

## THE EFFECTS OF THE DECISIONS OF THE CONSTITUTIONAL COURT RULING ON THE EXCEPTION OF UNCONSTITUTIONALITY

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**Abstract:** Starting from the role of the Constitutional Court as guarantor of the supremacy of the Constitution, this study analyzes the effects of decisions issued by the Constitutional Court in the exercise of subsequent constitutionality control, identifying both general and specific procedural aspects retained in its vast jurisprudence on the matter.

**Keywords:** constitutionality review; decisions; general effects; procedural effects.

### Introduction

The provisions of art. 147 para. (1) and (4) of the Constitution constitute the base of the matter regarding the general effects produced by the decisions of the Constitutional Court in resolving the exception of unconstitutionality, these regulating, on the one hand, specific aspects, and on the other hand, regulations of principle, based on which the constitutional court, through its decisions, has developed and enriched through jurisprudence the values of the principle of the supremacy of the Constitution, while ensuring a high degree of protection of fundamental rights and freedoms.

”The role of the Constitutional Court is that of a defender of respect for the Constitution, and its strength derives precisely from the fact that its very provisions consecrate its role and place distinct from that of the

other state authorities. [...] Consequently, the control of constitutionality represents even a way of «tempering» parliamentary and governmental legislative initiatives that would contravene the Constitution. Combined with the prerogative to judge the exceptions of unconstitutionality raised by litigants, in defense of their rights and freedoms, the picture of the importance of this body is complete; they reveal and justify in contemporary constitutional law the major value of the principle of the supremacy of the Constitution and its application in fact” (Constantinescu, Muraru, Deleanu, Vasilescu, Iorgovan, & Vida, 1992, p. 305).

The exception of unconstitutionality is an efficient and defensive procedure, in which you wait for the law to be applied to you to appeal on. By itself, the exception of unconstitutionality concerns a process or a litigation of a civil, administrative, criminal, or commercial nature, initiated in which, by challenging the act of concrete application of the law, the interested party requests that the legal provision on which the application act is based be found to be unconstitutional and, as such, must be removed. Naturally, the procedure for invoking and resolving the exception of unconstitutionality is regulated in detail by law, being at the disposal of the litigants (Muraru, & Tănasescu, 2009, p. 268).

In another opinion, the exception of unconstitutionality represents an incident arising in the course of a trial before a court, consisting in the determination of the constitutional legitimacy of a legal provision in a law or ordinance on which the trial of the case depends on (Deaconu, 2025, page 292).

In the Romanian system of concrete control of the constitutionality of laws, the triggering of the control *a posteriori* operates only incidentally, through the exception of unconstitutionality raised before the courts or commercial arbitration, and not through direct notification to the Constitutional Court by any person.

It is significant to mention that, through the solutions issued, the Constitutional Court does not resolve the case on the merits, the latter attribute being left to the courts.

## **General and Procedural Effects of the Decisions of the Constitutional Court**

Similar to the effects produced by a court decision, the effects of Constitutional Court decisions, in exercising constitutionality control through the exception of unconstitutionality, present similarities but also elements that differentiate them both in terms of substantial and procedural effects.

**Obligation.** According to the provisions of Article 147 paragraph (4) of the Constitution: "The decisions of the Constitutional Court are published in the Official Gazette of Romania. From the date of publication, the decisions are generally compulsory and have power only for the future."

To clearly establish the legal force of the decisions of the Constitutional Court and to eliminate intolerable practices of some courts in the future, the new constitutional text establishes that they "are generally compulsory." (Constantinescu, Iorgovan, Muraru, & Tănasescu, 2004, p. 325; Muraru, & Tănasescu, 2009, p. 274; Muraru, & Tănasescu, 2008, p. 1420).

In accordance with these constitutional aspects, the provisions of Law No. 47/1992 regulate in art. 11 paragraph (3): "The decisions, rulings and notices of the Constitutional Court shall be published in the Official Gazette of Romania, Part I. The decisions and rulings of the Constitutional Court are generally compulsory and have power only for the future."

Underlining the nature of the decisions rendered in resolving the exceptions of unconstitutionality, the provisions of the Art. 31 of Law no. 47/1992 states in paragraph (1): "The decision by which the unconstitutionality of a law or ordinance or of a provision of a law or ordinance in force is found to be final and compulsory", and in paragraph (3) the constitutional norm contained in Art. 147 Paragraph (1) is taken over.

Therefore, the decisions of the Constitutional Court are not subject to appeal, not being the subject to any form of control.

