EVOLUTIONS OF THE CONSTITUTIONAL REVIEW IN THE CONTEXT OF INTEGRATION INTO THE EUROPEAN UNION. THE ROLE OF THE CONSTITUTIONAL COURT OF ROMANIA IN THE PROCESS OF RECEPTION OF EUROPEAN LAW INTO THE NATIONAL LEGAL ORDER

Prof. univ. dr. TUDOREL TOADER
Dean of the Faculty of Law, University „Alexandru Ioan Cuza” of Iași, judge at the Constitutional Court of Romania; ttoader@uaic.ro

Dr. MARIETA SAFTA
Associate professor at the Academy of Economic Studies, Bucharest, First assistant – magistrate at the Constitutional Court of Romania, marietasafta@yahoo.com

I. Introduction

The studies dedicated to the analysis of the evolution of constitutional review in the Member States of the European Union1, implicitly the relationships between the national constitutional courts in these States and the Court of Justice of the European Union2, reveal both “sides of the coin”: on the one hand, national constitutional courts’ response to the phenomenon of EU enlargement and integration, with corresponding consequences at national level, and on the other hand, the changes that this phenomenon and the case-law of national constitutional courts have produced at the level of European law and in the legal approach of the CJEU3. In this context, it is more commonly used the term of "judicial dialogue", meaning at this level, a means of prevention and reconciliation of the conflict between the two plans: national and supranational and of interconnection of legal entities thereof for the purpose of ensuring the coherence of the mixed legal order and the pre-eminence of EU law in relation to national norms.4 This process of "Europeanization"5, where national constitutional courts constitute one of the main actors, has broad implications for the legal and institutional framework at the level of the Member States.

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1 Hereinafter referred to as the EU
2 Hereinafter referred to as the CJEU
4 the phrase referred objectifies various forms of dialogue between judges, both at national and at international level – for more details see I. Deleanu, "Judges dialogue – forms and implications in terms of judicial dialogue ”, in the Romanian Case-Law Journal No.1/2012, p.17
Addressing issues pertaining to the evolution of constitutional review in Romania in the context of integration of the country into the EU, we intend to carry out an analysis of how the Constitutional Court of Romania is involved in this judicial dialogue, a genuine factor of emergence in the philosophy and practice of integration, namely in the process of Europeanization of the national legal and institutional framework.

This analysis departs from the constitutional enshrining of the relationship between national and European law, namely Article 148 - Integration into the European Union, which sets the priority of the provisions of the constitutive documents of the EU and other Community legislation in relation to the contrary provisions of the national laws, as well as the obligation incumbent on Parliament, the President, the Government and the judiciary to ensure fulfilment of the obligations resulting from the accession instrument. Given its role as guarantor for the supremacy of the Constitution, the Constitutional Court of Romania has the obligation to ensure the observance of the constitutional text mentioned, being thus involved in a specific way - according to its competence - in the reception of EU law, both in legislation and in the case-law of national courts.

Since the research conducted is also aimed at comparative law issues, we analyzed this evolution with reference to two periods: pre-accession and post-accession, to note also the position of the Constitutional Court of Romania in relation to the jurisprudential trends identified in the specialised literature as characterising the constitutional courts of the Member States in the corresponding reference periods.6

II. The period of pre-accession to the European Union, a phase enshrined to setting the guiding principles

During this period, whose starting point for the analysis is deemed to be the constitutional revision of 2003, the decisions of the Constitutional Court of Romania comprise a series of guiding principles regarding the relationship between national and Community law and the obligations of public authorities in the perspective of EU accession.

