

Table of Contents

Abbreviations	13
Foreword	15
Introduction	17
I. The Constitutional Court of Romania	
Evolution and institutional consolidation	25
1. The dynamics of regulating the Constitutional Court of Romania.....	25
1.1 Constitutional rules of reference.....	25
1.2 Rules of the organic law of reference.....	28
1.3 The competence of the Constitutional Court	29
2. Consolidation of the role of the Constitutional Court by its case-law.....	36
2.1 The unconstitutionality of the legal provisions which lead to the limitation of the Constitutional Court's competences	36
2.2 The impossibility to resume the regulation of the legislative solutions that are found unconstitutional	40
2.3 The Possibility to verify the constitutionality of the repealed Laws and Ordinances	41
2.4 Sanctions for non-compliance with the decisions of the Constitutional Court	44
3. Effects of the Constitutional Court's decisions	45
3.1 Acts of the Constitutional Court	45
3.2 The erga omnes binding nature of the Constitutional Court's decisions	47
3.3 The obligatory force of recitals in the decisions of the Constitutional Court	50
3.4 Interpretative decisions	51

3.4.1	Conceptual explanations.....	51
3.4.2	Modalities to draft the operative parts of the interpretative decisions.....	54
3.4.3	General characterisation	64
3.4.4	Effects of the interpretative decisions.....	66
3.4.5	Delimitations of competences.....	69

II. The Dialogue of the Constitutional Judges

at International Level.....	73
1. Constitutional framework.....	73
2. The dialogue between the Constitutional Court of Romania and the European Court of Human Rights	78
2.1 The position and the role of the European Court of Human Rights in the European constitutional framework.....	78
2.2 Forms of dialogue between the Constitutional Court of Romania and the European Court of Human Rights.....	80
2.2.1 General aspects.....	80
2.2.2 The dialogue achieved during official meetings, national and international conferences.....	81
2.2.3 Acceptance of the case-law of the European Court of Human Rights through constitutional review	83
2.2.4 Reflecting the case-law of the Constitutional Court of Romania in the case-law of the European Court of Human Rights.....	98
2.3 Conclusions	105
3. The dialogue between the Constitutional Court of Romania and the Court of Justice of the European Union	107
3.1 The position and the role of the Court of Justice of the European Union within the European development	107
3.2 The dialogue between constitutional courts and the Court of Justice of the European Union	110
3.2.1 General aspects.....	110

3.2.2	The constitutional courts' reserved acceptance of the supremacy of European law – the hierarchy of rules – the issues of fundamental rights – <i>ultra vires</i> review.....	111
3.2.3	The mechanism of preliminary ruling	118
3.3	Constitutional Court of Romania and the CJEU.....	124
3.3.1	General aspects.....	124
3.3.2	The period prior to Romania's accession to the European Union	125
3.3.3	Post-accession period.....	127
3.3.4	Delimitations of powers at jurisdictional level.....	130
3.3.5	Observance of the Constitution within the harmonization process of the national law with EU law.....	133
3.4	Conclusions	139
4.	The dialogue between constitutional courts.....	141
4.1	General aspects.....	141
4.2	Forms of dialogue between constitutional courts	141
4.2.1	Dialogue within certain international bodies	141
4.2.2	International bodies of reference in the field of constitutional justice.....	142
4.2.3	The dialogue within bilateral meetings, conferences and symposiums	146
4.2.4	Reference to the case-law of other constitutional courts	147
4.3	Conclusions	156
5.	Dialogue between the Constitutional Court of Romania and the Venice Commission	158
5.1	Venice Commission. Brief history and activity.....	158
5.2	Forms of dialogue with the Venice Commission	159
5.2.1	Dialogue through conferences, seminars, as well as within certain forms of association of the constitutional courts	159

5.2.2	Dialogue through liaison officers. The Joint Council on Constitutional Justice.....	160
5.2.3	Dialogue with the Venice Commission reflected within the case-law of the Constitutional Court of Romania	160
5.3	Conclusions	174

III. The Dialogue Between Constitutional Judges and Authorities at the Internal Level.....175

1.	Dialogue partners.....	175
2.	The dialogue between the Constitutional Court and Parliament.....	178
2.1	General aspects.....	178
2.2	The relationship of Parliament with the Constitutional Court	178
2.2.1	Regulation on the organisation and operation of the Constitutional Court. Financial autonomy of the Constitutional Court	178
2.2.2	Competences in the procedure to appoint constitutional judges.....	181
2.2.3	Possibility to refer to the Constitutional Court	191
2.2.4	Expressing viewpoints in the cases brought before the Constitutional Court	192
2.2.5	Communication of the decisions/rulings/advisory opinions delivered by the Constitutional Court.....	193
2.2.6	Conclusions.....	194
2.3	The Constitutional Court's relationship to Parliament. Constitutional limits of the legislative power	195
2.3.1	General aspects.....	195
2.3.2	Parliamentary autonomy – constitutional limits	195
2.3.3	Compliance with the principle of “political spectrum”	197
2.3.4	The role of the parliamentary committees.....	199
2.3.5	Resolutions of Parliament.....	201
2.3.6	The Status of Deputies and Senators.....	204

