

Conference of European Constitutional Courts XIIth Congress

The relations between the Constitutional Courts and the other national courts,
*including the interference in this area
of the action of the European courts*

**Report of
the Constitutional Court
of the Republic of Moldova**

I. The Constitutional Court, the other courts and the constitutionality review

A. The judicial organization of the State

1. The judicial system

1. - According to Art. 115 of the Constitution in the Republic of Moldova justice is administered by the Supreme Court of Justice, the Court of Appeal, the County Courts and the District Courts. Certain types of cases may be dealt with, as in pursuance to the law, by specialized courts (economic, military). **(see attachment no. 1).**

The judicial competence of the courts of law in the Republic of Moldova is provided for by the Law on the Judicial Administration, the Law on the Supreme Court of Justice, the Law on the Economic Courts of Law, the Law on the Military Courts of Law, as well as the Code of Civil Procedure, the Code of Penal Procedure, the Code on Administrative Contravention, the Law on the Administrative Affairs in Litigation, and is established in the following way: **(see attachment no. 2).**

The Supreme Court of Justice (Art. 44 of the Law no. 514-XIII, Art. 28³ under the Code of Civil Procedure, Art. 27² under the Code of Penal Procedure)

Within the Supreme Court of Justice the following units operate: Civil Chamber, Criminal Chamber, Administrative Chamber, the Enlarged Court and other chambers established by the Court Panel according to the nature of cases.

The Supreme Court of Justice through its chambers:

- it hears civil applications and penal cases at first instance assigned to its jurisdiction by the law;
- as a last - appellate court, it hears limited appeals (recurs) against decisions on civil and penal cases delivered at first instance by the Court of Appeal and the Supreme Court of Justice and limited appeals (recurs) against decisions issued by the Court of Appeal, as an appellate court, as well as other cases as provided by law;
- it also hears limited appeals (recurs) against decisions on administrative cases pronounced at first instance by the Court of Appeal;
- it hears, within the limits of its competence, special appeals, including the limited appeals for annulment of the rulings, against the judgments delivered by the parties or by the Prosecutor General and appeals in the interests of the law, issued by the President of the Supreme Court of Justice or by the Prosecutor General;
- it seeks rulings from the Constitutional Court, either of its own motion or at the request of the lower courts, on the constitutionality of judicial acts;
- it resolves cases in which the lawsuit is suspended, as well as appeals on transfer of cases to another court;
- it resolves conflicts of interest among the judicial instances;
- it ensures the standardization of judicial practice, analyses judicial statistics and provides, of its own motion, explanations concerning the issues on legal practice in so far as, they do not involve an interpretation of laws and have no mandatory nature for judges;

- it affords judges methodological assistance with regard to the application of the law;
- it exercises, within the limits of its jurisdiction, the responsibilities deriving from the international treaties to which Moldova is a party;
- it exercises other obligations as provided for by the law.

The Court of Appeal (Art. 36 under the Law no. 514-XIII, Art. 28² of the Code of Civil Procedure, Art. 27¹ of the Code of Criminal Procedure)

- it exercises original jurisdiction in cases assigned by the law to its competence and it hears appeals on administrative affairs against administrative rules delivered at first instance by the bodies of central public administration, the National Assembly of Gagauzia (Gagauzia-Yeri – an autonomous territorial unit), as well as against prefect's dispositions, the administrative rules issued by the persons with private rights of the relevant level being assimilated to public authorities;
- as an appellate court, it rules on ordinary appeals (apel) against civil and criminal judgments delivered at first instance by the County Courts and Military Court, except the judgments concerning offences for which the law provides for a non-custodial sentence;
- as a last - appellate court, it hears the limited appeals (recurs) against civil judgments delivered by the County Courts and Military Courts, which are not subject to ordinary appeal; it rules on limited appeals (recurs) against criminal judgments delivered by the County Courts, as appellate instances, and against judgments handed down by the Military Courts concerning offences for which the law provides for a non-custodial sentence; and as for the cases of administrative affairs, it deals with limited appeals (recurs) against judgments pronounced at first instance by the County Courts;
- it rules, within the limits of its jurisdiction, on cases subject to special forms of appeal;
- it resolves conflicts of competence between County Courts, or between District and County Courts.

