

## Internal and international activity of the Constitutional Court –1st semester of 2018

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### FEBRUARY

**6 February 2018** - the President of the Constitutional Court of Romania, Professor Valer DORNEANU, had a working meeting with the delegation of the experts of the European Commission for Democracy through Law (Venice Commission) composed of Mr Ziya Caga TANYAR, legal officer, Division for Democratic Institutions and Fundamental Rights, Venice Commission, DGI - Directorate General of Human Rights and Rule of Law, Council of Europe and Mrs Herdis THORGEIRSDOTTIR, First Vice President of the Venice Commission, Professor.

The visit of the foreign delegation is part of the normal consultation process of the national public authorities regarding the elaboration and adoption of a normative act on which the Venice Commission opinion was requested, in this case the draft law amending and supplementing the Government Ordinance No 26/2000 regarding associations and foundations.

The meeting was attended by the following members of the Constitutional Court: Mrs Livia Doina STANCIU, Mrs Simona-Maya TEODOROIU, Mrs Mona-Maria PIVNICERU, Mr Petre LĂZĂROIU and Mr Mircea-Ștefan MINEA, Judges of the Constitutional Court, and Mrs Claudia-Margareta KRUPENSCHI, seconded First Assistant Magistrate and Director of the President's Office.

At the beginning of the meeting, at the request of the European experts, the President of the Constitutional Court talked about the review of constitutionality of the laws before promulgation, referring to the jurisdictional procedure and the subjects that can notify the Court.

The next topic of the discussions was the compatibility of the draft Law amending and supplementing the Government Ordinance No 26/2000 on associations and foundations, with international standards on human rights and fundamental freedoms.

In this regard, Mrs Herdis THORGEIRSDOTTIR expressed her interest in the case law of the Constitutional Court on freedom of expression, a fundamental right enshrined in the provisions of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and in Article 30 of the Constitution of Romania, with particular reference to the right to information of public interest.

In this respect, Judge Mona-Maria PIVNICERU briefly outlined the jurisprudence of the Constitutional Court in this matter, i.e. the case-law regarding Law No 544/2001 on free access to information of public interest.

On the same topic, Judge Livia Doina STANCIU explained the normative evolution in this field since the entry into force of Law No 3/1974 on the press in the Socialist Republic of Romania, until its repeal by Law No 95/2012.

The President of the Constitutional Court concluded by pointing out the dynamism in the protection of the fundamental rights and freedoms as laid down in the Convention and the Additional Protocols, which is a priority in the Court's work, reflected in its own jurisprudence,

the practice of the high-level European courts in this matter representing integral parts of the Constitutional Court's decisions. In particular, however, regarding the law under parliamentary procedure, which is the subject of the forthcoming opinion of the Commission for Democracy through Law, he stressed that the Court's judges are under an obligation to refrain from expressing their opinions, as the respective draft law could be the subject of a constitutional review prior to its promulgation.

At the end of the meeting, after hearing the guests' appreciation, the President of the Constitutional Court addressed a thank-you message and greetings to the President of the European Commission for Democracy through Law (the Venice Commission), Mr Gianni BUQUICCHIO, appreciating the importance and effectiveness of these meetings.

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## MARCH

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**8-9 March 2018** - Judge Mircea Ștefan MINEA participated in the proceedings of the Bureau of the Association of Constitutional Courts using Partially French Language (A.C.C.P.UF.), organised by the Swiss Confederation Court in Lucerne.

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**15 March 2018** - the Constitutional Court of Romania received the visit of the European Commission delegation headed by Mr Julien MOUSNIER and composed of Mrs Jeanne DE JAEGHER, Mr Ingo WEUSTENFELD, Mrs Irina STEFURIUC and Mrs Maria ARSENE.

The meeting was attended by the following members of the Constitutional Court: Mr Valer DORNEANU, President of the Court, Mrs Claudia-Margareta KRUPENSCHI, Director of the President's Office, Assistant-Magistrate-in-Chief and Mr BENKE Károly, Assistant-Magistrate-in-Chief.

