THEORETICAL AND JURISPRUDENTIAL ASPECTS CONCERNING THE CONSTITUTIONALITY OF THE COURT APPEAL ON POINTS OF LAW

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Abstract

The institution of the appeal on points of law has the role to ensure a unitary law interpretation and enforcing by the law courts. The legal nature of this procedure is determined not only by the civil and criminal normative dispositions that regulate it. In this study we bring arguments according to which this institution is of a constitutional nature, because according to the Constitution, the High Court of Cassation and Justice has the attribution to ensure the unitary interpretation of the law by the law courts. Thus are analyzed the constitutional nature consequences of this institution, the limits of compulsoriness of law interpretations given by the Supreme Court through the decisions ruled on this procedure, and also the relationship between the decisions of the Constitutional Court, respectively the decisions of the High Court of Cassation and Justice given for resolving the appeals on points of law. The recent jurisprudence of the Constitutional Court reveals new aspects regarding the possibility to verify the constitutionality of the decisions given in this matter.

Keywords: *Appeal on points of law/ the compulsoriness of the law interpretations for the law courts/ / The control of constitutionality of the decisions given for resolving the appeals on points of law/ Supremacy of Constitution*

1. Introduction

Such as its name is showing and such as results from the legal dispositions in the matter (Article 514-518 Civil Procedure Code and Article 471 - 474 of the new Criminal Procedure Code, respectively Article 414^2 -414^5 in the Criminal Procedure Code in force), the appeal on points of law is no remedy way with effects on the situation between the parties in the trial, but to ensure the unitary interpretation and application of the substantial and procedural laws throughout the entire country. Such a legal institution would not be required if all appeals shall be heard by the High Court of Cassation and Justice. In such a case the Supreme Court may achieve the unitary interpretation and application of the law. The normative regulations in force however establish the competence of the law courts and appeal courts in solving the appeal, which creates the possibility to have a different interpretation, even a wrong one of the laws. Therefore the legal institution of the appeal on points of law has the purpose to ensure in a unitary mode across the entire country, the observance of the will of legislator expressed within the law spirit and letter.

We consider that the legal nature of the appeal on points of law arises only from the civil and criminal procedural provisions which consecrate it.

In compliance with the provisions of Article 126 paragraph (3) of the Constitution "The High Court of Cassation and Justice ensures the unitary interpretation and application of the law by other law courts, according to its competencies". The decisions given in the proceeding of appeal on points of law represents the main means through which the Supreme Court fulfills the constitutional duty to ensure a unitary interpretation and application of the

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law. That's why, the appeal on points of law is not only a civil and criminal procedural institution, but at the same time, has its legal basis in the constitutional norm named above.

The constitutional nature of the appeal on points of law has two main consequences. The first refers to the obligation of the legislator to regulate in the civil and criminal proceeding, the juridical instrument through which the High Court of Cassation and Justice may accomplish its constitutional prerogative to ensure the unitary interpretation and application of the laws by all law courts. The legislator has at his disposition two possibilities: the first may be to regulate the exclusive competence of the Supreme Court in resolving all appeals and the second, the procedure this is currently regulated, of the appeal on points of law. The constitutional provision contained by Article 126 paragraph 3 of the Constitution represents a guarantee of the fundamental law. Given the principle of conformity of the whole law with the constitutional norms, the legislator cannot regulate the material competence of the Supreme Court without having instituted also the procedural instrument through which this will ensure the unitary interpretation and application of the laws by all law courts.

The second consequence refers to the necessity of compliance of the decisions ruled in this proceeding with the constitutional norms. The decisions of the High Court of Cassation and Justice shall be limited strictly to the interpretation of the law. The Supreme Court may complete, amend or repeal the regulations contained by the law. Otherwise it will be violated the principle of separation and balance of powers in the state, explicitly consecrated by the provisions of Article 1 paragraph 4 of the Constitution, because the law court exceeded the limits of judicial powers and would manifest itself as a legislative authority. We will refer to this consequence in chapter II of the present study.

2. Paper Content

One of the most important aspects of the legal regimes that is specific to the appeal on points of law is the compulsoriness of law interpretation by the courts.

