

INTERNAL AND INTERNATIONAL ACTIVITY OF THE CONSTITUTIONAL COURT – 1ST SEMESTER OF 2019

JANUARY

On 25 January 2019, the President of the Constitutional Court of Romania, Professor Valer DORNEANU and Mr BENKE Károly, Assistant-Magistrate-in-chief, represented the Constitutional Court of Romania at the solemn hearing and at the seminar with the theme “Strengthening Confidence in the Judiciary”, organised by the European Court of Human Rights to mark the official opening of the judicial year in Strasbourg.

That morning, the delegation of the Constitutional Court of Romania had a working meeting with the President of the European Court of Human Rights, Mr Guido RAIMONDI, in the presence of Ms Iulia Antoanella MOTOC, Romanian national judge to the ECHR, and of Mr Roderick LIDDELL, Registrar; the discussions focused in particular on relevant aspects of the jurisdictional activity of the European Court of Human Rights and of the Constitutional Court of Romania.

FEBRUARY

On 7, 8 and 9 February 2019, Judge Daniel-Marius MORAR and Ms Mihaela-Senia COSTINESCU, Assistant-Magistrate-in-chief, attended, as liaison officers for the European Commission for Democracy through Law (Venice Commission), the first training session for liaison officers, as well as the works of the Bureau of the World Conference on Constitutional Justice, events organized by the Constitutional Court of the Dominican Republic and the Venice Commission, in Santo Domingo.

* * *

On 7 February 2019, the President of the Constitutional Court of Romania, Professor Valer DORNEANU had a working meeting with the delegation from the Committee on European Union Affairs in the German Bundestag, headed by its Chairman, Deputy Gunther KRICHBAUM.

The visit of the German delegation was occasioned by the Romanian presidency of the Council of the European Union, during the first half of 2019, and was part of the list of meetings arranged for the delegation by the Embassy of the Federal Republic of Germany in Bucharest.

The meeting was also attended by Ms Claudia-Margareta KRUPENSCHI, Assistant-Magistrate-in-chief, Director of the President’s Office, and by Mr BENKE Károly, Assistant-Magistrate-in-chief, from the Constitutional Court, as well as by representatives of the Embassy of the Federal Republic of Germany in Bucharest.

In the beginning of the meeting, the President of the Constitutional Court spoke of the importance that Romania attaches to its relations with the Federal Republic of Germany, as well as of the close bilateral relations that the Constitutional Court of Romania has with the Federal Constitutional Court.

The German side expressed its interest in finding out more about the case-law of the Romanian Constitutional Court regarding the legal conflicts of a constitutional nature between public authorities, in particular about the one concerning the dismissal from office of the Chief Prosecutor of the National Anticorruption Directorate, Ms Laura Codruța Kövesi, and about the one relating to the representation of the Romanian State in the European Council. Furthermore, explanations were requested concerning the constitutional role of the President of Romania, while stating that the latter’s position and powers seemed restrictive compared to the legitimacy resulting from the universal vote received from the people.

The President of the Constitutional Court first presented the specificity of the Romanian semi-presidential government system and the differences which exist, in this respect, compared to the French system. He also explained the relationship between the legitimacy of the President of Romania and the constitutional role of the Minister of Justice. He then briefly presented the recitals of the Decision of the Constitutional Court n° 358 of 30 May 2018 on the request to adjudicate upon the legal conflict of a constitutional nature between the Minister of Justice, on the one hand, and the President of the Romania, on the other hand, as the main claim, and between the Government of Romania and the President of Romania, as the alternative claim, determined by the refusal of the President of Romania to comply with the request to dismiss from office the Chief Prosecutor of the National Anticorruption Directorate, Ms Laura Codruța Kövesi, request filed by the Prime Minister, as well as the recitals of Decision n° 683 of 27 June 2012 on the legal conflict of a constitutional nature between the Government, represented by the Prime Minister, on the one hand, and the President of Romania, on the other hand, resulting from the action of the Government and of the Prime Minister to exclude the President of Romania from the delegation participating in the European Council held on 28-29 June 2012 and, consequently, from the undertaking, by the Prime Minister, of the constitutional prerogative of representing the Romanian State in the European Council.

In the end of the meeting, the two sides expressed their satisfaction with the discussions held, while issuing invitations for future meetings concerning the constitutional case-law.

* * *

From 18 to 20 February 2019, Judge Mircea Ștefan MINEA and Ms Cosmina Brîndușa MARIN, legal staff – External Relations, Press Relations and Protocol Compartment, participated in the works of the 26th International Congress on Matters of Comparative European and International Law with the theme “The modern concept of the rule of law and its development through constitutional justice”, as well as in the works of the Biennial Congress of the World Jurist Association (WJA), events organised in Madrid by the University of Regensburg, the IRZ Foundation and the World Jurist Association.

At the International Congress on Matters of Comparative European and International Law, Judge Mircea Ștefan MINEA had a presentation with the theme “Benchmarks from the case-law of the Constitutional Court of Romania adjudicating upon legal conflicts of a constitutional nature between public authorities”.