Such guiding principles are set forth, mainly, in Decision no.148/2003 on the issue of constitutionality of the proposal for the revision of the Constitution of Romania7, where the Court had to adjudicate whether the provisions concerning accession to the Euro-Atlantic structures infringe upon the limits of revision, in relation to the concepts of sovereignty and independence. Concluding that the respective texts do not represent a violation of the constitutional provisions regarding the limits of revision, the Court held, inter alia, that “the aim pursued by the authors of the legislative proposal to amend and supplement the Constitution of Romania, in order to harmonize its provisions with the provisions of the constituent treaties of the European Union and with the mandatory regulations derived therefrom, is a necessary political and legal

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6 D. Piqani - Constitutional Courts in Central and Eastern Europe and their attitude towards European integration- Vol.1 EJLS No. 2
7 Official Gazette no. 317/12 May 2003
arrangement, [...]". Moreover, "introduction of these new regulations in the Constitution of Romania, at this moment, in view of a future integration into the European Union, represents a solution that cannot be abandoned, because integration into the Euro-Atlantic structures can only be achieved based on pre-existent constitutional basis." The Court also noted that "through the acts transferring certain powers to the structures of the European Union, these do not achieve, by endowment, «supreme powers», personal sovereignty. In fact, the Member States of the European Union decided to jointly exercise certain powers, which, traditionally, pertain to national sovereignty. It is obvious that in the present era of globalisation of mankind problems, of the interstates evolutions and of the inter-individuals communication to a planetary scale, the concept of national sovereignty can no longer be conceived as absolute and indivisible, without the risk of an unacceptable isolation".

The firmness of the Court’s pro-European discourse is accompanied by an emphasis on the consequences related to joining the EU: integration into national law of the acquis communautaire and the obligation to comply with European law. Thus, together with the constitutional revision for the purpose of accession, the genuine coordinates of the Europeanization process of national legal system were established, coordinates that stand at the basis of the evolution of the Constitutional Court’s case-law itself.

Thus, as concerns the first consequence - the integration of the acquis communautaire into national law, it should be noted that subsequent decisions of the Court (relevant in the matter) constantly emphasized the need to harmonize national legislation with the European legislation and the obligations incumbent on national authorities in this respect. As concerns the second consequence – the obligation to comply with EU law, while establishing the rule concerning the priority of community law over contrary provisions of national laws in the proposal for revision of the Constitution, the Court noted that "the Member States of the European Union agreed to place the community acquis - the constituent treaties of the European Union and the regulations derived therefrom – on an intermediary position between Constitution and the other laws, in case of binding European normative acts."8. The Court has thus established the hierarchy of norms, without further analysing on that occasion the relationship between European law and the Constitution, analysis which, moreover, was not required in the context.

The coordinates thus outlined mark the subsequent jurisprudential evolution, the Constitutional Court following a practice similar to that of other European constitutional courts (Poland, Czech Republic, Lithuania, Estonia, Latvia), respectively a favourable discourse for EU integration, focussed on the idea of achievement of judicial harmonization.9 Thus, for example, in one of its decisions, the Constitutional Tribunal o Poland emphasized that, even if EU law is not binding in Poland (since at that time Poland was not a Member State of the European Union), given the commitments undertaken, Polish institutions, including the Constitutional Tribunal, are

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8 Decision no.148/2003, Official Gazette no.317 of 12 May 2003
bound to ensure maximum compatibility between national and European legislation.\textsuperscript{10} In the same respect, the Constitutional Court of Romania, examining in 2006 the referral concerning the unconstitutionality of the Law on healthcare reform, held as\textsuperscript{11} unfounded the challenge on the existence within the law of rules applicable to the European Union structures as "taking certain regulations adopted by European Union bodies does not mean exceeding powers, but implementation of Community law into national law." In a decision rendered in the same year\textsuperscript{12}, the Court held that the impugned emergency ordinance "was adopted in order to harmonize the current legislation with the provisions of the Accession Treaty [...] The urgency of the measure was justified by the fact that Romania is closely monitored by the European Commission under the heading "Competition" and violation of the respective provisions of the Accession Treaty is likely to lead to activation of the safeguard clause, with the consequent postponement of Romania's accession to the European Union [...]."

However, the obligations arising from the accession instrument must be met in compliance with the constitutional provisions and principles and, it is not permissible, for example, in case of adoption of an emergency ordinance, justification of the emergency only based on the need to harmonize the Romanian legislation with the Community legislation. This because „modification or uniformisation of legislation in one area or another does not, by itself, justify the issuance of an emergency ordinance”\textsuperscript{13} Harmonization with European legislation, in itself, does not justify this emergency, and additional arguments are required, such as those used in the previous example.

