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# Some Case Studies Regarding the Application of the Principle of Legal Security in the Jurisprudence of the Constitutional Court of Romania

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**Abstract:** The term legal security, in a doctrinal interpretation, evokes specialist common terms, thus: the retroactivity of the law, the appearance of legality, the appearance of the law, the applicability of the law, the predictability of the law, the legality of incrimination and penalty, legislative inflation, legal acculturation or even the obscurity of the texts of legal rules. A basic feature of the principle of legal security is that the existing legal rules must be predictable, known and understood and that the corresponding legal solutions remain relatively stable and unequivocal. Clarity and sobriety of the legal rule requires that that the text of the law must be formulated clearly, soberly, fluently and intelligibly without syntactical difficulties and obscure or ambiguous passages, and the shape and the aesthetics of expression must not prejudice the legal style, precision and clarity of the provisions of the legal rule. Another essential characteristic of the principle of legal security is that the existing legal rules must be predictable, known and understood and that the corresponding legal solutions remain relatively stable and unambiguous.

**Keywords:** legal rule; legal security; jurisprudence; constitutionality; rule of law

## 1. Introduction

Aimed at a better understanding and a more accurate selection, interpretation and enforcement of internal, European and international legal rules[2] by the state institutions, but also by litigants, it is essential that the drafting of all legislation is of quality, that their editing is made in a uniform, sober, concise, clear, unambiguous and comprehensible manner, according to uniform principles (Top, 2000, p. 101) of presentation and legislative technique, so that all litigants are able to understand all their rights and obligations, and the courts can ensure their compliance.[3]

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[2] The New Civil Code. Art. 4. - (1) In the matters regulated by this code, the provisions regarding the rights and freedoms of persons shall be interpreted and applied in accordance with the Constitution, the Universal Declaration of Human Rights, the covenants and other treaties to which Romania is a party. (2) If there are inconsistencies between the pacts and treaties on fundamental human rights, to which Romania is a party, and this code, international regulations shall have priority, unless this code contains more favorable provisions.
Art. 5.- In the matters regulated by the present code, the norms of the community law are applied in a priority way, regardless of the quality or the statute of the parties.

[3] Art. 36 of Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts, text published in the Official Monitor. of Romania, in force since March 31, 2000. Form applicable from August 25, 2004 to April 20, 2010, being replaced by republishing (r2) of the Official Monitor, Part I no. 260 of April 21, 2010. Form applicable from April 21, 2010.

All these essential requirements can be considered a certain enforcement of the fundamental principles of law provided for and guaranteed by the Constitution, thus:

- the principle of legal security, in that the law must be foreseeable in order for it to be enforced (nemo censetur ignorare legem);[1]
- the equality of citizens before the law, in the sense that the law should be accessible and understood by all, regardless of education and social position in society.[2]

## 2. The Concept of Legal Security and the Principle of Legal Security

The term *legal security*, in a doctrinal interpretation, evokes specialist common terms, thus: the retroactivity of the law, the appearance of legality, the appearance of the law, the applicability of the law, the predictability of the law, the legality of incrimination and penalty, legislative inflation, legal acculturation or even the obscurity of the texts of legal rules. (Lambert, 2003, p. 5).

In fact, this principle of legal security is characterised in that the law must ensure the protection of the subjects of law against a possible danger that can come from the legal rules themselves, against a possible legal insecurity which can be created by the rule of law or which it may create. (François, 1993, p. 10).

Therefore, *the principle of legal security* can be defined as the belief of litigants that the enforcement of legal rules in a particular deed or issue brought before the court is predictable, that the legal rule applicable to the deed or case brought to trial is easily established, the recipients of this rule have the security that a legal provision corresponding to the deed or case brought to trial is enforced, and not another, and that it will be interpreted in a unitary and unequivocal manner, and that a legal rule that has not been made known to the litigants can not be enforced. (Predescu & Safta, 2009).