The presented points converge towards the conclusion that the decisions pronounced by the Constitutional Court in exercising its control *a posteo*, produce effects generally binding without being limited only to the parties to the dispute in which the exception of unconstitutionality was invoked. In other words, the admission decision is binding and applies to all legal subjects covered by the text declared unconstitutional.

In the aforementioned sense, it is necessary to highlight the fact that, by admitting an exception of unconstitutionality, the legislator cannot adopt a solution contrary to that adopted by the decision finding unconstitutionality, nor can it maintain in the active fund of the legislation the provision found to be contrary to certain provisions of the fundamental law.

The effects of decisions issued as a result of the constitutional review of laws or Government ordinances are established by Art. 147 Para. (1) of the Constitution, which provides that "The provisions of the laws and ordinances in force, as well as those of the regulations, found to be unconstitutional, cease to have legal effects 45 days after the publication of the decision of the Constitutional Court, if, within this period, the Parliament or the Government, as the case may be, do not reconcile the unconstitutional provisions with those of the Constitution. During this period, the ones found to be unconstitutional are suspended by law".

From the above-mentioned provisions it follows that although they are no longer in force, during the period of the suspension of law, they no longer produce legal effects, the Parliament or the Government, as the case may be, having the obligation to bring the provisions declared unconstitutional into line with the provisions of the Constitution, either by repealing or amending them in the sense indicated above.

**Opposability.** Concerning this effect, the Constitutional Court has issued numerous decisions rejecting as inadmissible exceptions of unconstitutionality, in situations where it had previously ruled in the sense of admitting the exception and the decision had not yet been published in the Official Gazette, which implies that the decision is enforceable, from the moment of its pronouncement and not from the moment of its publication in the Official Gazette, both against the

constitutional court and against any other authority with powers in the field of legislation.

In this sense, the provisions of Art. 23 Paragraph (3) second sentence of Law no. 47/1992 provides that: "The provisions found to be unconstitutional by a previous decision of the Constitutional Court cannot be the subject of the exception [...]" . The inadmissibility of the exception, being a defining element of the competence of the constitutional court, is exclusively after the previous pronouncement by the Constitutional Court of a decision admitting the exception with the same object and the finding of the unconstitutionality of the provisions referred, again, to the constitutionality review.

**The authority of res judicata.** By Decision no. 479 of 20 October 2025<sup>1</sup> the Court held that the binding force accompanying the Court's jurisdictional acts – and therefore also the decisions – attaches not only to the operative part, but also to the considerations on which it is based (see, in this regard, Decision no. 414 of 14 April 2010, published in the Official Gazette of Romania, Part I, no. 291 of 4 May 2010, Decision no. 903 of 6 July 2010, published in the Official Gazette of Romania, Part I, no. 584 of 17 August 2010, and Decision no. 1,039 of 5 December 2012, published in the Official Gazette of Romania, Part I, no. 61 of 29 January 2013). The Court also held that no other public authority may challenge the considerations of principle resulting from the jurisprudence of the Constitutional Court, which is obliged to apply them accordingly, compliance with the Court's decisions is an essential component of the rule of law.

By Decision no. 895 of December 17, 2015<sup>2</sup> the Constitutional Court established that: "the legislator, violating the authority of res judicata and the *erga omnes* effects of the decision to establish unconstitutionality, acted in a manner contrary to the constitutionally

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loyal conduct that it must demonstrate towards the constitutional court and its case law. Since compliance with the case law of the Constitutional Court constitutes one of the values that characterize the rule of law, the Court finds that the constitutional obligations resulting from its case law circumscribe the framework of future legislative activity; [...], by adopting a legislative solution similar to the one found, in the precedent, to be contrary to the provisions of the Constitution, the legislator acted *ultra vires*, violating its constitutional obligation resulting from Art. 147 Para. (4).

**Analyzing the effects in connection with the activity period of the provisions declared unconstitutional and the moment at which the exception was resolved.** The legal effects that the norm produces must be analyzed both for the period of activity of the legal norm, and for the period following it if the legal effects produced have not yet expired. Such a finding is supported by the fact that a legal norm that had a limited application in time can only be applied about legal relationships born and extinguished during its period of activity or to those that were born during this period, but which have not yet expired for various reasons; only in the latter case does the idea of continuity concerning the production of the aforementioned legal effects concern the effects produced during the period of activity of the norm that are still reflected on the personal situation of the author of the exception, proof of the fact that the respective legal relationship has not expired.