III. Post-accession period. Continuation of the process of harmonization of national legislation with the European legislation. The use of interpretive tools for ensuring consistency of the harmonization process. Clear separation of powers at jurisdictional level and constitutional loyalty in the interpretation and application of EU law

1. Continuation of the process of harmonization of national legislation with the European legislation.

1.1 Legislator’s obligations resulting from the accession instrument

In many of the decisions rendered after 2007, the Constitutional Court found that the legislator - primary or delegated - has harmonized national legislation with the EU legislation in various matters, for example: asylum (Law no.122/2006 on Asylum in Romania, published in the Official Gazette, no.428 of 18 May 2006)\textsuperscript{14}, foreigners’

\textsuperscript{10} Z.Kuhn, "The Application of European Union Law in the New Member States: Several Early Predictions", German Law Journal, 2005, p.564
\textsuperscript{11} Decision no.298/2006, Official Gazette no.372/28 April 2006
\textsuperscript{12} Decision no.205/2006, Official Gazette no.340/14 April 2006
\textsuperscript{13} Decision no.15/2000, Official Gazette no.267/14 June 2000
regime\textsuperscript{15}, preventing and combating cross-border crime (Law no. 76/2008 on the organisation and operation of the National System of Judicial Genetic Data, published in the Official Gazette, no.289 of 14 April 2008)\textsuperscript{16}, trademarks (Law no. 84/1998 on Trademarks and Geographical Indications, published in the Official Gazette of Romania, Part I, no. 161 of 23 April 1998)\textsuperscript{17}, mutual recognition of judgments in civil and commercial matters\textsuperscript{18}, mediation\textsuperscript{19}, consumer protection\textsuperscript{20} and others.

In some cases, the reasoning part of decisions explains in detail the grounds thereof in the meaning of emphasizing the obligation and importance of the harmonization process, justifying from the constitutional standpoint the adoption of certain normative acts. Thus, for example, the Court held that "\textit{in accordance with Article 148 (4) of the Constitution, the Romanian State authorities have pledged to guarantee the fulfilment of the obligations resulting from the Treaties establishing the European Union, the EU binding regulations and the accession instrument. In this regard, the Government is constitutionally empowered in that, by the means it has at hand, to ensure fulfilment by Romania of the obligations undertaken before the European Union. Thus, the use of emergency ordinances to harmonize national legislation with the community legislation, where the initiation of the infringement procedure before the Court of Justice was imminent, is fully constitutional.}\textsuperscript{21} Even if such infringement procedure was not imminent, specific conditions requiring rapid legislative intervention - such as to avoid negative consequences it would have on competition at EU level, respectively to ensure immediate protection of consumers - were also invoked as justifying the adoption of an emergency ordinance\textsuperscript{22}.

We note that, in the post accession period, the Constitutional Court of Romania has more frequently invoked the case-law of the CJEU, common practice of the Constitutional Court also prior the accession\textsuperscript{23}. We refer to what the specialised literature called "\textit{interpretative tools}\textsuperscript{24}, available to Constitutional Courts and used for the purpose to guide legislator’s action, to explain or to substantiate the latter’s approach and to establish the obligation of a consistent and consequent interpretation of national legislation with EU law.\textsuperscript{25} For example, adjudicating on a regulation concerning the organisation and use of games of chance\textsuperscript{25}, the Court held that "\textit{the case-law of the Court of Justice of the European Union on freedom to provide services under Article 49 EC must be taken into account. Thus, by the Judgment of 3 June 2010}