Regarding the aspect regarding the quality of the legal rule, from its definition (Popa, 2008, p. 123) of a behavioural, general and mandatory rule itself, for the enforcement of which the state uses its force of coercion, some characteristics can be extracted, such as: the legal rule is created with the purpose to impose or prohibit a certain behaviour or to sanction a behaviour inappropriate to the incidental legal rule.

In 1859, the English philosopher John Stuart Mill summarized in the essay "About Liberty" the purpose of the legal rule, stating that "your liberty ends where the liberty of another begins".

Legal rules must not be created in order to create illusive hopes or to cause confusion and ambiguity, they must to have a normative role (Niemesch, 2014, p. 105) and purpose because the lack of these characteristics may diminish the purpose and the role of the rules necessary to society and can induce a series of illusive interpretations on the real effect that is actually pursued through the provisions of the legal rules. In order to truly and accurately know what a legal rule provides, it is sufficient that its text is accessible in a material sense, namely that is only published in order to become accessible, but the text of the legal rule is clear, understandable, in the sense that it is legible, with regard to the sobriety, clarity and precision of the statements and terms, as well as their coherence.

[1] CCR decision no. 903 of July 6, 2010, published in the Official Monitor. no. 584 of August 17, 2010; CCR decision no. 743 of June 2, 2011, published in the Official Monitor. no. 579 of August 16, 2011; CCR decision no. 662 of November 11, 2014, published in the Official Monitor. no. 47 of January 20, 2015.

[2] The Romanian Constitution. Equality in rights; art.16: (1) Citizens are equal before the law and public authorities, without privileges and without discrimination. (2) No one is above the law.

The clarity and sobriety of the legal rule also require that the text of the legislation must be formulated in a clear, sober, fluent and intelligible manner without syntactic difficulties and obscure or ambiguous fragments, and the form and aesthetics of expression must not prejudice the legal style, the precision and clarity of the provisions of the legal rule.[1]

Another feature of the principle of legal security is that the existing rules of law must be predictable, known and understood (Chevalier, 2012, p. 101), and that the legal solutions corresponding to them remain relatively stable and unequivocal. This principle is rather a creation of the ECHR jurisprudence not being expressly consecrated in constitutional law and has the role of the basis of the rule of law, a state which is largely valued depending on the quality and clarity of its laws. Thus, the European Court of Human Rights has emphasized in its jurisprudence, for example in the case of *Marcks v. Belgium, 1979*, the importance of obeying the principle of legal security, considered to be necessarily inherent in both Convention law and community law. The case *Brumărescu v. Romania,* published in Official Gazette no. 414 of August 31, 2000, whereby the ECHR has ruled that one of the fundamental elements of the pre-eminence of the law is the principle of the security of legal relationships, which requires that the solution be definitively given by the courts to a dispute should not be recalled into question.

The principle of legal security has been consecrated and has known a continuous development in European law (Micu, 2007, 108) as well, at the general level of the Member States, as well as in the protection of rights and liberties of persons and, in light of these tendencies, the Court of Justice of the European Union has stated that the principle of legal security is part of the European legal order and must be obeyed by both the institutions of the European Union and the Member States, when exercising their prerogatives conferred by European directives.[2]

In the jurisprudence of the Trial Court, the principle of legal security is also consecrated in the sentence that "the principle of legal security requires that all actions of institution producing legal effects are clear, precise and observe the interests so that it is known with certainty when that action begins to exist and starts to produce legal effects. This requirement of legal security is imposed with particular rigour when it comes to an action likely to have financial consequences, in order to allow the interested parties to know with certainty the obligations imposed on them ". (Auby & Delphine, 2007, 480).