The constitutionality of the regulations that consecrates in the civil and criminal matter the obligation of the decisions given in the proceeding for appeal on points of law was contested both in the doctrine[1] as throughout the exceptions of non-constitutionality solved by the Constitutional Court, in relation to the provisions of Article 124 paragraph (3) of the Constitution, which establishes the principle of judge submission only to the law. The Constitutional Court in its jurisprudence has constantly stated that the statutory provisions that foresee the courts' obligation of the "law interpretations" given by the Supreme Court through the decisions rendered points of law are constitutional[2]. Our Constitutional Court has held that: "The principle of submission to the law, according to Article 123 paragraph (2) of the Constitution (presently Article 124 paragraph (3) n.m.) has not and cannot have the significance of a different applying, or even in contradictory of the same legal provision based solely on the subjectivity of the interpretation belonging to different judges"[3]. However it has been noted that: "The ensuring of the unitary character of the practice of law is imposed also by the constitutional principle of equality of the citizens before the law and public authorities, therefore including before the legal authorities, because this principle would be otherwise severely affected, if in the application of one and the same law, the solution rendered by the

[1] Ion Deleanu , Tratat de Procedură Civilă, "Civil Procedure Treaty" C.H. Beck Publishing House, Bucharest, 2007,pg. 349; Ion Deleanu, Sergiu Deleanu, Jurisprudența și reverimentul jurisprudențial, "The Jurisprudence and jurisprudential Revival" the Publishing House " Universul Juridic", Bucharest, 2013, pg. 93-97.

[2] See also: the Decision no 1014 /2007 published in the Official Gazette, part I, no. 816 November 29th no. 2007, Decision no. 928/2008 published in the Official Gazette, part I, no. 706 on October 17th 2008, the Decision no. 528 /1997 published in the Official Gazette, part I, no 90 on February 26th 1998, the decision no. 221/2010 published in the Official Gazette, part I, no 270 on April 26th 2010.

[3] Quoted works Decision no 528/1997.

law courts would be different or even in contradictory[4]. A topic of interest for our research study and for the substantiation of the constitutional court according to which: "The establishing of the compulsoriness character of the interpretations of the law issues judged by means of appeal on points of law, is only giving efficiency to the High Court of Cassation and Justice, contributing thus to the lawful state's consolidation [5].

In the separate opinion formulated by the Decision no. 221/2010 it is claimed that the normative provisions establishing the compulsoriness for the courts of the decisions rendered on points of law, are contrary to the provisions of Article 124 paragraph (3) of the Constitution. The author of the separate opinion emphasizes: "In this meaning we believe that providing a unitary interpretation has the significance of taking the needed actions for the unitary understanding, interpretation of the norm by each judge, of its letter and spirit, and not of offering/ imposing a certain solution, to the interpretation in a certain sense. The judge cannot be brought in the situation of an obedient executor, in relation to the interpretations given in resolving the appeal on points of law".[6]

From the analysis of the jurisprudence of the Constitutional Court, of the doctrine in the matter, but also of the regulations in the fundamental law, one can conclude that no constitutional text foresees clearly the compulsoriness of the decisions rendered by the High Court of Cassation and Justice, on points of law. Therefore, the compulsory character of such decisions for the law courts is not of a constitutional nature. The compulsoriness is conferred exclusively by the special regulations, to which we referred to in the Civil Procedure Code and, respectively the Criminal Procedure Code. We appreciate that it is necessary to achieve the distinction between the constitutional nature of the appeal on points of law, and on the other side, the constitutional character of the compulsoriness of the decisions ruled for the law courts.

The binding character of the "interpretation of law" given by the High Court of Cassation and Justice cannot be considered as an equivalent with the compulsoriness of the law norm. Therefore, the judge, in the work of interpretation and application of law, will have into consideration, firstly, the regulations with normative character, including the constitutional ones and, in subsidiary, the interpretation and the "clarifications of law" conferred through the procedural decisions given in the procedure of appeal on points of law. We appreciate that the procedural provisions that establish the compulsoriness character of such decisions are constitutional related with the provisions of Article 124 paragraph (3) of the Constitution, only in so far as it is interpreted that such an obligation does not prejudice the constitutional principle according to which the judges must grant priority and give efficiency to the law norms applicable in solving the cause and only in subsidiary, to the decisions rendered in this procedure.

At this time a scientific approach of the issue mentioned above would appear useless, having into consideration that the legislator eliminated, at least for the judges, any possibility to reflect upon this topic, because through the Law no. 24/2012 were brought important amendments in the sphere of disciplinary judicial misbehaviors of the judges, so that Article 99 letter **s** of Law 301/2004, in the form acquired throughout the normative act named above, establishes as a disciplinary misconduct "the non complying with the decisions given by the High Court of Cassation and Justice in resolving the appeal on points of law". It is regrettable such a brutal intervention of the legislator which, in our opinion, affects not only the scientific approach upon such a delicate matter, but it limits unconstitutionally the independence of the judges. The above named law test raises a concrete practical problem for the judges, namely how will the law court proceed in situation there are contradictions between a decision of the

[4] Quoted works Decision no 907/2007.
[5] Quoted works Decision no. 221/2010.
[6] Tudorel Toader, dissenting opinion to Decision no 221/2010.