\textsuperscript{15} Decision no.432/2010, Official Gazette no.17/7 January 2011
\textsuperscript{16} Decision no. 666/2011, Official Gazette no. 502/14 July 2011
\textsuperscript{17} Decision no.688/2011, Official Gazette no.537/29 July 2011
\textsuperscript{18} Decision no.1.289/2011, Official Gazette no.830/23 November 2011
\textsuperscript{19} Decision no.447/2011, Official Gazette no.485/8 July 2011
\textsuperscript{20} Decision no. 1591/2011, Official Gazette no. 80/1 February 2012
\textsuperscript{22} Decision no. 450/ 2012 , Official Gazette no.507/24 July 2012
\textsuperscript{23} D. Piqani, op. cit.
\textsuperscript{24} Idem, p.8
\textsuperscript{25} Decision no.1344/2011, Official Gazette no.32/16 January 2012
in Case C-258/08, Ladbrokes Betting & Gaming Ltd, Ladbrokes International Ltd v. Stichting de Nationale Sporttotalisator, the Court of Justice of the European Union reiterated its case-law in that Member States have a very wide discretionary margin on gambling regulations. [...] the Member States are free to set the objectives of their policy on betting and gaming, in accordance with their own scale of values, and, where appropriate, to define in detail the level of protection sought, the restrictive measures that they impose must nevertheless satisfy the conditions laid down in the case-law of the Court as regards their proportionality (see, to that effect, Judgement of 6 March 2007 in the joined cases C-338/04, C-359/04 and C-360/04, Massimiliano Placanica and others).

1.2 Compliance with the Constitution in the process of harmonization of national law with EU law

Maintaining its reasoning used in settling previous cases, the Constitutional Court held that the obligations which the authorities have under Article 148 of the Constitution must be fulfilled in compliance with the country's Basic Law, the Court thus reserving the right to punish violations of Constitution caused by improper fulfilment of these obligations.

It is a conclusion that emerges, for example, from Decision no.799/2011 on the bill for revision of the Constitution, where, noting that removal of the second sentence of Article 44 (8) of the Constitution, "Legality of acquirement shall be presumed", is unconstitutional, because it has the effect of suppressing a safeguard of the right to property, infringing thus the limits of revision set forth in Article 152 (2) of the Constitution, the Court stressed that "this presumption does not preclude the primary or delegated legislator to adopt, pursuant to Article 148 of the Constitution - Integration into the European Union, regulations allowing full compliance with EU legislation in the fight against crime" (objective envisaged by the initiator of the bill for revision, the particular with reference to the Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of the instrumentalities and property related to crime).

The reasoning of the Court comes to strengthen its previous practice concerning the same provisions, in the new context of reliance upon a European instrument as grounds for the revision, stating again, that no initiative for revision of the Constitution can remove a safeguard of a fundamental right. These safeguards are part of what the specialise literature called the „hard nucleus” of the Basic Law, or enshrining at constitutional level a general principal in the matter of protection of fundamental rights – that of continuous evolution of their regime of legal protection and of the impossibility to go back (cliquer arrière-retour) to a legal regime that is less favourable than the regime enshrined at certain time27. The text of Article 152 (2) of

the Constitution, which unequivocally establishes that „no revision shall be possible” (if it leads to the suppression of any of the citizens' fundamental rights and freedoms, or their safeguards) is not liable for any exception or exemption.28

By another decision, the Constitutional Court of Romania found unconstitutional a normative act transposing a Directive of the European Parliament and of the Council of the European Union (Law no.298/2008 regarding the retention of the data generated or processed by the public electronic communications service providers or public network providers, as well as for the modification of law 506/2004 regarding the personal data processing and protection of private life in the field of electronic communication area), mainly for lack of clarity and precision, holding that "limiting the exercise of the right to privacy and secrecy of correspondence and freedom of expression, [...] must take place in a clear, foreseeable and unambiguous manner so as to remove, as much as possible, the potential arbitrariness or abuse by the authorities in this area." The Court's reasoning set forth in detail all drafting deficiencies of the impugned normative act, also by reference to the standards set by the European Court of Human Rights in its case-law.29

What is remarkable in this case is the avoidance of any possible conflict between the two legal systems, as the reasoning part of the decision is exclusively related to the domestic regulatory shortcomings in relation to the Constitution of the country. We could even consider this decision as a form of judicial dialogue, as long as the Constitutional Court's reasoning is fully compliant with the statements included in the CJEU case law which held that „each Member State is bound to implement the provisions of directives in a manner that fully meets the requirements of clarity and certainty in legal situations imposed by the Community legislature, in the interests of the persons concerned established in the Member States. To that end, the provisions of a directive must be implemented with unquestionable legal certainty and with the requisite specificity, precision and clarity."30 Legal certainty "requires that the effects of Community law must be clear and foreseeable, the purpose of this requirement is to ensure that legal relationships governed by Community law remain foreseeable".31 “Member States must establish a specific legal framework in the area in question, by adopting provisions capable of creating a situation which is sufficiently precise, clear and transparent to enable individuals to ascertain their rights and to rely on them before national courts”.

