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# REPORT

**by**
**Ms Ruxandra SĂBĂREANU**
**Secretary General**
**Constitutional Court of Romania**

# COMMUNICATING THE DECISIONS OF THE CONSTITUTIONAL COURT TO THE PUBLIC

## (How Communication Theory Could Be Used for Publicity of the Constitutional Court Decisions)

"Democracy through Law": far from a mere accolade paid to the Venice Commission for its meritorious work, the phrase contains, in a nutshell, the underlying principles for all 46 democratic countries, members of the Council of Europe. In any democratic society, legislative power is entrusted to national parliaments constituted by free, regularly held elections; in the emblematic words of Article 61 paragraph (1) of the Romanian Constitution, "Parliament is the supreme representative body of the Romanian people and the country's sole legislative authority". While legislative action is legitimised by the expression of the people's sovereign will, as enshrined in a Basic Law, the idea of having laws reviewed for conformity with the Constitution by a specialized court (Kelsen's "negative legislator") appears now to be constitutionally intertwined, into an almost pan-European dimension. The so-called European model has also developed other typical functions for a constitutional court, all of which are envisaged to guarantee the supremacy of the Constitution.

1. In Romania, for instance, the Constitutional Court is vested with the powers listed under the lettered subparagraphs of Article 146 of the Constitution, as revised in 2003. Essentially, the constitutional review proceedings take one of the following forms:

- an abstract (a priori) review of laws prior to promulgation, or of international treaties prior to ratification [letter A), first thesis, and letter B)];
- an abstract (a posteriori) review of standing orders of Parliament [letter C)];
- or a concrete (a posteriori) review of effective laws and Government ordinances, by means of an objection of unconstitutionality which is raised before the ordinary courts [letter D), first thesis], or directly by the People's Advocate [letter D), second thesis].

Furthermore, it falls under the Court's competence:

- to resolve legal disputes of a constitutional nature between the public authorities [letter E)];
- to see to the observance of Presidential elections' procedure, confirm the voting results and validate the election of the President of Romania [letter F)];
- to ascertain circumstances which justify the interim in exercising the President's office [letter G)] or to issue an advisory opinion on a proposal to suspend the President from office (the impeachment procedure) [letter H)];
- to see to the observance of referendum procedures and confirm poll returns [letter I)];
- to review any initiative for the revision of the Constitution [letter A, final thesis] and also to verify popular legislative initiatives [letter J]; and,
- to settle challenges for review of constitutionality of political parties [letter K)].

The Court's wide jurisdiction accounts for its role as the guardian of the Constitution, which is ultimately responsible for neutralizing unconstitutional legislation, action or decision; and by that, to defend the rule of law and to protect fundamental rights and freedoms against discretionary measures and procedures. In that sense, public recognition of the Constitutional Court adds to the substance of a full-fledged democracy.

2. Like any piece of legislation, the Constitutional Court decisions are published in the Official Gazette. Communication to the public is all the more important as their direct impact on the normative order is transposed into the import on social relations, which are essentially shaped by the law. Since the legal maxim that no one should ignore the law – nemo censitur ignorare legem – can no longer be seen as a one-sided obligation falling on those "ruled by law", knowledge of the law and of its actual provisions appears intrinsically linked with public access to the Constitutional Court decisions, especially where such affect the law itself.

3. Let me explain: according to Article 147 paragraph (1) of the Constitution, provisions of effective laws and ordinances held unconstitutional by the Court shall cease their legal effectiveness on the forty-fifth day after publication of the decision, a time limit intended to allow Parliament or Government, as may be applicable, to accord such provisions with the Constitution; but even until then, they shall be suspended as of right. Briefly put, it means that once the Court has rendered its decision, no public authority or legal entity is allowed to apply or enforce a legal provision declared unconstitutional without so breaching upon the Constitution.

Next to that, although in altogether fewer cases, come the so-called "interpretative" decisions in respect of the legal provisions which lend themselves to differing interpretation, of which the Court has ruled out the "unconstitutional" meaning[1], to leave open the "constitutional" meanings in which the legal provision may be interpreted (and applied) by the ordinary courts or any other authority. Nonetheless, since all of the Court decisions are generally binding, individuals (read: the public) should also be able to distinguish which meaning of the law is contrary to the Basic Law, in order to adjust their conduct accordingly, but also to seek protection and redress against those (read: public authorities) having failed to take action by the law, in its constitutional meaning.