The County Courts (Art. 30 under the Law no. 514-XIII, Art. 28¹ of the Code of Civil Procedure, Art. 27 of the Code of Penal Procedure, Art. 282¹ of the Code on Administrative Contravention)

- they exercise original jurisdiction in civil and penal cases assigned to their jurisdiction by the law, and in cases implying administrative affairs, it rules, at first instance, on appeals against administrative rulings issued by the authorities of public administration from municipalities, towns and districts, as well as by the county councils, the council and the mayor's office of Chisinau municipality, by the prefects' office and their civil servants, and by the persons with private rights of the relevant level being assimilated to public authorities, except the cases assigned under the law to the Court of Appeal competence.
- as an appellate court, they hear ordinary appeals (apel) against civil judgments delivered at first instance by the District Courts and Municipal Courts, they also rule on appeals against penal judgments delivered at first instance by the District Courts, except the judgments concerning offences for which the law provides for a non-custodial sentence;
- as a last - appellate court, they rule on limited appeals (recurs) against civil judgments delivered by the District Courts and Municipal Courts, which are not subject to ordinary appeal; they hear limited appeals (recurs) against penal judgments passed at first instance by the District Courts, in cases regarding the offences for which the law provides for a non-custodial sentence, as well as against other judgments, which according to the law are not subject to ordinary appeal; they hear limited appeals (recurs) against judgments on

administrative cases handed down at first instance by the District Courts; they also deal with cases on administrative contravention;

- they resolve and hear special appeals assigned to their jurisdiction by the law;
- they deal with conflicts of jurisdiction between District Courts in their county.

The District and Municipal Courts (Art. 26 under the Code of Civil Procedure, Art. 25 under the Code of Criminal Procedure; Articles 209 and 273 of the Code on Administrative Contravention)

As the courts of first instance, they hear appeals concerning civil, family, labour, land relationships etc., and in such cases, where at least one of the parties in litigation is a citizen, except the cases assigned by the law to the competence of the other bodies or courts of law; they deal with cases subject to special forms of appeal, and in matters of administrative affairs, they consider the appeals against administrative rules issued by the authorities of public administration from communes and villages, as well as by their public servants, the persons with private rights of the relevant level being assimilated to public authorities; they also rule on all kinds of appeals concerning criminal cases and administrative contraventions, except those assigned under the law to other bodies.

The Economic Court of the Republic of Moldova is the supreme judicial instance among the economic courts of law (Articles 17-19 under the Law no. 970-XIII, Art. 278¹¹ of the Code of Civil Procedure):

- it deals with cases and applications at first instance, that come under its jurisdiction by law;
- as an appellate court, it hears appeals against judgments given at first instance by the District Economic Courts;
- as a last - appellate court, it rules on limited appeals (recurs) against judgments handed down at first instance by the District Economic Courts that have become final in law, as well as the judgments passed at first instance by the Economic Court of the Republic of Moldova, and the limited appeals (recurs) against the decisions of the Appellate Chamber.

The District Economic Courts (Art. 13 under the Law no. 970-XIII and Articles 27 and 278⁹ under the Code of Civil Procedure):

- they deal at first instance with all kinds of economic litigations, which arise from the juridical, civil, administrative and other relationships, between: 1) legal persons; 2) citizens which are engaged in the entrepreneurial activity without being the legal persons, but having the entrepreneur's status as legal persons, assigned to them as provided for by the law;
- they hear economic litigations with reference: to the divergences which arise while concluding the contracts under the law or suing at law the discrepancies which arise from the contracts' settlement under the mutual agreement between the parties; the default of obligations, or the failure to perform thoroughly the obligations; the acknowledgment of the right to property; the claim from the part of the proprietor or any other legal owner of an asset being in the unlawful possession of another person; the infringement of the right to property or the right to legitimate possession, which is not bound by the deprivation of the right to possess goods; the reparation of damages; the acknowledgment of invalidity of rulings of the public authority and other bodies, which have no legal force and run counter to the law or another normative act, that violate the legitimate rights and interests of whatever organization or citizen; the defense of honour, dignity and professional standing; the acknowledgment of

the failure to carry out a deed or any other unchallenged ruling on the basis of which, one can undisputedly proceed at suing at law; upon application against the refusal or shirk from the State registration of the company in the required terms by the natural or legal person, or in other cases, where such a registration is defined by law; the encashment of fines and other payments from the entrepreneurs, the natural and legal persons by the bodies of public administration or other instances which perform the functions of control, in case the law provides for no any other undisputed manner of encashment; at the insolvency of enterprises, the legal and natural persons; at the ascertaining of deeds which have legal force aimed at setting up, alteration and cessation of the rights assigned to companies, natural and legal persons, which pursue an entrepreneurial activity or any other economic activity.