28 although delivered in a different context and with regard to different principle provisions, for analogy purposes, one of the landmark decisions of the Constitutional Court of Germany, aimed at preserving constitutional identity, could be mentioned here. We refer to Decision dated 30 June 2009 on the Lisbon Treaty, where this court held that ” The constituent power has not granted the representatives and bodies of the people a mandate to change the constitutional principles which are fundamental pursuant to Article 79.3 GG. The Federal Constitutional Court shall be the guarantor thereof” par.217, 218, see http://www.bundesverfassungsgericht.de/en/press/bvg09-072en.html;
29 Sunday Times v. the U.K., 1979, case Rotaru v. Romania, 2000
30 C 354/99, Commission v. Ireland, 18 October 2001, par. 27
31 Takis Tridimas, The General Principles of EU Law, Oxford EC LAW Library, p. 244

2.1 Delimitation of powers at jurisdictional level.

After a short period of inconsistent practice the Constitutional Court of Romania clearly established the issue on the relationships of jurisdiction between national courts and the constitutional court in matters of constitutional interpretation and application with priority of EU law (also with reference to CJEU jurisdiction), thus implicitly setting the obligations on national courts in this context.

Thus, in a case-law that became consistent, the Court held that it does not have the jurisdiction "to examine whether a provision of national law is compatible with the Treaty establishing the European Community (now the Treaty on the Functioning of the European Union) in terms of Article 148 of the Constitution. Such jurisdiction, namely to establish whether there is a contrariety between national law and EC Treaty, belongs to the ordinary court, which, to reach a fair and lawful conclusion, ex officio or upon request of the party, may submit a question for the purposes of Article 234 of the Treaty establishing the European Community to the Court of Justice of the European Union. If the Constitutional Court deems itself competent to rule on the conformity of national legislation with the European we could reach a possible conflict of jurisdiction between the two courts, which, at this level, is inadmissible". Similarly, the Court also stated that "the task to apply with priority binding Community rules in relation to national legislation belongs to the ordinary court. It is a matter of a application of the law and not a constitutional matter", as well as that "in the relationship between Community law and national law (except for the Constitution), one can speak only of priority in terms of application of the former, matter falling within the jurisdiction of the courts."

2.2. Preliminary questions procedure - legal mechanism to ensure coherence in the EU

Developing the above considerations in a series of recent decisions - where constitutional review was exerted over a regulation on which the CJEU had adjudicated following a preliminary question submitted by a Romanian court - the Court

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33 Decision no.1.596/2009, Official Gazette no.37/18 January 2010 or Decision no.1289/2011, Official Gazette no.830/23 November 2011
34 Decision no.137/2010, Official Gazette no.182/22 March 2010
35 similarly, for example, the Constitutional Court of Austria, see for details Gabriele Kucsko-Stadlmayer, Constitutional review in Austria- Traditions and New Developments, paper presented at the International Conference dedicated to the 20th anniversary of Constitutional Court of Romania, available on the RCC website – www.ccr.ro
adjudicated on the relationships of jurisdiction between the CJEU, national courts and the Constitutional Court with regard to the preliminary procedure mechanism.

Concerning the jurisdiction of the Court of Justice of the European Union, the Constitutional Court held that, answering a preliminary question, it interprets applicable provisions of the Treaty on the functioning of the European Union, and it does not verify the compatibility of the domestic provisions with the Treaty. The European Court «has no jurisdiction to give a ruling aimed at finding the validity or invalidity of national law. Consequence of a certain interpretation of the Treaty may be that a provision of national law is incompatible with European law. The effects of this preliminary ruling are set forth in case law of the Court of Justice of the European Union, namely that "the interpretation which, in the exercise of the jurisdiction conferred upon it by article 177 [Article 267 of the Treaty on the functioning of the European Union], the court of justice gives to a rule of community law clarifies and defines where necessary the meaning and scope of that rule as it must be or ought to have been understood and applied from the time of its coming into force"».