4. If everyone is supposed (and entitled) to have knowledge of the law, from the broader perspective described above, then communication of the Constitutional Court decisions to the public should be understood in its complex dimension: publicity of the Court decisions has to be looked upon as a "must" in pursuance of the fundamental principle enshrined by our Basic Law, in Article 1 paragraph (5): "In Romania, the observance of the Constitution, of its supremacy and of the laws is obligatory".

5. Publicity of the Court decisions is primarily ensured by virtue of the constitutional text[2], which prescribes: "Decisions[3] of the Constitutional Court shall be published in the Official Gazette of Romania. As of the day of publication, they shall be generally binding and effective only for the future." It means that all of the Court acts, including (if that is the case) separate and/or concurrent opinions delivered by the judges, are published in Part I of the Official Gazette of Romania (which is reserved for the publication of normative acts).

However, publication in the Official Gazette should be also viewed and gauged from a more pragmatic perspective, whether this formality alone may be regarded as all-sufficient:

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[1] The usual formula is: "…*are unconstitutional to the extent that, …/ refer to*…, "

[2] Article 147 paragraph (4).

[3] In conformity with the distinctions made by Article 11 of the Law no. 47/1992 on the organisation and functioning of the Constitutional Court, republished, the Court renders: A. **decisions**, in the exercise of its powers under Article 146 subpara. a), b), c), d), e) and k) of the Constitution; B. **rulings**, in exercising the prerogatives under Article 146 subpara. f), g), i), and j) of the Constitution; issues C. **advisory opinions** subject to Article 146 subpara. h) of the Constitution.

In the first place, the Gazette is published in a limited edition of issues, with a restrictive distribution on the market.

Secondly, one must in principle know in which issue the decision has been published (identification by No. and date of publication), otherwise he or she must somehow get access to this information, be that by visiting a public library, approaching a civil servant or, where unsuccessful, by eventually making a formal request for access to information of public interest.

Subscription costs to the full collection of the Official Gazette are still prohibitive for the many.

Apart from that, legal language may sometimes prove not quite intelligible to the average citizen, which makes the Official Gazette hardly the kind of popular reading.

6. Publication on the Internet Homepage (http://www.ccr.ro) seems to be a reasonable alternative, enabling free access to all of the Constitutional Court jurisprudence from our data basis (totalling no less than 5,364 decisions rendered in almost 15 years since its creation). It provides various 'search' functions for multiple criteria, such as: No. or date of document (Court decision), No. or date of publication (in the Official Gazette), words in the decision title, key-words from the text, but also citation No. of the law or ordinance reviewed by the Court, which enables access to virtually any decision on either of the above listed criteria. In order to scale up knowledgeable access by as many visitors as possible, we are now in the process of compiling exhaustive lists of decisions per each year, which should give nearer identification of search criteria needed for retrieval of a relevant decision, depending on the act reviewed or matter considered by the Court.

7. But judges and lawyers, or the Internet skilled navigators, are not the sole "addressees" of the Constitutional Court decisions. First and foremost, communication of the Court decisions concerns the public at large, which ultimately means the individual, in other words, any individual.

8. Undoubtedly, the most efficient vehicle for ensuring the mass communication of the Court decisions is the media, which is why communication with the media is the key for successful communication to the public. For practical reasons, this presentation will concentrate on a single facet of communication, which is the Court's press release, although access to the Court's public proceedings, notably to the event of validation of the new President elect, which attracts a flood of journalists, reporters and cameramen for the "live" broadcasting – may have deserved equal attention. Or maybe also the instruments regulated by Law no. 544/2001 on freedom of access to information of public interest; or other communication efforts, such as the press conferences organised by the Court, even though only sporadically.

9. Since publicity of the decisions of a Constitutional Court is also a matter of practice, this presentation is mainly concerned with practical issues from our Court's experience. Still, our approach has found inspiration in the "Communication Theory", which is a multidisciplinary study in itself. In order to address the issue how communication theory could be used for publicity purposes, we need a working definition of the concept, and that is simply the assumption that "communication is transmitting information from one person to another", which is based on the simple triangle of Karl Bühler's function-oriented language model: sender, receiver, and message, with a focus on the communicative axis. In other words, from the sender's (read: Court's) point of view, whether and how the text (read: press release) functions "communicatively" for the receiver (read: journalist).