In the Romanian legal system, the Constitutional Court of Romania has decided that the rules of legislative technique, even though "they do not have a constitutional value, (...) by regulating them, the legislator has imposed a series of mandatory criteria for the adoption of any regulation, the compliance of which is necessary to ensure the systematization, unification and coordination of legislation, as well as the content and legal form appropriate for each regulation. Thus, the observance of these rules contributes to ensure a legislation that obeys the principle of the security of legal relationships, having the necessary clarity and predictability". And, for this reason, "the non-observance of the rules of legislative technique causes the occurrence of situations of incoherence and instability, contrary to the principle of the security of the legal relationships in its component regarding the clarity and predictability of the law." [3]

[1] Art. 8 of Law no. 24/2000 regarding the norms of legislative technique for the elaboration of normative acts, text published in the Official Monitor. of Romania, in force since March 31, 2000. Form applicable from August 25, 2004 to April 20, 2010, being replaced by republishing (r2) of the Official Monitor, Part I no. 260 of April 21, 2010. Form applicable from April 21, 2010.

[2] Case law of the European Court of Justice, 1998, p. I-08153, Case C-381/97, Belgocodex, para. 26.

[3] Decision of the Constitutional Court of Romania no. 448 of October 29, 2013, published in the Official Monitor, no. 5 of January 7, 2014.

## 3. The Jurisprudence of the Constitutional Court of Romania on the Principle of Legal Security

***Decision no. 296 of July 8, 2003 regarding the exception of unconstitutionality of art. 46 paragraph (5) of Law no. 10/2001[1] regarding the legal regime of certain buildings taken over unlawfully during the period March 6, 1945 - December 22, 1989 Published in the Official Gazette no. 577 of August 12, 2003.[2]***

*The Constitutional Court was notified of the exception of unconstitutionality, whose object is art. 46 paragraph (5) of Law no. 10/2001 regarding the legal regime of certain buildings taken over abusively during the period March 6, 1945 - December 22, 1989.*

*The legal text criticized has the following content:*

*Article 46 paragraph (5): "By way of derogation from common law, regardless of nullity, the right to action shall be prescribed within one year from the date of entry into force of this law. " The one-year term provided by the criticized legal text was extended successively, by 3 months, by Government Emergency Ordinance no. 109/2001, published in the Official Gazette of Romania, Part I, no. 460 of August 13, 2001, and through Government Emergency Ordinance no. 145/2001, published in the Official Gazette of Romania, Part I, no. 720 of November 12, 2001.*

*The author of the exception argues that the criticized legal provisions violate the following constitutional provisions.*

*Art. 21: "(1) Any person may go to court for the defence of their legitimate rights, liberties and interests.*

*(2) No law shall restrict the exercise of this right."*

*Art. 47: "(1) Citizens have the right to address public authorities through petitions formulated only on behalf of the signatories.*

*(2) Legally constituted organizations have the right to petition exclusively on behalf of the groups they represent.*

*(3) The exercise of the right of petition shall be exempt from tax.*

*(4) The public authorities have the obligation to respond to petitions under the terms and conditions established according to the law."*

*Examining the exception of unconstitutionality, the Court notes that, regarding the criticism regarding the free access to justice, the Plenary of the Constitutional Court ruled, by Decision no. 1/1994, that free access to justice implies access to the procedural means by which the act of justice is performed. It was considered that the legislator has the exclusive competence to establish the rules for conducting the trial before the courts, a solution that results from the constitutional provisions of art. 125 paragraph (3), according to which "The jurisdiction and the court procedure are established by law". In the recitals of the same decision it is noted that, for special situations, the legislator may establish special rules of procedure, as well as means for exercising procedural rights, so that free access to justice is not affected. Thus, the Court notes that the institution of prescription, in general, and the deadlines against which it takes effect can not be considered likely to hinder access to justice, their purpose is, rather, to facilitate it, by providing a climate of order, indispensable for the exercise of this*

[1] Art. 46, paragraph (5) By derogation from the common law, regardless of the cause of nullity, the right to action shall be prescribed within one year from the date of entry into force of this law.

[2] The exception of unconstitutionality refers to the provisions of the Romanian Constitution of November 21, 1991.