At the beginning of the meeting, the President of the Constitutional Court forwarded greetings on his behalf and on behalf of the members of the Constitutional Court to the European Commission Delegation, expressing appreciation for its work and the quality of its reports on progress in Romania under the Cooperation and verification mechanism (CVM), characterised by accuracy, objectivity and analytical depth, while also appreciating how some aspects of the activity of the Constitutional Court were reflected in the same.

The President then informed the members of the delegation of the Constitutional Court Judges' opinion as to their continued participation in these meetings. Starting from the role, place and attributions of the Constitutional Court within the rule of law, which obliges it to have a neutral position in the relations between the public authorities and imposes on it an obligation to refrain from expressing views that are the subject of public debates, with possible political connotations, the Plenum of the Court expressed its wish not to be involved anymore in the European Commission delegation program in the context of CVM. As a matter of fact, the Constitutional Court is not subject to the issues/objectives pursued by the CVM. In the discussions on the achievement of CVM objectives, the Court cannot engage in assessments

with regard to some of the institutions subject to the CVM reports in order to analyse and evaluate their work.

The members of the delegation appreciated this position of the Court and stressed that they never regarded the meetings with the Court as a way to monitor or control it.

The President then replied to the delegation's questions on some of the concrete aspects of the Court's decisions pronounced within the constitutional review before the promulgation of the three laws of justice - Laws 303, 304 and 317/2004.

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**21-23 March 2018** - the delegation of the Constitutional Court of Romania, headed by Professor Valer Dorneanu, President of the Court, and composed of Mrs Simona-Maya Teodoroiu, Mr Varga Attila, Judges, and Mr Benke Károly, Assistant-Magistrate-in-Chief, paid an official visit to the Hungarian Constitutional Court at the invitation of Dr. Tamás Sulyok, President of the Constitutional Court of the Republic of Hungary.

The visit is part of the bilateral agenda of the two constitutional jurisdictions.

During the working meeting, the President of the Constitutional Court of Romania, Professor Valer Dorneanu, presented succinctly the competences of the Constitutional Court, pointing in particular to the competence to resolve legal disputes of a constitutional nature between public authorities, with reference to the recent case-law.

The presentation of Dr. Tamás Sulyok, the President of the Hungarian Constitutional Court, included references to the jurisdiction, organisation and procedure of the Court, which provided the occasion for a useful and interesting dialogue between the judges of the two constitutional courts.

The official visit program also included a working meeting with members of the Supreme Court of Hungary, the topic of discussion being the relationship between the supreme courts and the constitutional courts of the two States.

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## APRIL

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**13 April 2018** - the President of the Constitutional Court of Romania, Prof. Dr. Valer DORNEANU, was paid a visit by H.E. Ms Isabel RAUSHER, Extraordinary and Plenipotentiary Ambassador of Austria to Bucharest.

Mrs Claudia Margareta KRUPENSCHI, Director of the President's Office, Assistant Magistrate-in-chief was also present at the meeting.

In his welcome speech, President Valer DORNEANU declared that he felt honoured to receive as guest the representative of Austria in Romania, highlighting the good bilateral relations

between the Constitutional Court of Romania and the Constitutional Court of Austria, and making a short comparative overview as to the competences specific to each constitutional court.

Thanking the President for accepting the meeting, H.E. Ms Ambassador Isabel RAUSHER expressed her interest in the situation in the justice system in light of the ongoing legislative changes in this area, in particular by referring to certain opinions expressed in the public area and to certain international documents, such as the recent GRECO report, asking in particular whether constitutional judges are affected by this situation.