Roman Jakobson, the famous linguist, had distinguished six dimensions instead, with as many different functions in the communication process[4], while other theoreticians resorted to mathematical models, such as the one known as Shannon-Weaver; however, such elaborate schemes would take a more ambitious expertise than offered in this presentation.

10. Bearing in mind that successful communication consists in transmitting information about a Court's decision to as many addressees as possible, by an interposed vehicle, which is the media, and that such information should be persistent, memorable of the contents supported, therefore likely to be used in a given context by end-receivers (individuals, or the public), our choice was to develop some kind of quasi-standard format for a press release, still far from an actual template.

The idea was to ensure continuity between old and new information, better "cohesion" through the text structure, in order to facilitate immediate, or reasonably quick, identification of new relevant information. In quite a number of instances, the interest shown by the media, especially televisions, in the outcome of the Court's proceedings also revealed a lot of pressure on the journalists themselves, who had feared that competition might expose them to a rivalling "breaking news" anteriority. To that point I will come down later.

Drafting of applicable press release formats is a response to the pressure of time, given the Court's practice to issue a press release on the very day it makes pronouncement.

Our press release is formatted to satisfy, in general lines, the typical 5Ws+H (Who, What, When, Where, Why, How) and contains:

- Date of the Court proceedings (vote or debate), petitioner or entity applying to the Court, the type of constitutional review (according to the Court's powers, identified by the subparagraph letter under Article 146 of the Constitution), object of review (law before promulgation; law or ordinance in force, etc.), and the outcome of the Court's deliberation (the disposition or operative part in the Court decision);
- The citation of relevant constitutional texts and summary statement of the main reasons leading to the Court's decision. Depending on the complexity of the subject matter entertained by the Court, the press release may give a full quotation of the legal, and also constitutional texts considered;
- In the final part of the press release, an announcement that: "Full reasoning (grounds) shall be presented in the Court decision to be published in the Official Gazette of Romania…";
- An explicit indication of the Court's decision being final and generally binding;
- Where applicable, the authorities to which the Court decision shall be communicated: to the President of Romania, in the case of a law reviewed a priori, that is before promulgation, also to presidents of both Houses of Parliament and Prime-Minister, if such law is found unconstitutional and compels its reconsideration by Parliament; or to both Parliament and Government, in the case of effective legislation (law or ordinance) reviewed a posteriori, whose effects are

[4] "Language must be investigated in all the variety of its functions. (….). An outline of those functions demands a concise survey of the constitutive factors in any speech event, in any act of verbal communication. The ADDRESSER [speaker, author] sends a MESSAGE [the verbal act, the signifier] to the ADDRESSEE [the hearer or reader]. To be operative the message requires a CONTEXT [a referent, the signified], seizable by the addresses, and either verbal or capable of being verbalized; a CODE [shared mode of discourse, shared language] fully, or at least partially, common to the addresser and the addressee (in other words, to the encoder and decoder of the message); and, finally, a CONTACT, a physical channel and psychological connection between the addresser and the addressee, enabling both of them to enter and stay in communication." **Roman Jakobson**, *Style in Language* (1960).

automatically suspended for the duration of the next forty-five days, before ceasing to exist.

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For illustration, a few press releases are attached

Quotation in full of both legal and constitutional texts is meant to clarify the context, make it readily at hand, and reduce potential distortion of received information (see Annexes I and II).

A press release may also publicize the Court being seized with a request within its competence, to be followed by a subsequent release on the outcome of the Court proceedings (Annex IIIA).

In other instances, in particular where a Court decision has been largely publicized, "serial" press releases may be used to give explicit information about access to the text published on the Court's website, or other relevant developments arising from the effects of the Court decision (Annex III B).

11. "Encoding" information, that is the choice of language for a press release so as to minimize barriers (in our case, "legalistic" terminology or words used in a different meaning than in common language) is nevertheless the constant challenge. Poor encoding will always result in loss of accuracy, with consequent distortion of information (poor decoding for the message receiver) because of a different frame of reference, hence the need for a "shared language context".