*constitutional right in optimal conditions, preventing abuses and limiting the disruptive effects* ***on the stability and security of civil legal relationships.***

*Exercise of a right by its holder can take place only within a certain framework, previously established by the legislator, subject to certain exigencies, to which the institution of deadlines is subsumed, after the expiry of which the use of that right is no longer possible. Far from being a denial of the right itself, such exigencies give expression to the legal order, the absolutisation of the exercise of a certain law having as consequence either the denial or the amputation of the legitimate rights or interests of other persons, to which the state is bound to equally provide protection.*

*Given that, according to the principle that no one can defend themselves by invoking ignorance of the law ( "nemo ignorare legem censetur "), the holder of a right is presumed to be aware of the regulation which provides that the use of their right falls within a certain period which, in fact, in this matter, the legislator has extended twice, without understanding to obey it, they only have their own lack of diligence to blame for the negative consequences which they must bear and not in the least the legal text criticized. Article 46 paragraph (5) of Law no. 10/2001 recognizes the right of the holder to exercise the action for absolute nullity of legal actions regarding the sale of unlawfully obtained buildings and ensures the opportunity to exploit it within a deadline imposed by major social reasons, namely the avoidance of states of prolonged insecurity in* ***civil legal relationships, as well as to ensure their stability and security****, all the more important when they have ownership as their object. Therefore, the Court finds that the text brought for constitutional control does not reveal any contradiction with the provisions of art. 21 of the Constitution.*

***Commentary:***

*Law in its essence is a social product, and the legal phenomena are found in the daily activity of legal subjects in any field. Without law, with its rules and legal institutions, the modern state cannot reach the state of "rule of law" in which all fundamental human rights and liberties are guaranteed and protected.*

*Interpersonal legal relations, as a component of legal consciousness, have the role of testing the achievement and enforcement of the law to legal relationships and situations, and legal order is guaranteed and ensured by the real exploitation of legal rights and interests only in compliance with the legal rules in force.*

*In this sense, by analysing the above decision more deeply, some conclusions can be drawn, as follows:*

*- the decision rendered by the Court does nothing more than fully strengthen the civilizing effect of the legal relationship as a social relationship (Niemesch, 2016, p. 95);*

*- free access to justice of the litigant means access to the incidental procedural means by which the act of justice is performed;*

*- the institution of extinctive prescription (Boroi, & Stanciulescu, 2012, p. 277), in general, as well as the deadlines in relation to which it produces effects cannot and must not be considered likely to restrict the free access to justice of the litigant, their purpose being, on the contrary, to facilitate it precisely through ensuring a climate of order and social relationship, indispensable for the optimal exercise of this constitutional right, preventing possible abuses and limiting the disruptive effects on the* ***stability and security of civil legal relationships;***

*- The Court has also verified that the legislator provided access to the information of the litigant to the knowledge of the incidental legal rule in order to be able to exploit his personal right by the fact that it is confined to a certain deadline (Nicolae, 2010, 43-44) which, moreover, in the matter of the present case brought to constitutional court, the legislator has extended it twice, and the litigant, without understanding to obey it, they only have their own lack of diligence to blame for the negative consequences which they must bear in this regard.*

***Decision no. 731 of November 6, 2019 , regarding the objection of unconstitutionality of the provisions of the single article point 2 (with reference to article 4 paragraph (11) and paragraph (13)), point 3 (with reference to art. 4 paragraphs (3) and (4)), point 6 (referring to article 7 paragraph (11)), point 7 (referring to article 7 paragraph (4)), point 8 (with reference to art.7 paragraph (51)) and point 9 (referring to art.8 paragraph (5) second sentence] of the Law for amending and completing Law no.77/2016 regarding the datio in solutum of certain properties with a view to extinguishing the obligations assumed by loans***