As for the national court and its jurisdiction, the preliminary question is seen and promoted as a form of judicial dialogue in order to seek "technical" justification for solutions rendered by the national judge, without prejudice to his competence or independence. "Dialogue between judges" at the initiative of the national judge, is, in fact, according to the opinions expressed in the specialised literature, "the cornerstone" of the European legal order, whose observance is ensured also by the courts, pursuant to Article 148 (4) of the Constitution and, also, an indispensable tool for the national judge in achieving his duties from this perspective.

This even more as compliance with the obligations imposed by Article 148 of the Constitution by the courts involves also the accountability of the national judge, issue taken into account by the Constitutional Court when it had to examine regulations concerning sanctioning of misconduct of judges and prosecutors. In this regard, it is worth noting the reasons of the Court in terms of limits of jurisdictions – national courts, Constitutional Court an CJEU, when it analysed the national judge’s obligation to comply both with the decisions rendered by the Constitutional Court, respectively the decisions rendered by High Court of Cassation an Justice (appeals in the interest of the law), placed by the authors of the referral in a somehow antagonistic relationship with the CJEU judgements. With reference to both categories of decisions, the Court found that they "give expression to a specific power, strictly provided by law.

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38 see I. Deleanu, cited paper, p. 38
39 for an analysis of the role of the national judge in the integration process see Imelda Maher, National Courts as European Community Courts, - HeinOnline- 14 Legal Stud.226, 1994
40 Decision no.2/2012, Official Gazette no.131/ 23 February 2012
Therefore, contrary to the complaint, compliance therewith does not prevent the exercise of legal powers of the courts. In order to adjudicate, courts must consider and apply both the provisions of domestic law and the international treaties to which Romania is a party, according to the differentiations required by Article 20 and Article 148 of the Constitution."

The reasoning focused on this type of dialogue is developed by including in its scope also the constitutional court. By the same decisions, the Court, stating that "it is not a positive legislator or court with jurisdiction to interpret and apply EU law in disputes concerning subjective rights of citizens", admits that it can use a rule of European law in the constitutional review as a rule interposed to the reference one, provided that certain conditions are complied with: "this rule must be sufficiently clear, precise and unambiguous in itself or its meaning must have been clearly, precisely and unequivocally established by the Court of Justice of the European Union [...] the rule must be circumscribed to a certain level of constitutional relevance so as its legal content might support the possible infringement by the national law of the Constitution - the only direct reference standard in its review of constitutionality. In such a case the Constitutional Court approach is distinct from the simple application and interpretation of the law, jurisdiction belonging to courts and administrative authorities, or from any issues of legislative policy promoted by the Parliament or Government, as appropriate." The Court stipulated that "In the light of cumulative set of conditionality, it is up to the Constitutional Court to apply or not in its constitutional review the judgements of the Court of Justice of the European Union or to formulate itself preliminary questions to determine the content of the European norm."41.

It appears that by those decisions, the national constitutional judge is taking another step towards strengthening the relationship between the two legal systems and promoting a pluralist conception. This attitude is related – according to the Court – to the "cooperation between European and national constitutional court and the judicial dialogue between them, without bringing into question aspects of establishing a hierarchy between these courts".42

2.3 Reference standards for carrying out constitutional review. The Charter of Fundamental Rights of the European Union

If given the aforementioned reasons, the Court acknowledges that a rule of European law can be used in the constitutional review as a norm interposed to the reference standard - which can only be the Constitution - under certain conditions,
there is a situation in which the rule of European law may constitute, through a provision of the Constitution, the reference standard itself for the constitutional review.