However, not just selection of vocabulary is essential, and it would be unrealistic to pretend that press releases from the Constitutional Court are written in a language that requires no comprehension skills at all; inevitably, they are bound to retain some "technical terms". Yet clear, unambiguous words, taken from the core of the Court's argumentation, will simplify understandability. Brevity of the sentence, the order of determinants, phrase syntax, in general, also has a word to say.

12. Information as such is the central issue to deal with. In certain instances, it may take preparation in advance in order to reduce the interval necessary for composing a press release – especially if the interest in the outcome of proceedings is a challenge for the press itself. Suffice to say that where a law is subjected to constitutional review prior to promulgation, that is before its publication in the Official Gazette, the composition of a press release shortly after the Court's pronouncement requires a certain degree of acquaintance with the legal texts pending adjudication by the Court, or with the criticism adduced by those who have challenged the law as unconstitutional.

13. Press releases are distributed by multiple channels: they are posted on the Court's website, also sent by e-mail and fax to national press agencies, and international agencies based in Romania, to news centres, televisions, and newspapers.

Typically, the first to react are news editors in televisions, who often call back on the phone to ask for details. At other times, it may be the Court's press officer who asks whether the message has been received (checking channel working). In many cases, the feedback has significantly helped to overcome "noise" in communication, such as stereotyping (a potential for error for both sides). Prompt responses are needed especially for television communicators, since they are the first to release the news, within maybe just minutes after receiving the information. Their impact on the audience is also considerable by comparison with any other media channel. If the "news" is related to a prominent event (and the Court decisions have been treated so more than once), some of the journalists, analysts,

politicians, sociologists who are currently invited on talk-shows (so popular in Romania) to comment on various topical questions, take the moderator as the source of information.

The feedback was also the occasion to build-up confidence with journalists, especially with those who currently check up commentaries from other sources.

Another successful instrument developed as a result of feedback was statistics on the Court's activity, whose format has been regularly diversified to include information frequently asked.

14. For all the positive experience described in this presentation, communication remains a problem of understanding each other. In many instances it still leaves to be desired. For obvious reasons, it would have been nonsensical to dwell upon the emotive function of the sender (read: the Court). However, we cannot totally exclude subjective, therefore emotional attitudes towards the object that the message refers to. Criticism from the media, or persons from the political sector, or from the public, is a typical example. In spite of that, the Court has never officially reacted to criticism, but only rectified information utterly misleading for the public, such as about alleged proceedings before the European Court of Human Rights, or false information, such as in connection with hoaxes, for example a chain letter (see Annex IV).

15. Let me conclude by emphasizing the essential role of the media in a democratic society, while serving the public's right to be informed, which is a fundamental principle entrenched by Article 10 in the European Convention on Human Rights. If judges must be reserved in their relations with the media, given their obligation to refrain from any public statements regarding matters falling under their jurisdiction (Article 64 subpara.b) of the Constitutional Court Act – Law no.47/1992, republished), publicity of their decisions by communication with the media ought to be seen as a mechanism adding to the Court's credibility before the public. Or vice-versa, where communication is impaired by distrust, prejudgment or so many other potential "noises". In that respect, we should maybe listen to you for advice. Keeping an open mind within that framework leaves room for dialogue, which ultimately means successful communication.

Thank you for the attention.

ANNEX I

March 22nd 2006

PRESS RELEASE

In its proceedings of March 22nd 2006, the Constitutional Court examined the request from the President of Romania, as to the unconstitutionality of certain provisions in the Law on the Status of Deputies and Senators.

Having taken this reference under debate, the Court has established as follows:

I. The Court, by majority vote, has declared unconstitutional the following texts of the law:

1. The wording "in the period of exercise of office" under Article 22, which reads:
"Article 22 – Immunity for political opinions

No Deputy or Senator shall be held legally responsible for any vote cast or political opinion expressed in the period of exercise of office."

This text deviates from provisions of Article 72 paragraph (1) of the Constitution, which proclaims:

"No Deputy or Senator shall be held legally responsible for any vote cast or political opinion expressed in the exercise of his term of office."