The Military Courts (Articles 4 and 10 under the Law no. 836-XIII, Art. 26 of the Code of Penal Procedure, Art. 28 of the Code of Civil Procedure)

As a first instance, they hear petitions concerning offences committed by ordinary soldiers, commissioned and non – commissioned officers of the National Army, the carabineer’s troops (paramilitary police) of the Ministry for the Interior and the Service for Information and Security, the soldiers, commissioned and non – commissioned officers of the Department of Civil Defense and the State of Emergency; by the persons from the penitentiary institutions, the persons specified by the law currently in force, as well as by the conscripts. Apart from criminal cases, they deal with civil matters of military units, the natural and legal persons, which involve the reparation of the pecuniary damages caused by military offences and the applications for annulment of the disciplinary sanctions and for restoring in functions of military men, police men and other high ranking persons having the military status.

2. The Constitutional Court

2. – According to Art. 134.1 of the Constitution, the Constitutional Court is the sole authority of constitutional jurisdiction in the Republic of Moldova and is independent of any other body within the judiciary, and obeys only the Constitution.

B. The respective jurisdictions of the Constitutional Court and the other courts in the area of constitutionality review

1. Review of laws and other acts

§ 1. Type of review

The Constitutional Court shall be independent of any other public authority, and it shall be subject only to the Constitution. The goal of the Constitutional Court is to guarantee the supremacy of the Constitution, to ensure the principle of separation of State powers into the legislative, executive and judicial branches and to guarantee the observance of the State’s responsibility towards the citizen and the citizen’s responsibility towards the State (Art. 1 of the Law on the Constitutional Court).

Upon request, the Constitutional Court shall exercise the constitutionality review of laws and decisions of the Parliament, the decrees of the President of the Republic of Moldova, the decisions and standing orders enacted by the Government, as well as the international treaties the Republic of Moldova is a party to. The Constitutional Court settles the exceptional cases of non-constitutionality of the judicial acts referred to it by the Supreme Court of Justice (Art. 135 of the Constitution).

The operation of the Constitutional Court is governed by the Constitution, the Law on the Constitutional Court and the Code of Constitutional Jurisdiction. While delivering its judgments, the Court enforces also the international setting standards, on the reason that by virtue of Articles 4 and 8 of the Constitution, the constitutional provisions on human rights and liberties shall be interpreted and applied in conformity with the Universal Declaration of Human Rights, the covenants and other treaties to which the Republic of Moldova is a party, but wherever disagreements appear between the covenants and treaties on the fundamental human rights concluded by the Republic of Moldova and its domestic laws, priority shall be given to international regulations. The Republic of Moldova pledges to abide by the Charter of the United Nations Organization and the treaties to which it is a party and to observe in relations with other states, the mutually recognized principles and rules of the international law. The coming into force of an international treaty containing the provisions contrary to the Constitution shall be preceded by a revision of the latter (Articles 4 and 8 of the Constitution).

4. – The Constitutional Court is the sole authority of constitutional jurisdiction in the Republic of Moldova, having the exclusive competence and holding the monopoly of constitutionality review over the legal acts. The other acts of public authorities can be contested in ordinary courts of law dealing with administrative litigations, with the view of their lawfulness review.

5. – The Constitutional Court undertakes an *a priori* review in case of an advisory opinion issue on the initiatives of revising the Constitution, and it carries out a subsequent review (*a posteriori*) in case of the constitutionality review of laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and standing orders of the Government, as well as the international treaties to which Moldova is a party.

6. – The Court exercises *an abstract review* in case of the constitutionality review of laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and standing orders of the Government, as well as the international treaties Moldova is a party to;

The Court undertakes *a concrete review* in case of solving the exceptional cases concerning the non-constitutionality of judicial acts petitioned to it by the Supreme Court of Justice;

§ 2. Referral to the Constitutional Court

a. Types of referral

7. – The Constitutional Court exercises constitutional jurisdiction only upon appeal by the subjects provided for in an express manner by the law. (see attachment no. 3)

b. Actions for annulment

8. – Subjects endowed with the right to petition the Constitutional Court can directly access the Court claiming the constitutionality review of laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and standing orders of the Government, as well as the international treaties to which the Republic of Moldova is a party.