The President indicated that the texts examined by the Constitutional Court in the cases concerning the justice laws were not such as to actually affect the independence of the judiciary, stating that some of the admission decisions were based on other grounds of unconstitutionality. In this context, he underlined the importance of accountability and objectivity which must be demonstrated by both the public authorities directly involved in the legislative process and all other factors contributing to accurate public information. These requirements are, moreover, frequently highlighted in the case-law of the Constitutional Court, in particular in decisions handed down in the resolution of legal disputes of a constitutional nature between public authorities, the respect for the fundamental principles of the separation and balance of powers and of loyal interinstitutional collaboration representing an essential prerequisite of the rule of law.

As a conclusion, the Ambassador highlighted the importance of becoming aware of the socio-legal reality in the most objective way and she expressed her sincere appreciation for the open dialogue that took place during this meeting and offered her full support as to the strengthening of the relations between the Constitutional Court of Romania and the Constitutional Court of Austria.

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**14 April 2018** - Mrs Ionița Cochințu and Mr Fabian Niculae, Assistant-Magistrates of the Constitutional Court of Romania, attended the conference on tax law organised by the Faculty of Law of Cluj-Napoca. The topics of the conference included: the VAT at the level of the European Union, transfer pricing adjustment and VAT implications, the concept of supporting documents from the perspective of tax law, theoretical and practical issues concerning transfer pricing, the tax regime, the tax regime for loans granted between companies, the reform of Romanian tax law in the light of the recent rulings of the Court of Justice of the European Union, procedures in the case of unannounced controls by competition inspectors.

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**MAY**

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**3-4 May 2018** - Mr Benke Károly, Assistant-Magistrate-in-chief of the Constitutional Court of Romania, attended the conference “*Constitutional Identity and Social memories in Central and Eastern Europe*”, organised by the Law Faculty of the West University of Timișoara, Centre for Legal Education and Social Theory and Central and Eastern European Forum of Young Legal, Political and Social Theorists. During the session *Judicial Dialogue in the European*

Union, he presented the paper entitled *The Romanian Constitutional Court's approach toward constitutional identity*.

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**15-18 May 2018** - the President of the Constitutional Court of the Russian Federation, Mr Valery ZORKIN, addressed to the President of the Constitutional Court of Romania, Mr Valer DORNEANU, the invitation to participate in the works of the International Conference on “*Constitution in the Global Change Epoch and the Goals of Constitutional Review*”, organised by the Constitutional Court of the Russian Federation, as well as in the works of the 8<sup>th</sup> International Legal Forum, held between 15 and 18 May 2018, in St. Petersburg.

Consequently, through the provisions of Decision no. 6 of 29 March 2018 of the Plenum of the Constitutional Court of Romania, it was decided that the Constitutional Court be represented at these events by Mr Valer Dorneanu, the President of the Romanian Constitutional Court, accompanied by an Assistant-Magistrate.

At the International Conference, held on 15 May 2018, the President of the Constitutional Court supported presented a paper on “*The impact of globalization on the constitutional review in Romania*”.

The events were attended by representatives from 40 constitutional courts, by presidents, vice-presidents and judges from constitutional courts, supreme courts, other jurisdictions and international bodies in Europe, Africa, Asia and South America, among which: the President of the Constitutional Court of the Russian Federation, the President of the Supreme Court of Austria, the President of the Federal Administrative Court of Switzerland, the President of the Constitutional Court of the Republic of Serbia, the President of the Supreme Court of Monaco, the President of the Constitutional Court of Hungary, the President of the Constitutional Court of the Republic of Bulgaria, the President of the Supreme Court of Israel, the President of the Constitutional Court of the Kingdom of Morocco, the President of the Constitutional Court of the Republic of Azerbaijan, the President of the Constitutional Court of the Republic of Albania, the President of the Constitutional Court of the Republic of Macedonia, the President of the Constitutional Court of the Republic of Armenia, the Vice-President of the Federal Supreme Court of Brazil.

These events represented a good opportunity to consolidate the good bilateral and multilateral relations that the Constitutional Court of Romania maintains with the other constitutional jurisdictional authorities in the world, through membership in the Association of Constitutional Courts using the French Language (ACCPUF), in the Conference of European Constitutional Courts, as well as in the World Conference on Constitutional Justice.