Between these two texts there are differences: the constitutional text has in view votes or political opinions, as may have been expressed during exercise of the term of office. Instead, the legal text impugned refers to votes or political opinions expressed during the period in which the office is exercised. The wordings "in the exercise of his office" and "in the period of exercise of office" have different meanings, hence also different legal consequences.

2. The final phrase in paragraph (3) of Article 23:
"Article 23 – Regime during criminal trial
(3) – final phrase: The order of revocation of the detainment shall be executed as once through the Ministry of Justice".

This provision has been declared unconstitutional because, in conformity with the Basic Law, relations between Parliament and the specialized central public administration authority are confined to the relations established between the Chambers, on the one hand, and the Minister of Justice, on the other hand. That being so, the resolution passed by one Parliament Chamber, revoking detainment of a Member of Parliament in case of a crime committed in flagrante delicto, may be carried out not by the Ministry of Justice, but only by the Minister of Justice.

3. The provisions of Article 28, by omission of law as a source for the fundamental duties and principal obligations binding on Deputies and Senators:
"Article 28 – Sources of obligations
Fundamental duties and principal obligations of Deputies and Senators are such as deriving from the Constitution, from this Statute, and Regulations."

Subject to Article 1 para.(5) of the Constitution, "In Romania, the observance of the Constitution, of its supremacy, and of the laws is obligatory". This constitutional obligation is also valid for Senators and Deputies who are equally bound – just like any other citizen – to obey to the laws as well.

4. The provisions under Article 35 paragraph (1) sub-paragraphs i) and j), paragraph (2) and paragraph (3):

"Article 35 – Political and other specific rights

(1) The main political rights of Deputies and Senators, as well as the obligations attached thereto are the following:

…..

i) right to get information, to request and obtain information and documents for this purpose from Government and from the other authorities of the public administration;

j) right of entry to the institutions of the public administration in the interest of the exercise of their office;

(2) The Government and the other authorities of the public administration must assure to Deputies and Senators the necessary conditions for the exercise of the rights provided under paragraph (1) sub-paragraphs i) and j).

(3) Other principal rights, connected or derived, may be provided and settled by means of a special organic law or in the Chamber Regulations or in the Regulations for the joint sessions."

These provisions of the law are contrary to those under Article 111 paragraph (1) of the Constitution, by virtue of which "The Government and the other organs of public administration must, in the framework of parliamentary control of their activity, supply any information and document as may have been requested by the Chamber of Deputies, the Senate, or parliamentary Committees through their respective Presidents". That being so, the parliamentarians' right to be informed, to request and to obtain information and documents for this purpose, directly from Government or from the other authorities of the public administration, just like their right of entry to institutions of the public administration in the interest of the exercise of office are unconstitutional.

It follows that the provisions under paragraph (2) of this article are also unconstitutional, because of their organic bond with the texts declared unconstitutional.

Finally, provisions under paragraph (3) of the same article are unconstitutional whereas they make it possible to have certain rights set forth by means of parliamentary regulations, which contravenes Article 73 paragraph (1) sub-paragraph c) of the Basic Law, according to which other rights of Deputies and Senators may be established only by organic law.

II. The Constitutional Court, by majority vote, has held that the provisions of Articles 38 to 40 of the law, concerning constituency bureaus of Deputies and Senators, obligations falling on local authorities, travel allowances (per diems) and accommodation expenses are constitutional.

The provisions under article 41 paragraphs (3) and (6), concerning legal regime of the parliamentarians' monthly indemnity, those under Article 49 paragraphs (1) to (5), relative to the parliamentarians' age pensions, as well as those under Article 50 paragraph (2) of the same law, concerning the payment of pensions, have been unanimously declared constitutional.

After redaction, the decision shall be published in the Official Gazette of Romania, Part I.

The Law on the Status of Deputies and Senators shall be transmitted to Parliament for re-consideration.

According to Article 147 paragraph (2) of the Constitution, in cases of unconstitutionality relative to laws before their promulgation, Parliament must reconsider the provisions concerned in order to bring such into accord with the decision rendered by the Constitutional Court.