9. – Subjects with the right to address to the Constitutional Court (laid down in attachment no. 3) are entrusted the power to request for a constitutionality review only of the normative acts adopted following the entrance into force of the Constitution of the Republic of Moldova – August 27, 1994. Any normative act entered into force, can be subject to constitutionality review at the initiative brought forward by the subjects endowed with such a right, and without any time limit. Pursuant to Art. 42 under the Code of Constitutional Jurisdiction, in case the Constitutional Court handed down a judgment concerning a normative act (partially or completely), a recurred petition is not allowed, but in case the applicant had withdrawn the appeal, a recurred petition can be lodged with the Court following the period of 9 months.

10. – The Constitutional Court has no right to suspend the lawsuit of the normative acts. Simultaneously, the laws and other judicial rules or some of their provisions being pronounced as unconstitutional lose their judicial power, or are rendered as null and void, at the date the Constitutional Court judgment is handed down and cannot be enforced for the future (Art. 28 of the Law on the Constitutional Court).

c. Preliminary issues – plea of unconstitutionality

Who can refer cases to the Constitutional Court?

11. – From among the courts of law, the Supreme Court of Justice and the Economic Court of the Republic of Moldova can submit the petitions to the Constitutional Court, challenging the constitutionality review of laws and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and standing orders of the Government, as well as the international treaties to which the Republic Moldova is a party. As for the preliminary question put forward, the Supreme Court of Justice seeks rulings from the Constitutional Court, either of its own motion or at the request of the lower courts for resolving the exceptional cases of unconstitutionality of the judicial acts.

12. – According to Art. 10 under the Code of Criminal Procedure and Art. 11 under the Code of Civil Procedure, if during the proceedings of the case trial the parties had invoked the plea of unconstitutionality and the court of law ascertains that the judicial ruling which should be applied goes contrary to the Constitution and is laid down in a judicial act which, pursuant to

the Constitution is subject to constitutionality review, then, it can suspend the case consideration and submits the proposal to the Supreme Court of Justice to refer a petition to the Constitutional Court. The Supreme Court of Justice takes this proposal into consideration and making no any statement, it refers the case to the Constitutional Court.

13. – This kind of procedure is not foreseen by the domestic legislation.

14. – The procedure for referral to the Constitutional Court is provided for by point 12.

15. - In pursuance to the domestic legislation, the courts of law are deprived of the right to rule out on the constitutionality or unconstitutionality of the regulation in question.

Screening

16. – According to Articles 39 and 40 of the Code of Constitutional Jurisdiction, the petition is submitted to the Constitutional Court in written form, in the official state language, it has to be well-motivated and enshrines:

- a) the naming of the Constitutional Court as a referred instance;
- b) the naming and the address of the applicant;
- c) the object of the petition;
- d) the circumstances on which the applicant sets up its requirements;
- e) the petition's requirements;
- f) other issues concerning the petition's object;
- g) the catalogue of the enclosed documents;
- h) the signature of the applicant, its code and stamp.

In case the petition does not meet the established requirements, the Chairman of the Constitutional Court accepts the petition, initiating the proposal to the applicant to settle the drawbacks, or to decline the petition. The Constitutional Court can deliver a ruling concerning the cease of the proceedings, if:

- a) the petition has been withdrawn;
- b) the petition does not fall within the Constitutional Court competence;
- c) the plea of unconstitutionality of the normative act in question is settled;
- d) there is a previous judgment of the Constitutional Court on the question at issue; (Art. 60 of the Code of Constitutional Jurisdiction).

From the date of the Court's establishment until December 31, 2000, the aforesaid procedures had been applied to an amount of 60% from the petitions lodged with the Constitutional Court.

Scope of referral of the Constitutional Court

17. - In the courts of law of the common right, the interested parties arise the plea of unconstitutionality in the case trial before the court *a quo* which, subsequently, through the Supreme Court of Justice can refer the case on the plea of unconstitutionality to the Constitutional Court, with the view of exercising the jurisdiction *ad quem*. The Court can be apprised on the opinion delivered by the court of law of the common right, but it cannot be imposed to the Court with the view of passing the judgment. While undertaking the review of

the contested normative act, the Court can deliver judgments concerning other normative acts, whose constitutionality completely or partially depends on the constitutionality of the contested act.