MARCH

On 13 March 2019, the President of the Constitutional Court of Romania, Professor Valer DORNEANU, received a courtesy visit from the Minister of Justice of the Kingdom of Morocco, Mr Mohamed AUJJAR. The meeting was part of the official programme of the visit to Romania, which was paid on the invitation of the Romanian counterpart, Professor Tudorel TOADER.

On behalf of the Ministry of Justice of the Kingdom of Morocco, the meeting was also attended by Mr Mohammed NASSAR, Inspector General, Mr Mustafa Ait LARAİK, Head of Administrative and Technical Cooperation Department, Mr Fouad MOHYI, Director for Human Resources, Mr Redouane EL HASSONEY, Representative of the Press and Ms Salma BENTYINA, Adviser to the Embassy of the Kingdom of Morocco in Bucharest, and on behalf of the Constitutional Court, the meeting was also attended by Ms Marieta SAFTA, First Assistant-Magistrate, and Ms Claudia-Margareta KRUPENSCHI, Assistant-Magistrate-in-chief, Director of the President’s Office.

At the request of the guests, Mr Valer DORNEANU, President of the Constitutional Court, briefly presented issues concerning the organisation and powers of the Constitutional Court of Romania, giving some detail of interest about the procedure under which exceptions of unconstitutionality and legal disputes of a constitutional nature between public authorities are raised and settled.

Mr Mohamed AUJJAR, Minister of Justice of the Kingdom of Morocco, expressed his gratitude for the discussions held at the Constitutional Court, in particular in the context in which he would promote a legislative initiative on the power of the Constitutional Court of the Kingdom of Morocco to address exceptions of unconstitutionality. The high-level guest appreciated the tradition of the Constitutional Court of Romania in this matter, launching the invitation for a visit in the near future to Morocco.

* * *

From 18 to 19 March 2019, Mr BENKE Károly, Assistant-Magistrate-in-chief, participated in the Meeting of the Anti-Fraud Partners of the Member States of the European Union, event organised in Bucharest by the Anti-Fraud Department, given that the DLAF holds the chairmanship of the Anti-Fraud Working Group in the context of the Romanian presidency of the Council of the European Union. The intervention of Mr BENKE Károly focused on the presentation of the relevant case-law of the Constitutional Court in criminal and procedural criminal matters with impact on the fight against fraud, as well as of the points of contact between the Constitution and the Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office (the EPPO).

* * *

From 22 to 23 March 2019, a delegation of Assistant-Magistrates, composed of Ms Mihaela Senia COSTINESCU, Ms Mihaela IONESCU, Ms Daniela Ramona MARIȚIU and Mr BENKE Károly participated in the Conference entitled *the New Criminal Codes five years after their entry into force*, organised in Cluj-Napoca by the Faculty of Law of the Babeş-Bolyai University and the INPPA — Cluj Regional Centre, with the support of Cluj Bar Association, and in collaboration with the Universul Juridic Publishing House.

APRIL

From 2 to 4 April 2019, a delegation of the Constitutional Court of Romania, headed by Professor Valer DORNEANU, President of the Court and composed of Ms Simona-Maya Teodoroiu, Mr Mircea Ștefan MINEA, Judges, Ms Claudia Margareta KRUPENSCHI, Director of the President's Office, Assistant-Magistrate-in chief and Ms Cosmina MARIN, legal staff with the External Relations, Press Relations and Protocol Compartment, paid an official visit to the Supreme Court of Israel at the invitation of Ms Esther HAYUT, President of the Supreme Court.

The visit was part of the bilateral agenda of the two authorities with constitutional jurisdiction.

The meeting was structured in 4 sessions: Overview of judicial systems, Human dignity, Multiculturalism and Judicial selection process.

A separate topic, Overview of security issues was addressed by Mr Uzi VOGELMAN, Judge of the Supreme Court of Israel.

The discussions took place in an atmosphere of collegiality and mutual respect, and the themes touched upon both the theoretical aspects of the two legal systems and the practice of the two courts.

The relevant case-law has supplemented the presentations of each rapporteur and the active dialogue thereon was concluded on the similarities and differences between the two bodies with constitutional prerogatives.

The two Presidents appreciated the meeting as a particularly fruitful one at the level of bilateral cooperation and agreed on the importance of continuing the judicial dialogue, for the purpose of strengthening the friendly relations and mutual collaboration.

* * *

On 12 April 2019, the Constitutional Court of Romania organised the International Conference “National Constitutional Identity in the context of European Law”.

The event took place at the Palace of Parliament, the Nicolae Bălcescu Hall, and was attended by representatives of the Constitutional Courts of Austria, the Czech Republic, the Republic of Croatia, the Federal Republic of Germany, the Republic of Hungary, as well as by a delegation of the Federalist Society for Law and Public Policy Studies of the United States of America.

During the opening speech, the President of the Constitutional Court of Romania, Professor Valer DORNEANU stressed the importance of analysing national constitutional identity, a topical issue in the context of the evolution of European law and the increased shaping of the concept of European constitutional identity. The dialogue of constitutional judges should be considered as essential to a better knowledge, definition and approach of the multiple dimensions of the relationship between the two concepts.