Constitutional Court and a decision of the High Court of Cassation and Justice given in resolving the appeal on points of law, both applicable in a case deduced to the judgment?

In the literature in specialty this problem was indicated previously to amending and completing of Law no. 303/2004 by Law no. 24/2011, having into consideration the concrete situation when the law courts faced such contradictions between the decisions of the Constitutional Courts and the decisions of the High Court of Cassation and Justice given in the procedure of appeal on points of law, both categories of decisions having as matter the same text of law applicable in a case deduced to the judgment[7]. The author of the study which we are referring to concludes in the sense that: "Therefore in the given situation, the law courts, ascertaining contradictions between the decision of the Constitutional Court and the one of the united sections of the High Court of Cassation and Justice, must comply to those stated by the Constitutional Court and remove those decisions decided by the United Sections of the High Court of Cassation and Justice"[8]. The solution we consider as logic and justified as a judicial reasoning but presently inapplicable, having into consideration the law text that sanctions as disciplinary misconduct both equally the non-abiding of the decisions of the High Court of Cassation and Justice regarding the compulsory interpretations given for resolving some law issues, as the decisions of the Constitutional Court. It is obvious that the judge is facing a insoluble dilemma and he is subjected to a constraint that is severely prejudicing his independence, because no matter what solution will be rendered, he will be liable for disciplinary responsibility for failure, as the case may be, either of the decision of the Constitutional Court or of the decision of the High Court of Cassation and Justice. It should be noted that no legal provision in the procedure for the judicial control is sanctioning the non-abiding of the compulsoriness of the decisions of the Supreme Court that were given in the appeal on points of law.

In the civil matter, there are no legal norms sanctioning the nonobservance of the decisions of the Supreme Court given on points of law. By way of interpretation it may be inferred that such a sanction in the regulations of Article 488 paragraph (1) point 8 Civil Procedure Code, establishing as cassation grounds of the appealing decision, the violation or wrong application of the substantive law norms. Nevertheless, such an interpretation of the above named law texts is debatable, as such as emphasized in the literature in specialty, the very interpretation itself of the Supreme Court will be implicitly brought into question, eventually it could be invoked only as argument in supporting the "legal" grounds of cassation. In any case, it by itself does not constitute such grounds[9].

In the Criminal Proceeding Code the cases to which cassation appeal can be done are regulated by the provisions of Article 438. In our opinion neither of these cases can be interpreted in the meaning that it is sanctioning the nonobservance of the compulsoriness of decisions given by the High Court of Cassation and Justice, through which was solved an appeal on points of law. In the actual criminal trial regulation, only by the interpretation way is possible to reach to the conclusion of sanctioning by the appeal court of non-abiding such a decision of the High Court of Cassation and Justice. Having into consideration the provisions of Article 385^9 paragraph (1) point 17^1 Criminal Procedure Code according to which the decisions are subject to cassation, if they are contrary to the law or when through the decision it was done a wrong application of the law. It worth mentioning that such dispositions were abrogated by Article 1 point 185 of the Law no. 356/2006, but by Decision no. 783 / 2009 the Constitutional Court declared such regulations as unconstitutional. For our research topic the

[7] For development see Cristina Ștefăniță, Manner to proceed of the law courts that face a contradiction between the decision of the Constitutional Courts and a judgment ruled by the High Court of Cassation and Justice, in the United sections, for the resolving of an appeal on points of law, in "the Law" no. 4/2010, pp. 119-135.
[8] Cristina Ștefăniță, quoted works p.125.
[9] Ion Deleanu, Sergiu Deleanu, , "The Jurisprudence and jurisprudential Revival" the Publishing House " Universul Juridic", Bucharest, 2013, pp. 92-94.

arguments of the Constitutional Court are of interest, according to which, Article 146 letter d of the Constitution does not exempt from the constitutionality control the abrogation legal provisions and, in case it is ascertained their unconstitutionality, they cease their legal effects within the conditions foreseen by Article 147 paragraph 1 of the Constitution, and the legal provisions that constituted the substance of abrogation, keep producing effects.