The works were also attended by: the President of the United Nations Committee on Economic, Social and Cultural Rights, the Director-General of the Council of Europe's Directorate General of Human Rights and Rule of Law, the Vice-President of the European Court of Human Rights, the Secretary of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe.

The other events that took place during the 8<sup>th</sup> International Legal Forum were attended by representatives of the scientific society in over 60 countries, and the topics discussed were related to the most important current legal issues, such as: *The future of the legal profession*,

*Professional and educational standards in the field of law, Personal data protection – benefit or burden?, Current trends in the development of judicial practice on the correlation of international law with national law, Legal issues of international migration, Modern trends in the development of judicial practices in the field of amicable agreements and other conciliation procedures, etc.*

Information on the agenda of the events organised, the list of participants, as well as on the working sessions can be found on the event's Website: <https://spblegalforum.ru/en/>.

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**16-19 May 2018** - a delegation of the Constitutional Court of the Republic of Albania, composed of Mr Eugen PAPANILE, Secretary General, Mrs Elsa TOSKA, Advisor to the President's Office, and Mrs Kaliona NUSHI, Legal Advisor, carried out a research and exchange visit at the Constitutional Court in Romania, within the bilateral relations that the Romanian Constitutional Court has with other constitutional courts.

During this research visit, the discussions held at the headquarters of the Constitutional Court of Romania referred to the organisation and functioning of the Constitutional Court of Romania, to its prerogatives and relevant jurisprudence, including to aspects related to the enforcement of the judgments of the European Court of Human Rights and of the Court of Justice of the European Union in the national judicial system.

On 17 May 2018, the delegation of the Constitutional Court of the Republic of Albania met with representatives of the High Court of Cassation and Justice, at its headquarters, during which discussions were held on the role and powers of the High Court of Cassation and Justice, on relevant aspects related to the jurisprudence of the High Court of Cassation and Justice, on details about how the ECRIS computer system works, as well as on details concerning the data protection legislation, namely the anonymization of the parties in the computer system.

Also, on 18 May 2018, the members of the delegation attended the seminar entitled "*Impacts of the ECHR and EU-law on the procedural laws*" at the National Institute of Magistracy, chaired by Mrs Edith Zeller, member of the Vienna Administrative Court, and by Mr Heinrich Zens, member of the Austrian Supreme Administrative Court, which focused on aspects related to the settlement of the cases within a reasonable timeframe and the use, in this context, of the legal remedies, the force of *res judicata* of court rulings, the *ne bis in idem* principle, the relationship between constitutional courts and courts of law, etc.

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The Constitutional Court of Romania sent to the Furth Family Foundation its profound regret on the passing of H.E. Mr Frederick P. Furth, President of the Furth Family Foundation, a pillar and a promoter of the values of the rule of law and constitutional principles, his prominent activity and personality in the field of justice significantly contributing to the strengthening of the dialogue between supreme and constitutional judges.

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**24-25 May 2018** - Judges Petre Lăzăroiu and Mircea Ștefan Minea attended the works of the International conference on “*The role of constitutional courts in the globalised world of the 21<sup>st</sup> century*”, organised in Riga by the Constitutional Court of the Republic of Latvia.

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## JUNE

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**11 June 2018** - the President of the Constitutional Court of Romania, Prof. Dr. Valer DORNEANU, had a working meeting with the Delegation of the European Commission for Democracy through Law (Venice Commission), composed of Director Thomas MARKERT, Secretary of the Venice Commission, Ms Hanna SUCHOKA, Honorary President of the Venice Commission, Ms Artemiza CHISCA, Head of the Office for Democratic Institutions of the Venice Commission, Mr Kaarlo TUORI, Member of the Venice Commission (Finland), Mr Nicolae ESANU, substitute member of the Venice Commission (Republic of Moldova), Mr Jean-Claude SCHOLSEM, substitute member of the Venice Commission (Belgium).