Thus, taking into account the provisions of Article 20 of the Constitution relating to International Treaties on Human Rights, which establish the obligation to interpret constitutional provisions on fundamental rights and freedoms in accordance with international treaties on human rights to which Romania is a party and the priority of international regulations in cases of inconsistencies, except where the national law contains more favourable provisions, the Constitutional Court ruled on the Charter of Fundamental Rights that it is, in principle, applicable in the constitutional review "insofar as it ensures, guarantees and develops constitutional provisions regarding fundamental rights, in other words, as far as the level of protection thereof is at least at the level of constitutional norms on human rights." This is also about a form of judicial dialogue with the European Court, as long as application of the Charter as reference standard in its review of constitutionality complies with the interpretation and meaning established by the CJEU.

Thus, for example, analyzing the scope and conditions of Article 53 of the Constitution - Restriction on the exercise of certain rights or freedoms, the Court has made an interpretation consistent with the Charter, using as an instrument the case-law of the CJEU. The Court noted in this regard that the formula used by Article 52 (1) of the Charter, which states that "Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others" is inspired by CJEU case law according to which "restrictions may be imposed on the exercise of those rights, in particular in the context of a common organisation of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, disproportionate and unreasonable interference undermining the very substance of those rights" (Judgment of 13 April 2000 in Case C-292/97, paragraph 45).

The same importance is granted to the Charter also by other European constitutional courts, such as the Austrian Constitutional Court which, in a decision issued in March 2012, stated that the rights established in the Charter can be invoked directly before the Constitutional Court. A study on this case shows that it represents a review in relation to EU law integrated into the constitutional review. A possible consequence of this form of review could be even creating the framework for submission of preliminary questions by the Constitutional Court for interpretation of the Charter.

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43 Decision no.871/2010, Official Gazette no.433/28 June 2010
44 Decision no.53/2012, Official Gazette no. 234/6 April 2012
45 Gabriele Kucsko-Stadlmayer, cited paper
3. The public authorities’ constitutional loyalty duty in fulfilling their obligations resulting from the accession instrument

Fulfilment by Romanian authorities of certain obligations resulting from membership to the European Union led also to legal disputes of constitutional nature. We refer to the dispute between the President of Romania and the Prime Minister in relation to the matter of representation of the country in the European Council. In this case, the Court had to determine the rights of the respective authorities pursuant to the Constitution, but in relation to the obligations imposed by the relevant European instrument, an occasion to make some direct connections between the two plans – national and European, this time at institutional level. Certainly the Court’s interpretation was related to constitutional provisions, but by means of this interpretation the Court imposed also a certain concept on the institutional relationships in terms of relevant EU instruments, establishing thus the obligations incumbent on national public authorities pursuant to Article 148 (4) of the Constitution.

Without analysing the settlement of this dispute and the reasons for such settlement, we only wish to underline the Court’s statement, i.e. ”in carrying out their powers, authorities must be concerned with the proper functioning of the rule of law, thus having the duty to cooperate in the spirit of the rules of constitutional loyalty”, a statement made also in another somehow related decision, in terms of subject matter, where the Court declared unconstitutional certain provisions of the Law concerning cooperation between Parliament and Government in the area of foreign affairs.

IV. Conclusions

The brief case law analysis reveals, in terms of constitutional development in the context of EU integration, that there is consistency in national constitutional case-law regarding: the relationship between national law and EU law, the Constitutional Court's jurisdiction, the courts’ jurisdiction and the CJEU jurisdiction within this relationship, including the possibility to submit an application to the CJEU for a preliminary ruling, within the constitutional review of the rules transposing into national law EU regulations and reference standards, for the purposes of carrying out the review.

Given the set coordinates, national constitutional court is one of the main actors of the process of Europeanization of national legal system, in respect for national constitutional identity, conclusion demonstrated by the numerous cases in which the Court adjudicated on the obligations of national authorities from the perspective of Article 148 of the Constitution and on the modality to meet these obligations.

The general concept that emerges from all this practice is that of promotion of mutual respect, in other words, constitutional tolerance based on understanding the phenomenon of multiple constitutional systems in the EU, which must coexist and relate within and in relation to the independent legal order which it entails.

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46 Decision 683/2012, Official Gazette no.479/12 July 2012
47 Decision no.784/2012, Official Gazette no.701/12 October 2012