Constitutional Court Press Office

Annex II

July 11th 2006

PRESS RELEASE

On proceedings of July 11th 2006, the Constitutional Court deliberated on the objection of unconstitutionality raised directly by the Advocate of the People, based on Article 146 subparagraph d) second thesis of the Constitution, whose objection concerns provisions under Article 12 paragraph (1) of the Law no.3/2000 on the organisation and holding of the referendum, published in the Official Gazette of Romania, Part I, no.84 of February 24th 2000, which read as follows:

"Article 12 (1) – There are to be considered matters of national interest in the meaning of Article 1:

A. The adoption of certain measures concerning reform and economic strategy of the country

B. The adoption of certain special political decisions concerning:

a) the general regime of public, and private property:

b) the organization of local public administration, of territory, as well as the general regime on local autonomy;

c) the general organization of education;

d) the structure of the national system of defence, army organization, participation of the armed forces to certain international operations;

e) the concluding, signing or ratification of certain international act for an indefinite period or for a period exceeding 10 years;

f) the integration of Romania into the European and Euro-Atlantic structures;

g) the general regime of religious denominations."

After deliberation, the Constitutional Court allowed the objection, holding that the provisions impugned are unconstitutional because they come against those of Article 1 paragraph (4), relative to the principle of separation and balance of powers, Article 80 "Role of the President", and Article 90 "Referendum", of the Basic Law.

According to Article 90 of the Constitution, "The President of Romania may, after consultation with Parliament, ask the people of Romania to express their will as to questions of national interest, by a referendum". This constitutional text confers to the President of Romania an exclusive competence to establish the questions of national interest on which he wants to consult the people by referendum, even if for this purpose his consultation with Parliament is mandatory.

Full statement of grounds for the solutions pronounced by the Constitutional Court shall be presented in the text of the decision, which shall be published in the Official Gazette of Romania, Part I.

The decision of the Court is final and generally binging and shall be communicated to the two Chambers of Parliament.

The Constitutional Court Press Office

Annex IIIA

April 4th 2006

PRESS RELEASE (1)

On April 4th 2006, the Constitutional Court received the request for settling the legal dispute of a constitutional nature between the President of Romania and the Prime Minister, on the one hand, as public authorities that belong to the executive, and the judicial authority, on the other hand, represented by the Superior Council of Magistracy.

The request is formulated by the President of the Superior Council of Magistracy based on Article 146 sub-paragraph e) of the Constitution and Article 34 et sequel of the Law no.47/1992 on the organisation and functioning of the Constitutional Court, republished.

The date of proceedings for debate shall be established by the President of the Constitutional Court after receiving the viewpoints of the public authorities concerned.

The Constitutional Court Press Office

May 26th 2006

PRESS RELEASE (2)

In proceedings of May 26th 2006, the Constitutional Court resumed the debate on the request for the settling of the legal dispute of a constitutional nature between the President of Romania and the Prime Minister, on the one hand, as public authorities which belong to the executive, and the judicial authority, on the other hand, represented by the Superior Council of Magistracy.

After deliberation, the Constitutional Court, by majority vote, has held that public statements made by the President of Romania, Mr. Traian Băsescu, and by the Prime Minister, Mr. Călin Popescu Tăriceanu, did not raise a legal dispute of a constitutional nature between the public authorities – the President of Romania and the Prime Minister, on one hand, and the judicial authority, on the other hand, - in the meaning of the provisions under Article 146 sub-paragraph e) of the Constitution.

The decision of the Court is final and generally binding.

The decision shall be communicated to the President of Romania, to the Prime Minister and to the Superior Council of Magistracy, and shall be published in the Official Gazette of Romania, Part I.

The Constitutional Court Press Office

ANNEX III B

July 6th 2005

PRESS RELEASE (1)

Based on Article 146 sub-paragraph a) of the Constitution of Romania, the Constitutional Court has been seized by a number of 101 Deputies and 39 Senators, by the High Court of Cassation and Justice, constituted into Joint Sections, as well as by a group of 25 Senators, concerning the unconstitutionality of the Law on the Reform in the Areas of Property and Justice as well as on Certain Additional Measures, which was adopted under the procedure of Government's undertaking of responsibility, in joint session of two Chambers of Parliament of June 22nd 2005.