The Conference was structured in two sessions:

Session I: National constitutional identity — a rediscovered concept. This session was chaired by Prof. Christoph GRABENWARTER, Vice-President of the Austrian Constitutional Court and included the presentations of Ms Brigitte BIERLEIN, President of the Austrian Constitutional Court, Dr. Yvonne OTT, Judge of the Constitutional Court of the Federal Republic of Germany, Dr. VARGA Attila, Judge of the Constitutional Court of Romania and Mr Lubomir MAJERCIK, Head of the Department of Analysis/Research, Constitutional Court of the Czech Republic.

Session II — The relationship between the constitutional identity and the principle of priority of Treaty law -7 was moderated by Dr. SULYOK Tamás, President of the Hungarian Constitutional Court and included the presentations of Prof. Dr. Andreas L. PAULUS, Judge of the Constitutional Court of the Federal Republic of Germany, Ms Simona Maya TEODOROIU, Mr Marian ENACHE, Judges of the Constitutional Court of Romania, Dr. Marieta SAFTA, First Assistant Magistrate of Romania, Dr. Mario JELUŠIĆ, Judge of the Croatian Constitutional Court and, last but not least, Dr. SULYOK Tamás, President of the Hungarian Constitutional Court.

Each paper presented both theoretical and concrete examples from the judicial practice of each participating constitutional court and the questions, discussions and answers provided were an excellent opportunity for an open dialogue for in-depth knowledge of the various approaches to the concept of national constitutional identity at the level of the participating European countries.

In his closing remarks, the President of the Constitutional Court thanked all colleagues for their contributions through the active involvement in the dialogue of constitutional judges and noted that the discussions during the Conference had showed that there is a number of common fundamental features identifying national constitutional identities and that, on the other hand, this concept is harmonised in a way that is complementary to European constitutional identity. He also highlighted the essential role of Constitutional Courts to interpret the Constitution/Basic Law for safeguarding national constitutional identity, and

hoped that the judicial dialogue would continue in order to maintain and strengthen cooperation and collegiality between constitutional jurisdictions.

The papers presented at the conference will be included in an edited volume in Romanian and English.

* * *

From 30 April to 3 May 2019, Mr Fabian NICULAE, Assistant-Magistrate, participated in the 8th Congress of the Association of Constitutional Courts who partially use the French language (A.C.C.P.U.F.) with the topic “Constitution and legal certainty”, held in Montréal, Canada.

MAY

From 23 to 24 May 2019, Ms Mihaela Senia COSTINESCU, Assistant-Magistrate-in-chief, participated in the Joint Constitutional on Constitutional Justice within the European Commission for Democracy through Law (the Venice Commission), which took place in Rome, Italy.

* * *

On 23 May 2019, the President of the Constitutional Court, Professor Valer DORNEANU received a courtesy visit from H.E. Ms Jiang YU, Ambassador of the People’s Republic of China to Romania. The meeting was also attended by Ms Claudia Margareta KRUPENSCHI, Assistant-Magistrate-in-chief, Director of the President’s Office and Mr Liu YANG, Second Secretary of the Embassy.

The discussions focused, in essence, on the traditional friendship relationship between the two States, based on mutual respect and a constant collaboration in all areas of activity, including in the area of justice and legislation, being mentioned in this respect the working meetings that have taken place between the representatives of Romania’s Constitutional Court and the Legal Commission of the National Assembly.

The parties have expressed their strong desire for support and pragmatic use of the opportunities offered by the partnerships concluded by the People’s Republic of China with Romania, the European Union and other European States, for the sustainable development thereof on all plans to the benefit of the social welfare in the complex process of globalisation.

JUNE

From 6 to 7 June 2019, Ms Claudia Margareta KRUPENSCHI, Assistant-Magistrate-in-chief, Director of the President’s Office, participated, as focal point on behalf of the Constitutional Court of Romania, in the Focal Points Forum of the Superior Court Network (SCN) at the European Court of Human Rights, Strasbourg.

The topics discussed concerned the issue of migration and terrorism, seen in the light of the principles and criteria applicable under the provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms and the relevant case-law of the European Court of Human Rights. The first Advisory Opinion delivered by the European Court of Human Rights on the basis of Protocol No 16 to the Convention was also a topic of discussion.

The Human Rights Education for Legal Professionals (“HELP”) programme developed by the Council of Europe to implement the Convention was also presented during the Forum, a programme that makes available to the judges, prosecutors, lawyers and jurists of the 47

Member States online courses on various topics. <https://www.coe.int/en/web/help/home?desktop=true>

* * *

On 6 June 2019, under the Lead 2019 Leadership Programme, a group of young lawyers of the Republic of Moldova paid a working visit to the Constitutional Court. The 15 judges, lawyers, judicial assistants and jurists were received by Professor Valer DORNEANU, President of the Constitutional Court, and Ms Marieta SAFTA, First Assistant Magistrate, who presented to them issues relating to the organisation, functioning and powers of the Constitutional Court, with examples from the relevant case-law of the Constitutional Court.