The Court, by Decision no. 766 of 15 June 2011<sup>1</sup>, regarding the unconstitutionality of provisions that are no longer in force, established that "they do not produce retroactive effects, but exclusively for the future. The unconstitutional provisions will no longer apply in cases in which the exception of unconstitutionality was invoked, nor in the cases pending before the courts in which the respective provisions are applicable. As such, the effects of the admission decision are limited exclusively to the application in time of the sanctioned provision, which

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is denied by the ultraactivity based on the principle of *«tempus regit actum»*, and not on the existence of the norm in positive law, which, following the abrogation or reaching the deadline occurring before the moment when the constitutionality review is carried out, has passed into a passive state. In other words, the decision of the Court by which the exception of unconstitutionality is admitted is generally binding and has power only for the future in all legal situations in which the norm that is no longer in force continues to produce its unconstitutional legal effects, by virtue of the principle *«tempus regit actum»*“.

Therefore, the decision will apply in all cases in which the exception was raised, regardless of whether it was finally resolved or not, as well as in cases finally resolved in which the same exception was invoked but in which it was rejected as inadmissible in relation to the provisions of art. 29, paragraph (3) of Law no. 47/1992.

By Decision no. 1422 of 20 October 2011<sup>1</sup>, the Court held that the repeal of the measure of suspension of rights is accompanied by the regulation of new causes of review in civil and criminal matters, respectively, such as to ensure the parties the specific guarantees of the right to a fair trial. Thus, if the exception of unconstitutionality is admitted and the law, ordinance or provision of a law or ordinance or other provisions of the contested act, which, necessarily and obviously, cannot be dissociated from the provisions mentioned in the notification, have been declared unconstitutional, and, until the publication in the Official Gazette of Romania, Part I, of the decision of the Constitutional Court, the decision by which the case in which the exception was invoked was resolved has become final, the persons provided for by law may request the review of this decision. [...] Different from what was shown in the aforementioned decision, the Court notes that, indeed, in practice, situations difficult to resolve may arise as a result of the elimination of the legal stay of the case during the resolution of the exception of unconstitutionality. However, this does not amount *ab initio*

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with the unconstitutionality of the criticized legislative solution, so that the courts, through their practice, as well as the legislator, as the case may be, must find solutions that accompany the relationship between the courts and the constitutional court and that do not affect in any way the authority of the decisions of the Constitutional Court or the interests of the parties to the process when the Court is notified of an exception of unconstitutionality.

Currently, new cases of review of court decisions are regulated, as follows:

- in civil matters, Art. 509 Para. (1) point 11 of the Code of Civil Procedure, according to which: "Revision of a decision pronounced on the merits or which evokes the merits may be requested if: [...] 11. After the decision became final, the Constitutional Court ruled on the exception invoked in that case, declaring the provision that was the subject of that unconstitutional exception";

- in criminal matters, Art. 453 Para. (1) letter f) of the Code of Criminal Procedure according to which: "the review of final court decisions, about the criminal aspect, may be requested when: [...] f) the decision was based on a legal provision which, after the decision became final, was declared unconstitutional as a result of the admission of an exception of unconstitutionality raised in that case, in the situation where the consequences of the violation of the constitutional provision continue to occur and can only be remedied by reviewing the decision rendered".

The decision finding the unconstitutionality of a law constitutes the basis for the retrial of the case in favor of the party that invoked the exception of unconstitutionality in a civil trial, and in a criminal trial, for the retrial of the case in all trials in which the conviction was pronounced based on the legal provision declared unconstitutional (Duculescu, Călinoiu, & Duculescu, 1997, p. 433).

Regarding the effects of decisions rejecting the exception of unconstitutionality, there are no regulations in this regard, so that, by referring to the case in which the exception was invoked, it can be stated that the effects occur only with respect to the case in which it was invoked.

According to the provisions of art. 518 and art. 521 paragraph (4)

of the Code of Civil Procedure, as well as the provisions of art. 4741 and art. 4771 of the Code of Criminal Procedure, the decision resolving the appeal in the interest of the law and the prior decision to resolve legal issues ceases to be applicable on the date of the unconstitutionality of the legal provision that was the subject of the interpretation.

## **Conclusions**

The unconstitutional finding decisions are part of the normative legal order, as a result of which the provisions declared unconstitutional cease to apply for the future.

The effects of the decisions of the Constitutional Court represent a fundamental guarantee of constitutional rights that ensure legal certainty and citizens' trust in the legal system, a prerequisite for respecting the separation of powers in the state, thus contributing to the consolidation of the rule of law.

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