic forum.

Finally, I encourage the Governor of the NBR and his excellent management team to continue the good tradition of the numismatic programme and other actions that would raise national awareness on facts and figures of major historical importance for the everlasting existence of the Romanian people.

President of the Constitutional Court of Romania
Marian Enache