Another aspect we wish to emphasize is that the Supreme Court has no legitimacy in conferring the force of an authentic interpretation to the legal norms. Such an interpretation is of the exclusive competence of the legislator. In the procedure of appeal on points of law, the High Court of Cassation and Justice makes a synthesis of the decisions given in relation to a certain law issue, ruling on its correctitude, conferring at the same time, a compulsory interpretation" of the law aspects solved differently by the law courts.[10]

The question arises if the decisions handed down by the Supreme Court in this procedure are formal springs of law. Constantly, in the literature in specialty the notion of spring of law is defined as "the form of expressing the judicial norms that are determined by their enactment or sanctioning by the state" [11]. In our opinion, the decisions rendered by the High Court of Cassation and Justice cannot be springs of the law because they cannot contain law norms. Moreover, in our legal system the jurisprudence is not a formal spring of law. In this respect, the Constitutional Court stated: "The interpretative solutions given in the appeal on points of law named "interpretations of law" cannot be considered springs of law, in the usual meaning of this term[12]. Such interpretative solutions, constant and unitary, that do not concern certain parties and have no effect on the prior given solutions that entered the res judicata, are invoked by the doctrine as a judicial precedent, being considered by the legal literature "secondary springs of law" or "interpretative springs". In relation to the foregoing, we express our opinion that these decisions can be considered as sources of law, but not formal springs of law, opinion consistent with the Constitutional Court jurisprudence.

Another aspect we consider relates to the time at which the decisions given in the resolution of the appeals on points of law, start enforcing judicial effects. According to the procedural provisions "the decisions are published in Romania's Official Gazette – Part I, and on the internet page of the High Court of Cassation and Justice. These are brought to the knowledge of the courts also by the Ministry of Justice". From the interpretation of the legal dispositions results that such decisions cannot produce judicial effects with their ruling and their effects are only for the future. The decisions' publishing on the internet page of the High Court of Cassation and Justice and their communication to the courts by the Ministry of Justice cannot be considered as moments since when they start producing effects because the legislator did not foresee expressly this fact, and much more, neither of the above named procedures has presently in the Romanian Law the judicial value of the act of communication or publishing. We consider that the moment since when the decisions ruled in the procedure of appeal on points of law start producing judicial effects is the one of publishing in the Official Gazette. This solution is imposed by the general binding character of the decisions, and also by their quality as source of the law, which clearly distinguish them in terms of legal nature from other types of judgments.

The Civil Procedure Code, by Article 518, comes to clarify, at least in the civil matter, the issue of the effect of decisions on points of law. The normative regulations state that: "the decision on points of law ceases its applicability since the date of amending, abrogation or finding unconstitutional the statutory provision that made the object of the interpretation". The Criminal Procedure Code does

[10] For developments see Ion Deleanu, Sergiu Delenau, quoted works p.95.

[11] Ioan Muraru, Elena Simina Tănăsescu, Drept constituţional şi instituţii politice, "Constitutional Law and Political Institutions" C.H.Beck Publishing House, Bucharest, 2003, vol. I, p. 26. For developments see also Radu Motica, Mihai Gheorghe, Teoria generală a dreptului, "The "General Theory of Law" Alma Mater Publishing House, Timişoara, 1999; Nicolae Popa, Teoria generală a dreptului, "General Theory of Law" Actami Publishing House, Bucharest, 1999.

[12] Decision no . 93/200, published in the Official Gazette part I, no. 444 on September 8th 2000.

not contain such regulations and therefore, in the criminal matter, remains opened the problem of applicability of the decisions on points of law in the hypothesis of abrogation or finding unconstitutional the statutory provision that made the object of the interpretation. It is necessary that the legislator intervenes to regulate in a unitary manner this aspect in the sphere of criminal justice.

Before referring to the recent jurisprudence of our constitutional court in this matter, we consider appropriate to our research topic to emphasize briefly the nature of the relationships between the decisions of the Constitutional Court and the decisions of the High Court of Cassation and Justice ruled on points of law[13]. The first distinctive note is with regard to the effects of the two categories of decisions: the decisions of the Constitutional Court are compulsory in general, therefore not only for the law courts and including for the Supreme Court, but also for any other law topic. In contrast, the decisions of the High Court of Cassation and Justice ruled in the procedure of appeal on points of law are compulsory only for the law courts. Another aspect that distinguishes the two categories of legal acts is represented by the different nature of litigations that are resolved. The decisions of the Constitutional Court are rendered only to resolute a constitutional litigation and have as object the verification and analysis of the consistency or not of the legal norms examined with the Fundamental Law. The decisions of the Supreme Court are exclusively given with the purpose of a unitary interpretation and application of the law by the law courts and they concern the compliance or not of the law courts' practice in the authentic meaning of the legal provisions examined.