2.3.7	Constitutional limits of the law-making activity	210
2.3.8	The relationship between Parliament and the other public authorities	225
2.4	The Constitutional Court – “positive and specific co-legislator”	240
2.4.1	Introductory considerations.....	240
2.4.2	“Correction” of legislative omissions through constitutional case-law.....	242
2.4.3	The constitutional review of repealing norms	243
2.4.4	Interpretative decisions.....	252
2.4.5	Expressing recommendations for the legislature	253
2.4.6	The decisions of the Constitutional Court – a source of law	255
2.5	Conclusions	256
3.	The dialogue between the Constitutional Court and the President of Romania	258
3.1	General aspects.....	258
3.2	The relationships between the President of Romania and the constitutional court	259
3.2.1	Competences in the procedure to appoint constitutional judges.....	259
3.2.2	The possibility to refer to the Constitutional Court	259
3.2.3	The possibility to express viewpoints in the cases brought before the Constitutional Court	262
3.2.4	The Constitutional Court shall communicate to the President the referrals, as well as its decisions/ rulings/advisory opinions delivered by it, under the conditions provided for by law.....	262
3.3	The relationship between the Constitutional Court and the President of Romania	263
3.3.1	Competences in the procedure to appoint constitutional judges.....	263
3.3.2	The Court’s competences within the suspension procedure as well as the referendum for the suspension of the President of Romania from office	268

3.3.3	The Constitutional Court's role on the exercise of the constitutional powers granted to the President of Romania.....	273
3.4	Conclusions	287
4.	The dialogue between the Constitutional Court and the Government of Romania	289
4.1	General aspects.....	289
4.2	The relationship between the Government and the constitutional court	289
4.2.1	The possibility to refer to the Constitutional Court	289
4.2.2	The possibility to express viewpoints in the cases brought before the Constitutional Court	291
4.2.3	Communication of the decisions/rulings adjudicated by the Constitutional Court, under the conditions provided for by law.....	292
4.3	The relationship between the Constitutional Court and the Government.....	293
4.3.1	General aspects.....	293
4.3.2	Liability of members of the Government	293
4.3.3	Government's assumption of responsibility on a bill	298
4.3.4	Legislative delegation	310
4.3.5	Conclusions.....	319
5.	The dialogue between the Constitutional Court and the courts of law and commercial arbitration.....	320
5.1	General aspects.....	320
5.2	The notification of the Constitutional Court by the courts of law or commercial arbitration.....	321
5.2.1	The constitutional and legal framework.....	321
5.2.2	The settlement of the exceptions of unconstitutionality of laws and ordinances	323
5.3	The role of the courts of law and the courts of commercial arbitration within the acceptance and the enforcement of the Constitutional Court's decisions	358

5.3.1	The binding nature of the Constitutional Court's decisions in the relationships with the courts of law.....	358
5.3.2	Taking over the case-law of the European courts by the courts of law as a consequence of the fact that the constitutional court has taken it into consideration in its own decisions.....	369
5.4	Conclusions	371
6.	The dialogue between the Constitutional Court and the Advocate of the People	372
6.1	General aspects.....	372
6.2	The Advocate of the People in the relationship with the constitutional court	372
6.2.1	Statistical data.....	372
6.2.2	The possibility to refer to the Constitutional Court in order to exercise the constitutional review of laws before promulgation	373
6.2.3	The possibility to raise directly the exceptions of unconstitutionality in relation to laws and ordinances	375
6.2.4	The possibility to express viewpoints in the cases brought before the Constitutional Court	376
6.2.5	Communication of the decisions delivered by the Constitutional Court, under the conditions provided for by law	376
6.3	The relationship between the Constitutional Court and the Advocate of the People	376
6.3.1	The constitutional review of the Parliament's resolutions in relation to the appointment of the Advocate of the People or for the purpose of ensuring the interim office	376
6.3.2	The constitutional review of the Parliament's resolutions in relation to the revocation of the Advocate of the People from office.....	379
6.3.3	Statutaries of the Constitutional Court on the role and statute of the Advocate of the People	381
6.4	Conclusions	388

7. The dialogue of the Constitutional Court with/by the mass media.....	388
7.1 General considerations	388
7.2 Organisation of the Constitutional Court of Romania in matters of communication with/by the mass-media	390
7.2.1 Communication ways	390
7.3 Responsibilities related to the communication of the Constitutional Court by the mass-media. Internal regulations.....	393
7.3.1 Organisation of the Constitutional Court.....	393
7.3.2 The rights and the obligations of the mass-media representatives.....	394
7.4 The mass-media's interest in the activity of the Constitutional Court and the issues related to the freedom of expression	395
7.4.1 The powers of the Constitutional Court reflected in the mass-media.....	395
7.4.2 Problems of communication with/by the mass-media. Limits of the freedom of expression.....	396
7.5 Conclusions	398