PARTICULARITIES OF THE MODEL OF CONSTITUTIONAL JUSTICE APPLICABLE IN THE REPUBLIC OF MOLDOVA

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This article intends to examine the evolution of the constitutional justice applicable in Republic of Moldova, with the establishment of the Constitutional court, analyzing the key differences between European model of Constitutional court and the mechanism created in the Republic of Moldova over the years, while focusing on the concrete Moldavian historical-political background which had an impact on the shaping of the Constitutional Court.

Key words: *European model, Constitutional Court, Constitution, democracy, constitutional justice, the exceptions of unconstitutionality*

The emergence of constitutional justice in the history of each nation is a sine qua non for the constitution and achievement of all the requirements of the rule of law regulated by the provisions of art. 1 of the Constitution

of the Republic of Moldova. The German scholar Georg Jellinek, author of "A Constitutional Court for Austria", mentions the necessity of a Constitutional Court as a body specialized in the protection of the Constitution [1].

The concept of "constitutional justice" needs to be considered differently from constitutional law as a branch of law, defined as the totality of norms and legal institutions that regulate those social relationships that appear in the process of establishing, maintaining the exercise of public power. Therefore, constitutional justice has the meaning of a set of legal techniques and ways by which the supremacy of the Constitution must be guaranteed [2].

The Constitutional Law Control, theorized by Kelsen (1918), is organized into two major systems: control by a common law jurisdiction, also called the American model and control by a particular and specialized single organ or European model.

Therefore, the European model strengthened in almost all Western European states, gives the Constitutional Court in the light of Hans Kelsen's theory, the role of a body that acts as a complement to the parliamentary assembly and has the role of a "negative legislator".

Applicable to the Republic of Moldova, we consider that the essential functions of the democratic state are established with the adoption of the Declaration of Sovereignty on June 23, 1990, and later on August 27, 1991 by the Declaration of Independence. Regarding the establishment of a Constitutional Court, following the adoption of the Constitution of the Republic of Moldova on 29 July 1994, the Constitutional Court included in its text a special title. Statute of the Constitutional Court as "the unique authority of constitutional jurisdiction" was later completed by the Law on the Constitutional Court of 13 December 1994[3] and the Code of Constitutional Court of 16 June 1995[4].

Establishing the model of constitutional justice applied in the Republic of Moldova, it should be noted that it is in an inseparable connection with the type of the competent authority to exercise the control of the constitutionality of laws, with the attributions of this authority, but also with the procedures applied in the constitutional review process.

The Republic of Moldova institutionalized the European model of control of the constitutionality of laws, exercised by a specialized judicial body – the Constitutional Court. At the same time, the model of constitutional jurisdiction applicable in the Republic of Moldova has its own peculiarities, which derive from the political wishes of the members of the Constituent Assembly, which elaborated the Statute of the Constitutional Court provided by Title VI of the Constitution. One of the peculiarities is taking over the American experience – the procedure for lifting the exceptions of unconstitutionality (also present in the interwar Romanian law) [5], witch solved the dilemma: to admit citizens, directly or indirectly, to constitutional justice.

Thus, the exception of unconstitutionality in the Republic of Moldova does not establish the direct access of the citizen to constitutional justice, as in the German legal system through direct appeal or the Russian Federation through the direct access of the party in a pending trial to a common law court.

As originally was provided in the Constitution, the part to the proceedings had the right to refer the Constitutional Court, through the court examining the case, which in turn could only refer the matter to the Constitutional Court through the Supreme Court of Justice. In addition, the recent access of the citizen to constitutional justice has known a significant transformation in the Republic of Moldova, being allowed the right of any court "as in the diffuse model of constitutional control" to raise the issue of constitutionality, the only distinction being the fact that the final control of constitutionality is exercised by a specialized court – the Constitutional Court.

A substantial approach to the metamorphosis of the exception of unconstitutionality can be achieved by analyzing the case law of the Constitutional Court in this regard. Adopted on May 6, 1997, the Constitutional Court Decision no. 15 repeats the constitutional provisions by which the Supreme Court of Justice is empowered with the right to refer the Constitutional Court except for unconstitutionality, without expressing on the right of the other courts to refer the Constitutional Court directly.

Also, the Constitutional Court didn't pronounce in the mentioned Decision on the relations existing between the courts and the parties to the litigation brought before the court when the exception was lifted. The solution in this regard comes much later through the Constitutional Court's Decision no. 2 of February 9, 2016[6]. After almost 20 years after the application of this procedure, the new interpretation of the Constitution, from 2016, brings significant changes by separating the procedure of raising the unconstitutionality exception into two stages.

The first step is on the common law court, which consists in lifting the unconstitutionality exception in a pending litigation, by the litigants or by the court of its own motion. The second step, of the constitutional litigation, consists in resolving the exception, however increasing the circle of the rights holders to the Constitutional Court, legitimizing this right to all courts.

The new interpretations, which have become applicable since 2016, have considerably contributed to the increase in the number of exceptions raised before the Constitutional Court, which in the future could complicate

the work of the constitutional judge and why not, to reflect on the quality of the Court's judgments. On the other hand, the mechanism created requires the common law judge to verify the cumulative existence of some conditions, without exposing concerning to the referral or the compliance of the contested rules with the Constitution.

Thus, by the abovementioned judgment, the Court has established 4 conditions which are a preventive filter for the admissibility of the exception: the subject of the exception falls within the category of acts contained in Article 135 (1) lit. A) Of the Constitution; the exception is lifted by one of the parties or its representative, or it is indicated that the court of its own motion extinguishes it; the contested provisions must be applied to the case; there is no previous judgment of the Court concerning the contested provisions.

As we can see, the model of constitutional justice applied in the Republic of Moldova has been strongly transfigured over the years, following the case law of the Constitutional Court. Along with this, the transformation of the model applied in the Republic of Moldova was also determined by external factors.

On the international level, we have a convergent evolution of the two classic models of constitutional jurisdiction. On the one hand, European and American models inspire each other by implementing classical elements attributed to the opposite models. On the other hand, the European model in most of the states that have implemented it also contains other procedures for the exercise of constitutionality control than those envisaged by Hans Kelsen in 1920, as is the case with the Republic of Moldova through the exception of the unconstitutionality procedure.

In these circumstances, it can be stated that, during the transition period and the political and constitutional transformations by which the Republic of Moldova passes, the control of the constitutionality of the laws has become the most effective mechanism for controlling the organization of the system of law.

In this process, the constitutional jurisprudence acquires normative valences, having effect both on the entire normative system by constitutionalizing the law, by impregnating all branches of the law with the constitutional values and principles, as well as on the Supreme Law itself.

Moreover, we subscribe to the opinion expressed by the President of the Constitutional Court, Tănase Alexandru, according to which "the evolution of judicial control of laws and its forms has been based most often on the result of the activity of jurisdiction and not on the expression of the will of the legislator" [7], adding that in this activity the Court pursued the goal of the supremacy of the Constitution, giving greater protection of individual rights.

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