Following proceedings of July 6th 2005, the Constitutional Court, taking into debate all three references, joint into a single case file, has adjudicated as follows:

1. The Court rejected the challenges of unconstitutionality concerning the procedure of adoption of the draft normative act contended, having in view its previous jurisprudence on this matter, as well as the fact that bills amending or repealing certain laws may have a complex content. Consequently, it held that the law was adopted in compliance with provisions under Article 114 paragraph (1) of the Constitution.

2. Having examined the challenges regarding the law's provisions relative to the area of property (Titles I through XIV of the law), the Court held such as being unfounded, therefore the texts are constitutional.

3. Concerning legal provisions relative to the reform on justice, the Court stated the unconstitutionality of provisions comprised under Title XV, Article I, paragraph 26, amending Article 24 paragraph (2) of the Law no.317/2004 on the Superior Council of Magistracy, and respectively paragraph 27, inserting a paragraph (4) under that same article, whose text reads as follows:
"(2): For the duration of their office, judges and public prosecutors who have been elected to membership of the Superior Council of Magistracy may not carry out any activity as a judge or as a public prosecutor. Upon cessation of their office, members of the Superior Council of Magistracy shall return to the office as a judge or as a public prosecutor, held prior to election."
…
"(4) Manager's offices held by judges or public prosecutors elected to membership of the Superior Council of Magistracy shall cease as of right on the date of publication of the Senate resolution in the Official Gazette."

Likewise, the Court declared unconstitutional the provisions under Article II paragraphs (1) and (2) of the same Title, which read:

"(1) Within 15 days from the coming into force of this law, members of the Superior Council of Magistracy holding office must chose between manager's office at the courts of law or prosecution offices, and membership of the Superior Council of Magistracy.
(2) If judges and public prosecutors mentioned under paragraph (1) have failed to exercise their option rights within the established term, or if they no longer function within a court of law or a prosecution office of equal level with that of the court of law or prosecution office where they had been appointed by the time of election, they shall loose their membership of the Superior Council of Magistracy".

Furthermore, within Title XVII for modification and supplementation of Law no.303/2004 on the Status of Magistrates, the Court declared unconstitutional the wording "other than that of a judge or of a public prosecutor" of Article 81 paragraph (8), which reads:

> "(8) Judges and public prosecutors who benefit of occupational pension according to paragraphs (1), (2) and (4) may cumulate such occupational pension with the incomes raised from a professional activity, other than that of a judge or of a public prosecutor, irrespective of the level of those incomes".

The Court also held unconstitutional provisions amending Article 82 of Law no.303/2004, which reads:

> "Article 82 - Judges, public prosecutors, assistant-magistrates of the High Court of Cassation and Justice, and the legal staff provided by Article 86 paragraph (1) cannot be maintained in office after reaching the retirement age provided by Law no.19/2000 on the public system pensions and other social insurance rights, with subsequent amendments and supplementations".

These provisions are contrary to the principle of immovability, as well as to provisions under Article 155 paragraph (5) of the Constitution, according to which currently serving Judges of the High Court of Cassation and Justice "shall continue activity until expiration of the term of office for which they serve following appointment".

They also contravene Article 125 paragraph (1) of the Constitution, concerning judges' irrevocability, as well as the following international documents:

- Basic principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders (held at Milan from 26 August to 6 September 1985) and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985), which specifically provide, in Article 11, that "the term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law";
- The Universal Charter of the Judge, adopted by the International Association of Judges on its meeting held in Taipei on November 17, 1999, which under Article 8 provides "Any change to the judicial obligatory retirement age must not have retroactive effect";
- Recommendation No. R (94) 12 on the Independence, Efficiency and Role of Judges, adopted by the Committee of Ministers of the Council of Europe on 13 October 1994, establishing, as one of its general principles on the independence of judges, that "The terms of office of judges and their remuneration should be guaranteed by law".

The Court found provisions under paragraphs (1), (6) and (7) of Article IV of Title XVII, for amendment and supplementation of the Law no.303/2004, as unconstitutional; they read:

> (1) At the date of the coming into force of this law, there shall cease the leading mandates of judges and public prosecutors of the courts of appeal, tribunals, specialized tribunals and trial courts, as well as those of the public prosecutors of prosecution offices attached thereof.
> ….