18. - While considering the plea of unconstitutionality, the Court can be referred both on the content of unconstitutionality of the case at issue, and on circumstances which gave rise to this problem.

Relevance of the question

19. – The Court deals with the referrals on the plea of unconstitutionality submitted by the Supreme Court of Justice. The Constitutional Court ascertains the limits of competence itself. So far, there were no records for the petitions' annulment on the ground of lack of competence from the part of court of law, which gave rise to the plea of unconstitutionality.

Interpretation of the question

20. – The Constitutional Court exercises constitutional jurisdiction only upon appeal by the subjects provided for by the Law on the Constitutional Court, and under the conditions of the Code of Constitutional Jurisdiction. During the process of the case examination the Court defines the object of appeal and sets forth the limits of constitutionality review. On the ground of the right enshrined in Art. 6 para. 3 under the Code of Constitutional Jurisdiction, the Court can expand the review of constitutionality over other normative acts, whose constitutionality, completely or partially, depends on the constitutionality of the contested act, and it can deliver judgments concerning these acts as well.

Interpretation of the reviewed regulation

21. – In conformity with Art. 66.c. under the Constitution of the Republic of Moldova, the Parliament is the sole authority entitled to provide legislative interpretations and ensure the legislative unity of regulations throughout the country. The Constitutional Court, pursuant to Art. 135.1.b. of the Constitution is entitled to explain and clarify the constitutional provisions, the Court's judgments being mandatory both for the Court and for the courts of law *a quo*. The courts *a quo* are assigned the right to enforce the legislative norms, but not to explain and clarify them. While undertaking the constitutionality review of an act, the Court exercises the review of its compliance, both with the Constitution and with the Court's interpretations.

Jus supervenies

22. –

Parties

23. - In the proceedings can participate only the parties before the Constitutional Court (the Supreme Court of Justice – the applicant, other subjects, the public bodies, institutions and

organizations, the official bodies or persons the normative acts of which are brought into question), their representatives, the experts and interpreters. The parties are informed by the rapporteur judge of the place, date and time of the session through a subpoena and by handing in the petition's transcript, no later than 10 days before the session itself. The default at the session of the preliminary informed parties does not impede the case examination. In case of a well – motivated default of the parties, or in case the latter ask the Court to adjourn the session, then, the Court's meeting shall be postponed. The parties before the court *a quo* cannot be viewed as parties before the Constitutional Court, these, can only attend the procedure of their own motion.

24. – The legal representatives of parties can be on the basis of a letter of attorney, the lawyers, specialists of the relevant fields and other persons. There is no any counsel for the prosecution, or institutions of lawyers and the public ministry with the Constitutional Court.

Points of law in the constitutional proceedings

25. – The constitutional jurisdiction procedure does not foresee for the definite regulations for the case at issue, but following the judicial precedent, these actions have no any impact on the conduct of the constitutional proceedings. The constitutionality review of a normative act does not depend on the fact of bringing and not bringing about the effects and circumstances. The unleashed process can be ceased only under the law which, however, is not referred to the aforesaid cases. Moreover, the parties before the court *a quo* cannot be viewed as parties in the constitutional jurisdiction proceedings, the subject with the right to petition the Constitutional Court being the Supreme Court of Justice, and the default of a party preliminary informed in the proper way at the Constitutional Court proceedings, does not impede the case examination and judgment delivery (Art. 49 of the Code of Constitutional Jurisdiction).

d. The constitutional appeal (for example: recours d'amparo, Verfassungsbeschwerde, etc.)

Object of the constitutional appeal

26. – As in pursuance to Art. 140.2 under the Constitution of the Republic of Moldova, the judgments of the Constitutional Court are final and cannot be appealed against. The national legislation does not stipulate for a specific manner to lodge an ordinary or limited appeal against the Constitutional Court enactments, and, therefore, the requirements invoked by the applicant cannot be re-examined. Article 72 of the Code of Constitutional Jurisdiction ascertains the manner of revising the Court's judgment and advisory opinion, which can be undertaken only at the initiative of the Constitutional Court, through a decision, handed down with the majority of the judges' votes, in case:

a) new circumstances appeared, unknown at the date of the judgment delivery and advisory opinion issue, and whether these circumstances by their nature can fundamentally change the judgment or the advisory opinion;

b) the provisions of the Constitution, laws, and other normative acts on the ground of which the judgment has been handed down and the advisory opinion has been issued, are amended.