The meeting was attended, on behalf of the Constitutional Court, by Mrs Mona-Maria PIVNICERU, Ms Simona-Maya TEODOROIU, Petre LĂZĂROIU, Mr Daniel Marius MORAR, Judges, as well as by Mrs Claudia-Margareta KRUPENSCHI, delegated First Assistant-Magistrate, Director of the President’s Office, Mrs Senia Mihaela COSTINESCU and Mr BENKE Károly, Assistant Magistrates-in-chief.

The discussions concerned essentially constitutionality issues arising during the legislative process of drafting the laws amending and supplementing Law no. 303/2004 on the status of judges and prosecutors, Law no. 304/2004 on the judicial organisation and Law no. 317/2004 on the Superior Council of the Magistracy.

The guests also enquired about the circumstances of the letter addressed by the Constitutional Court to the Venice Commission, the Secretary of the Council of Europe and the President of the Conference of the European Constitutional Courts on the pressures exerted on the Constitutional Court and the public calls for non-compliance with the Constitutional Court’s decisions.

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**12 June 2018** - as part of the *Exchange Programme for Judicial Authorities*, initiated by the European Commission, coordinated by the *European Judicial Training Network (EJTN)*, in cooperation with the Prosecutor’s Office attached to the High Court of Cassation and Justice and the National Institute of Magistracy, a group of 9 magistrates from EU Member States paid a working visit to the Constitutional Court. Ms Cristina Teodora POP, Assistant-Magistrate, presented to the foreign magistrates certain aspects regarding the organisation, functioning and powers of the Constitutional Court, the latter being illustrated by the relevant case-law of the Constitutional Court.

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**14 June 2018** - in the framework of the Programme of Leadership for Young Lawyers from the Republic of Moldova, now at the second edition, implemented by the INK Association and the Romanian Centre for European Policy, with the support of the Embassy of the Kingdom of the Netherlands in Romania and the Republic of Moldova, a group of 19 lawyers from the Republic of Moldova conducted a working visit to the Constitutional Court.

On behalf of the Constitutional Court, the meeting was attended by Mrs Claudia KRUPENSCHI, delegated First Assistant-Magistrate, Director of the President's Office and by Mr Fabian NICULAE, Assistant Magistrate, who presented to the guests aspects concerning the organisation, functioning and powers of the Constitutional Court, as part of an active dialogue on theoretical and practical issues related to the recent case-law of the Constitutional Court. At the end of this event, the President of the Constitutional Court, Prof. Dr. Valer DORNEANU, had meeting with the participants, welcoming and enjoying the visit of young legal practitioners and replying to some of their questions.

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**13-15 June 2018** - Ms Simona-Maya TEODOROIU, Judge, and Mr BENKE Károly, Assistant Magistrate-in-chief, took part in the preparatory meeting of the 18th Congress of the Conference of the European Constitutional Courts and in the International Conference with the topic "*Our Beginnings: Hans Kelsen's Heirs*", dedicated to the celebration of the 25th anniversary of the Constitutional Court of the Czech Republic, events held in Prague.

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**19 June 2018** - as part of the *Exchange Programme for Judicial Authorities*, initiated by the European Commission, coordinated by the *European Judicial Training Network (EJTN)*, in cooperation with the Prosecutor's Office attached to the High Court of Cassation and Justice and the National Institute of Magistracy, a group of 13 magistrates from EU Member States paid a working visit to the Constitutional Court. Mr Fabian NICULAE, Assistant-Magistrate, presented to the foreign magistrates certain aspects regarding the organisation, functioning and powers of the Constitutional Court, the latter being illustrated by the relevant case-law of the Constitutional Court.

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**27-28 June 2018** - Mrs Mihaela Senia COSTINESCU, Assistant Magistrate-in-chief, participated in the meeting of the Joint Council on Constitutional Justice of the European Commission for Democracy through Law (Venice Commission), which took place in Lausanne, the Swiss Confederation.