The Constitutional Court stated constantly in its jurisprudence that starting with 2000, in the exercising of the responsibilities provided by Article 126 paragraph (3) of the Constitution, the High Court of Cassation and Justice has the obligation to provide the unitary interpretation and application of the law by the law courts, with the observance of the fundamental principle of the separation of powers consecrated by Article 1 paragraph (4) of Romania Constitution. The Supreme Court does not have the constitutional competence to establish, amend or abrogate the judicial norms with law powers, or to do their control of constitutionality. The interpretations given by the Supreme Court to the law matters is mandatory for the other courts in as far as its objective is to promote a correct interpretation to the legal norms in force, and not to elaborate new norms. One cannot consider that the decision rendered by the High Court of cassation and Justice, in such appeals, would represent a task aiming at the law making prerogative, situation in which the named text would violate the provisions of Article 58 paragraph 1 of Constitution. [14]

Starting from a comprehensive jurisprudence analysis, the authors of a recent study[15] emphasize: "The decisions thus ruled have the role to give a correct interpretation to law matters over which they have appeal on points of law; however, proceeding to such an analysis, the High Court of Cassation and Justice is forbidden to violate the competence of the legislative power or executive power or that of the Constitutional Court. Therefore, this instrument is and remains a tool for the law interpretation and application, so like any other court decision, it cannot constitute a spring of law in the Romanian constitutional system"[16]. We share the view expressed.

It is necessary to notice the limits of the control of constitutionality related to the decisions ruled by the Supreme Court in the procedure of appeal on points of law.

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[13] For developments see Ion Deleanu, Sergiu Deleanu, quoted works, pp 97-98.

[14] See Decision no 93/2000, published in the Official Gazette part I, no. 444 on September 8th 2000 and Decision no 838/2009 , published in the Official Gazette part I, no 461 on July 3rd 2009.

[15] Mihaela Senia Costinescu, Karoly Benke, The effects of the general compulsory character of the decisions of the Constitutional Court regarding the decisions ruled by the High Court of Cassation and Justice in resolving the appeal on points of law, in the "Law" no. 4/2013, pp 134-162.

[16] Mihaela Senia Costinescu, Karoly Benke, quoted works. p. 135.

Constantly, until recently, the Constitutional Court refused to arrogate such a power, emphasizing the limits for constitutionality control in respect to the decisions ruled by the Supreme Court in the procedure for appeal on points of law. The Constitutional Court stated that a decision rendered on points of law cannot constitute an object of censorship of the constitutional litigation court[17]. Recently the Constitutional Court by Decision no. 854/2011[18] confirmed its previous case law. The Constitutional Court stated that " in regard to the censuring of the provisions of a decision given in an appeal on points of law, it cannot constitute an object of exception of unconstitutionality, being from this perspective, inadmissible , because the constitutional litigation court, in agreement with the provisions of Article 146 of the fundamental law, has not the competence of censoring the constitutionality of the statutory decisions, no matter if they are rule in the interpretation of some common law matters or in view of a unitary interpretation or application of the law". There are some nuance aspects in the constitutional court jurisprudence. Thus, quite recently the Constitutional Court emphasized: "The circumstance that throughout a decision given in an appeal on points of law, a certain interpretation is given to a legal text, is not to be converted in a non-receiving ending that obliges the Court, which despite its guarantor role of the Constitution supremacy, not to analyze the text in question, in the interpretation given by the Supreme Court"[19].

The recent doctrine expresses a similar point of view, in the meaning that the Constitutional Court has the competence to establish the non constitutionality of the statutory norm in the interpretation given by the High Court of Cassation and Justice:"Having into consideration those mentioned above, it comes out that the High Court of Cassation and Justice, being held by the decisions of the Constitutional Court on the track of a decision rendered in resolution of an appeal on points of law, cannot establish the application of an interpretation which *per se* would give a sense of unconstitutionality to the norm interpreted. Therefore the Court has the competence to establish the unconstitutionality of the norm in the interpretation given by the High Court of Cassation and Justice in the situation in which:

-The Supreme Court by interpreting the norm disobeyed an interpretative decision ruled by the Constitutional Court in regard to that statutory norm;

- The Supreme Court by interpreting the norm exceeded the jurisdiction of the law legislative power (judicial power n. m.);

- The Supreme Court interpreted that norm in a manner capable to breach the fundamental rights and freedoms". ☒

Nevertheless it is acknowledged the jurisdiction of the Constitutional Court to declare the unconstitutionality of the law norm in the interpretation conferred through the decision ruled by the High Court of Cassation and Justice, but not the unconstitutionality in itself of the decision through which was resolved the appeal on points of law.