Allowability of the appeal

27. –

28. –

Screening

29. – The answer of the question is provided for by point 16.

Parties

30. – The answer is laid down in point 23.

31. – The answer is enshrined in point 24.

2. Settlement of conflicts between courts

32. - The Constitutional Court is not a branch in the hierarchy of the judiciary in the Republic of Moldova and, therefore, it is deprived of the right to settle the conflicts of competence between the courts.

II. The relations between the Constitutional Court and the other courts

A. The organic link

B. The procedural link

33-34. – The Constitutional Court is the sole authority of constitutional jurisdiction in the State, which guarantees the supremacy of the Constitution, ensures the enforcement of the principle of separation of State powers into the legislative, executive and judicial branches and guarantees the observance of mutual responsibility of the State and of the citizens. By virtue of diverse powers and functions assigned to the Constitutional Court and to national courts of law, some organic or procedural links between them are missing.

C. The functional link

§ 1. The review and its effects

35-36-37. – The effects of the Constitutional Court rulings by their nature are characterized by the fact that, the laws and other legal acts or some of their provisions pronounced as

unconstitutional can lose their judicial force, become null and void from the moment, that the Constitutional Court passes the appropriate judgment to that effect and cannot be enforced for the future. The judicial effects of a ruling or a normative act declared as being unconstitutional are removed by the body which had adopted them. The Constitutional Court judgments are binding for the implementation for all courts of law, producing, therefore, the legal effects for the future. To this end, there were not signaled any difficulties.

38. – The Court's judgments are enforced in the established by the Constitutional Court terms. The damages caused to natural and legal persons through the enforcement of a normative act recognized as being unconstitutional are repaired under the law. The Constitutional Court is apprised of its judgment and advisory opinion fulfillment in the ascertained by the Court terms, and the decision-making factors which, failed to carry into effect in the established terms the Court's rulings, are held responsible under the law.

But the fact that public bodies do not adjust the legislation to the Constitutional Court judgments is a common place.

§ 2. Interpretation by the Constitutional Court

a. The case law of other courts accepted by the Constitutional Court in the exercise of its own jurisdiction.

39. – The Constitutional Court gives interpretations only to the constitutional provisions and while passing the rulings, the Court's procedure is governed only by the Constitution, the Law on the Constitutional Court and the Code of Constitutional Jurisdiction.

b. The effects of the interpretation of the Constitutional Court and the acceptance of the case law of the Constitutional Court by the other courts in the exercise of their own jurisdiction.

40. – Judgments on the interpretation of the constitutional provisions have the same judicial force with that of the constitutional rulings. The failure to abide by the interpretations delivered by the Constitutional Court leads to the nullity of acts to the implementation of which, the interpretation has been disregarded.

41. – Carrying out the interpretation, the Constitutional Court complies with the limits of the interpreted ruling. In the process of interpretation's enforcement, the drawing up of the new rulings which differ from those interpreted is avoided.

42. – The interpretative judgments have supreme judicial force both for the courts of law and public authorities.

III. The interference of the European Courts

A. The Constitutional Court and the other courts vis-à-vis the European Convention on Human Rights and the case law of the European Court of Human Rights.

43. – The Constitutional Court is not directly bound by the case law of the European Court of Human Rights, however, in its activity the Court is also guided by the decisions of the European Court of Human Rights, adopted in conformity with the European Convention.

44. – The European Convention for Human Rights Protection constitutes a guide mark for the Constitutional Court in passing its judgments, especially in cases, where the human rights and liberties are violated.

45. – The constitutional jurisdiction is not a component part of a judiciary of common right, that is why, its involvement before an appeal can be made to the European Court of Human Rights is not binding. Simultaneously, the Constitutional Court can be petitioned against on the constitutionality of a ruling, which has an impact over the case, that follows to be challenged at the European Court of Human Rights.

B. The Constitutional Court and the other courts vis-à-vis the case law of the Court of Justice of the European Communities

46. – The Constitutional Court can consult the case law of the Court of Justice of the European Communities, but this one is not binding upon the course of action of the Court.

47. – The Constitutional Court and other courts of law are deprived of this right.

48. – Pursuant to the domestic legislation, the courts of law can invoke the plea of unconstitutionality through the Supreme Court of Justice, thus, their access to the Court of Justice of the European Communities is not provided for by the legislation in force.