(6) The length of office for judges and public prosecutors who, on the date of the coming into force of this law, exercise other manager's offices than those provided under paragraph (1), shall be for 3 years from their date of appointment.
(7) The mandates of judges and public prosecutors who hold other manager's offices than those provided under paragraph (1), shall cease where, at the date of the coming into force of this law, their length may have exceeded 3 years from appointment.

This solution arises from the Constitutional Court's jurisprudence in other cases concerning the status of magistrates.

After redaction, the decision shall be published in the Official Gazette of Romania, Part I.

Therefore, the Law on the Reform in the Areas of Property and Justice as well as on Certain Additional Measures, adopted by the Chamber of Deputies and the Senate on June 22nd 2005, may not be promulgated by the President of Romania, and shall be transmitted to Parliament for re-consideration in the joint session of the two Chambers.

According to Article 147 paragraph (2) of the Constitution, in cases of unconstitutionality relative to laws before their promulgation, Parliament must reconsider the provisions concerned in order to bring such into accord with the decision rendered by the Constitutional Court.

The Constitutional Court Press Office

July 8th 2005

## PRESS RELEASE (2)

The Constitutional Court Decision no.375 of July 6th 2005, on the challenges of unconstitutionality as to the Law on the Reform in the Areas of Property and Justice as well as on Certain Additional Measures, has been released for publication into the Official Gazette of Romania, Part I.

The full text of the decision can be found on the Constitutional Court website, at: www.ccr.ro

The Constitutional Court Press Office

July 18th 2006

PRESS RELEASE (3)

1. In its proceedings of July 18th 2005, the Constitutional Court has examined the request from the President of Romania, as to the unconstitutionality of the Law on Reproductive Health and Medically Assisted Human Reproduction, and has reached to the conclusion that more than 38 texts of the law are unconstitutional. Likewise, the Court has found that the terminology used in the law is inadequate, and for that reason it also submits to Parliament a number of proposals with regard to the correlation of certain articles, correct use of legal terms, and removal of contradictions existing between certain texts in the law.

The decision shall be published in the Official Gazette of Romania, Part I.

Therefore, the Law on Reproductive Health and Medically Assisted Human Reproduction may not be promulgated by the President of Romania, and shall be transmitted to Parliament for re-consideration.

2. In the same sitting, the Constitutional Court has examined the request from the President of Romania, to oversee the way in which Parliament of Romania, joined in extraordinary session on July 13th 2005, has brought into line the provisions declared unconstitutional from the Law on the Reform in the Areas of Property and Justice as well as on Certain Additional Measures, with the decision of the Constitutional Court no.375 of July 6th 2005.

Having examined the reference act, the Constitutional Court has pronounced that the Parliament removed certain unconstitutional texts while amending some other texts declared unconstitutional, thus bringing them in accord with the Court's decision.

Likewise, the Constitutional court has found that Article 82 of the Law no.303/2004 on the Status of Magistrates, in its new wording, is constitutional, in the sense that the provision on "retirement age provided by the law" refers to legal regulations in the future and that magistrates who are in the exercise of office by the date of publication of the Constitutional Court Decision no.375/2005 can continue their activity under the terms provided by Article 64 of the Law no.303/2004 on the Status of Magistrates.

The Law on the Reform in the Areas of Property and Justice as well as on Certain Additional Measures shall be sent, for promulgation, to the President of Romania, according to provisions under Article 77 of the Constitution.

The Constitutional Court Press Office

January 31st 2006

PRESS RELEASE

Concerning certain information published in mass-media (the article “The Constitutional Court of Romania, Tried by the ECHR”, in România Liberă of January 31st 2006), the Press Office of the Constitutional Court is authorized to state the following:

Subject to Article 34 of the European Convention on Human Rights, ratified by Romania by Law no.30 of May 13th 1994, the European Court of Human Rights may receive applications from “any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto.”

Accordingly, it may be possible to have proceedings initiated against the Romanian State, as a Party to the Convention, but not against the Constitutional Court.

Concrete information on the subject matter of this individual application, as well as the on stage of the proceedings before the European Court of Human Rights may be obtained from the Government’s Agent Institution, which functions with the Romanian Ministry of Foreign Affairs.

The Constitutional Court Press Office

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