The Decision no. 206 on 29th of April 2013 of the Constitutional Court[20] represents in our opinion, a legal revival in the matter of the jurisprudence of the Constitutional Court, because it clarifies the relationship between the decisions of this Court, and on the other side, the decisions of the High Court of Cassation and Justice ruled on points of law, and also a reconsidering of the competence of the Constitutional Court to censor under the aspect of this decision's constitutionality.

From considerations of the decision to which we made referral it comes out that the Constitutional Court was informed about the exception of non-constitutionality of the provisions of Article 414^5 paragraph 4 of the Criminal Procedure Code. The authors of the

[17] Decision no 409 on November 4th 2003, published in the Official Gazette part I no 848 on November 27th 2003.
[18] Published in the Official Gazette, part I, no 672 on September 21st 2011.
[19] Decision no. 8 on January 18th 2011, published in the Official Gazette part I, no. 186 on March 17th 2011.
[20] Published in the Official Gazette part I, no 350 /13th of June 2013.

non-constitutionality exception consider the text criticized as unconstitutional, because it establishes the binding compulsory nature of the interpretations given in the law matters, judged by the High Court of Cassation and Justice by means of appeal on points of law, and thus are violated the provisions of Constitutions regarding the separation and balance of the powers in the state, the equality before the law, the free access to the justice and last, the role of the Parliament as a sole legislative authority.

Concretely, the authors of the information towards the Constitutional Court have in consideration the decision no. 8/ 2010 given by the High Court of Cassation and Justice, in the procedure of appeal on points of law, by which it was admitted the appeal made by the General Attorney of the Prosecution besides the High Court of Cassation and Justice with regard to the consequences of the decisions of the Constitutional Court no. 62 / 2007 on the activity of the provisions of Articles 205, 206 and 207 of the Criminal Code. The Supreme Court established that: "The rules incriminating the insult and defamation contained by Article 205 and 206 of the Criminal Code, and also the provisions of Article 207 of the Criminal Code regarding the proof of truth, abrogated by the provisions of Article 1 point 56 of the Law no. 278/2006, provisions declared unconstitutional through the decision no. 62 on January 18th 2007 of the Constitutional Court, are not in force".

At the end of this comprehensive and pertinent argumentation, the Constitutional Court admits the exception of unconstitutionality having as objective the provisions of Article 414^5 paragraph 4 of the Criminal Procedure Code and finds that the "interpretation given to the the law matters, judged by the decision of the High Court of Cassation and Justice - United Sections no. 8 on October 18th 2010 … is unconstitutional, contravening to the provisions of Article 1 paragraphs 3, 4 and 5 and Article 126 paragraph (3), Article 142 paragraph (1) and Article 147 paragraph (1) and (4) of the Constitution and the decision of the Constitutional Court no. 62 on January 18th 2007". In support of this solution the Court notes that it is imposed the sanctioning of any interpretation of the statutory norms criticized for unconstitutionality that regulates the obligation of the clarifications given in the law matters by means of appeal on points of law, in the sense that it would offer to the Supreme Court the possibility that by this way, within the grounds of an infra-constitutional norm, to give compulsory interpretations that contravene to the Constitution and to the Constitutional Courts' decisions. From the contents of the decision clearly results that our Constitutional Court ruled on the constitutionality of the decision of the High Court of Cassation and Justice through which solved an appeal on points of law. It is a radical change of the previous jurisprudence through which constantly were rejected as inadmissible the complaints with constitutionality of such decisions.

The decision no. 206/2013 of the Constitutional Court presents a technical and practical importance for many aspects, of which we remember:

1. The Constitutional Court declared itself competent to rule on the constitutionality of the decisions delivered by the High Court of Cassation and Justice in the proceeding of appeal on points of law, which fact changes the previous jurisprudence of the Constitutional Court. We appreciate that the solution is correct even if neither the Basic Law nor the the special law for the Constitutional Court's organizing foresee expressly such a material prerogative. The legal basis is that any legal act of interpretation of such a judicial norm, mostly when it is about a compulsory judgment of a law court, cannot be dissociated by the judicial norm interpreted. In consequence, the Constitutional Court ruling on the constitutionality of the legal provisions that establish the compulsoriness of the decisions rendered in the appeal on points of law, has the competence to examine concretely any judgment of the High Court of Cassation and Justice, that confers an interpretation to a text of law and establishes a compulsory interpretation of law for the law courts. There is no „non-receiving ending" in the event that the author of an exception of unconstitutionality is

invoking the unconstitutionality of a decision rendered by the High Court of Cassation and Justice in the proceeding of appeal on points of law.

2. The Constitutional Court clarifies the relationships existing between the decisions of this law court, and on the other side, the decisions ruled by the High Court of Cassation and Justice. The interpretation conferred to the infra-constitutional law texts and the compulsory interpretations of law of the Supreme Court cannot contravene either to the Constitution or to the decisions of the Constitutional Court.

3. We appreciate that new possibility opens for the notification of the Constitutional Court in the procedure of exception of unconstitutionality. Thus the participants in the civil or criminal suits or court, ex officio, may appeal to the Constitutional Court, a plea of unconstitutionality, having as object the statutory regulations, but with specific reference to a decision of the High Court of Cassation and Justice in the proceeding of appeal on points of law, if appreciated that throughout of the compulsory interpretations of the law, the constitutional regulations or the decisions of the Constitutional Court are contravened. In such a circumstance, the Constitutional Court can ascertain the constitutionality of the the legal regulations mentioned in the exception of unconstitutionality, but may rule on the unconstitutionality of the decisions through which is solved the appeal on points of law, to the extent they conflict with the provisions of the Constitution or with the Constitutional Court decisions.

4. This decision, the ideas contained in the motivation constitute an argument for the legitimacy of the common law courts to examine the constitutionality of some legal acts, other than those that are subject to the exclusive jurisdiction of the Constitutional Court. Obviously the examination of constitutionality does not always equate with the right of the courts to rule on the constitutionality of such legal acts.

The recent jurisprudence of some Law Courts confirms such an interpretation regarding the possibility for the referral of the Constitutional Court with the verification of constitutionality of a law text in the interpretation conferred to it by the High Court of Cassation and Justice as a result of a settlement of an appeal on points of law.

The Court of Appeal Pitesti by the Criminal Concluding no. 876/R on December 2013 ordered the referral of the Constitutional Court with the exception of unconstitutionality raised by the Indicted, regarding the provisions of art 86/4 paragraph I in relation to item 83 paragraph I of the previous Criminal Code, in the interpretation conferred by the decision I/2011 of the High Court of Cassation and Justice, pronounced in solving an appeal on points of law.

Relevant for our research theme are the following aspects arising from the considerations of the court decision. The judicial court held admissible the request for referral to the Constitutional Court in relation to the provisions of art. 29 Law No. 47 / 1992, republished and with referring to decision No. 206/2013 of the Constitutional Court. It held that the referral of the Constitutional Court for the exception of unconstitutionality, having as object a decision of the High Court of Cassation and Justice pronounced in the procedure of appeal on points of law, is admissible, even if the provisions of art. 146 of the Constitution and respectively, those included in the Law no. 47/ 1992 republished, do not expressly regulate such a competence of the constitutional court. The decision of the Supreme Court is an act of interpretation of a judicial norm and therefore, makes one common body with the judicial norm which they interpret. Consequently, the examining of constitutionality of the legal text has as object, implicitly the examining of the interpretative act constitutionality.

The second argument to which the court refers to in justifying the admissibility of the request for the referral of the Constitutional Court refers to the jurisprudence of the constitutional controlling court. The decision No. 206/2013 of the Constitutional Court has the value of judicial precedent in relation to which it can be argued the admissibility of the

referral. It is mentioned in the decision of the Court of Appeal Piteşti: "therefore the Constitutional Court returned to its jurisprudence and ruled out that it has competence to adjudicate also over the decisions of the High Court of Cassation and Justice given in the procedure of appeal on points of law".

We appreciate as pertinent the arguments of the Court of Appeal Piteşti having into consideration the mandatory character of the decisions of Constitutional Court, in compliance with the provisions of art. 147 paragraph (4) of the Constitution. Certainly the compulsoriness of the decisions does not transform them into formal springs of law, but can be a juridical source to argue in favor of such a solution.

The case is in pending for solving by the Constitutional Court.

3. Conclusions

In relation to the foregoing, we appreciate that the judge has the possibility to notify to the Constitutional Court, for ascertaining the unconstitutionality of a decision ruled on points of law, certainly by invoking the statutory regulations interpreted throughout the respective decision, with referral to the constitutional norms violated by the High Court of Cassation and Justice through the compulsory interpretation given and, such as the case be, with referral to the decisions of the Constitutional Court whose general binding effect was not observed by the Supreme Court by the judgment ruled in resolving the appeal on points of law.

It is obvious that, under the conditions mentioned before, deduced from the contents of the decision no. 206/2013, the Constitutional Court may find unconstitutional such a decision. Worth mentioning that the decision of the Constitutional Court being binding has as a lawful consequence the cessation of the effects of the decision of the High Court of cassation and Justice for all law courts and not only for the specific case deducted concretely to the judgment. Therefore this is another termination situation of the effects of the decisions ruled for resolving the appeals on points of law.

In the concept of the Romanian constituent legislator the control of constitutionality done by the Constitutional Court has as objective only the law as a legal act of the Parliament, or the statutory regulations with a legal force equal with that of the law. In relation to this aspect in the doctrine is claimed that the issue of the control of constitutionality does not arise in the same terms for the legal acts with administrative character or the judicial acts of the law courts. The control of lawfulness and implicitly that of the constitutionality of the legal acts issued by the administration authorities or the law courts is performed within a judicial control, in compliance with the material competences of the law courts[21].

Such a legal reality, which is determined by the rules of Constitution, leaves outside the control of legality and implicitly of constitutionality, categories of important legal documents. We consider the decisions of the High Court of Cassation and Justice in solving appeals on points of law. As noted before the decisions ruled by the Supreme Court in this procedure, throughout the solutions adopted, may be unconstitutional at least by exceeding the limits of the judicial powers. The unconstitutionality of these legal acts may consist in the unjustified restraining of the exercising of some rights and fundamental liberties recognized and guaranteed by the Constitution or in violating some of the Constitutional Court decisions.

The lack of statutory regulations that establish the control of constitutionality by means of the Constitutional Court over the decisions ruled in the procedure of appeal on points of law, is likely to allow the excess of power in the Supreme Court's activity with serious consequences on the compliance of the lawful state requirements, citizens' fundamental human rights and freedom.

[21] Ioan Muraru, Elena Simina Tănăsescu, quoted works, vol I, p. 68.

There are other categories of legal acts that not only that they do not make the subject of the Constitutional reviewing but are also exempted from the judicial review. According to the provisions of Article 126 paragraph 6 of Constitution and Article 5 of the Administrative Litigation Law no. 554/2004, the acts that concern the relations with the Parliament and acts of military Command, cannot be subject to Constitutionality reviewing. This matter requires a separate analysis. In this context we emphasize only the fact the contemporary reality has shown the existence of legal acts of the executive in the relationship with the Parliament that are likely to violate seriously the letter and spirit of Constitution. The Parliamentary control of these acts is not sufficient to ensure the supremacy of Constitution and the requirements for democracy of the lawful state.

For our topic of research it is important to emphasize that there are Constitutions stipulating the competence of the Constitutional Courts to exercise the constitutionality review over other categories of individual and normative legal acts and not only on laws. Thus, the Belgian Constitutional Court is competent to exercise control, when being notified about a jurisdiction regarding the compliance with the rules for the division of powers between state authorities. The German Constitutional Court has the competence to exercise a subsequent specific control over some legal or administrative acts at the notification of the court or the direct notifying from the citizens, by constitutional appeal. Similarly, Spain Constitution on 1978 stipulated the competence of the Constitutional Court, by way of "de amparo" appeal proceeding, to verify the the constitutionality of some final judgments. An illustrative example is Hungary, where the Constitutional Court exercises a posteriori abstract or concrete on delegated acts and on ministerial acts.

All these arguments entitle us to support, along with other authors[22],, the proposal for ferenda law that in the light of revising the Constitution to be provided the competence of the Constitutional Court to exercise the constitutional control on the decisions ruled by the High Court of Cassation and Justice in the appeal on points of law procedure and on the legal acts exempted from the judicial reviewing. The subjects of law that may notify the Constitutional Court in such a procedure may be: the General Prosecutor of the Prosecution besides the High Court of Cassation and Justice, the People's Lawyer and courts.

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[22] See Mircea Criste, Considerations regarding the necessity to revise some texts of România Constitution concerning the Constitutional Court in the "Law" no. .6/2013, p. 152-172. The author emphasizes: "Having into consideration the effects of the decisions ruled by the High Court of Cassation and Justice in the matter of appeal on points of law and more recently of the decisions through which are given solutions in principle of some law matters, related to the experience of some European countries, we believe that should be conferred to the Constitutional Court also the competence of censoring the constitutionality of some of the High Court decisions" p 170.