*3. In motivating the objection of unconstitutionality, its authors make extrinsic criticisms of unconstitutionality, by reference to the constitutional provisions contained in art.1 paragraph (3) regarding the rule of law and paragraph (5) **regarding the principle of legal security**, in its component regarding the quality of the law, art.79 - Legislative Council and art.141 - Economic and Social Council. Furthermore, intrinsic criticisms of unconstitutionality are formulated, punctually, regarding the provisions of the single article points 2, 3, 6, 7, 8 and 9 of the criticized law, with reference to art.4 paragraph (11) - (13), Article 4 (3) and (4), Article 7 (11), Article 7 (4), Article 7 (51) and Article 8 paragraph (5), respectively, of Law no.77/2016, by reference to the constitutional provisions contained in article 1 paragraph (3) regarding the rule of law and paragraph (5) regarding the principle of legality, article 15 paragraph (2) regarding the principle of non-retroactivity of civil law, art.16 - Equality in rights, art.21 - Free access to justice, art.44 - The right to private property , art.53 - Restricting the exercise of certain rights and liberties, art.124 - The execution of justice and art.147 paragraph (4) regarding the effects of the decisions of the Constitutional Court.*

*4. Regarding the first aspect, with respect to the extrinsic criticisms of unconstitutionality, it is shown that the purpose of the criticized law, according to the explanatory statement, is to extend the enforcement of Law no.77/2016 to the credits granted through the "First home" programme, approved by Government Emergency Ordinance no.60/2009 regarding certain measures for the implementation of the "First home" programme, approved with changes and amendments by Law no. 368/2009. Considering that through the amendments adopted by the Senate, as the chamber first notified, the initial legislative proposal was transformed into a new one, different in title and content of the regulation, and both the opinion of the Economic and Social Council and the opinion of the Legislative Council, which concerned the initial form of the legislative proposal, became devoid of purpose. In this regard, it is shown that, according to the jurisprudence of the Constitutional Court, the lack of the opinion of the Economic and Social Council causes the unconstitutionality of the legislative proposal adopted in this way. Furthermore, regarding the lack of the opinion of the Legislative Council, it is shown that, through the adopted amendments, the contents of the initial legislative proposal were eliminated and replaced with completely new contents, so that the jurisprudence of the Constitutional Court, according to which there is obligation to request the opinion of the Legislative Council in the case of projects of regulations, but not in the case of amendments, cannot maintain its validity. It is shown that in this way the legality of the enactment process was affected, with the violation of Articles 79 and 141 of the Constitution regarding the Legislative Council and, respectively, the Economic and Social Council, corroborated*

*with Article 1 paragraph (3) regarding the rule of law and paragraph (5)* ***regarding the principle of legal security.***

*23. Regarding the provisions of art.7 paragraph (51) of Law no.77/2016, introduced by the criticized law, it is claimed that it contravenes to the* ***principle of legal security****, in its component regarding the quality of the law, regulated by art. (5) of the Constitution, by establishing a derogation from the common law in the matter, namely art.1350 and art.1535 paragraph (1), first sentence of the Civil Code, regarding contractual liability and moratorium damages in the case of financial liabilities. Thus, the criticized legal provision limits the liability of the debtor, in the sense that they will not be held to cover the damage caused by fault, in the situation in which the creditor's appeal was admitted. It is further claimed that in this way the constitutional principle of equality in rights is violated, in relation to the debtors who, being temporarily unable to pay, do not issue a notification of datio in solutum, being consequently kept in full payment of the damage, in accordance with art.1350 and art.1535 of the Civil Code.*

*The Court, examining the objection of unconstitutionality, the report prepared by the judge-rapporteur, the provisions of the criticized law, related to the provisions of the Constitution, as well as Law no. 47/1992, holds the following:*

*30. The object of constitutionality control is the Law for the modification and amendment of Law no.77/2016 regarding the datio in solutum of property in order to extinguish the obligations assumed by credits. Although the objection of unconstitutionality concerns the whole law, the Court notes that, in fact, only the provisions of the single article point 2 (with reference to article 4 paragraph (11) and paragraph (13)), point 3 (with reference to art. 4 (3) and (4)), Section 6 (with reference to Art. 7 (11)), point 7 (with reference to Art. 7 (4 )), point 8 (with reference to article 7 paragraph (51)) and point 9 (with reference to article 8 paragraph (5) second sentence] of the law are criticized, provisions that have the following content:*

*- single article point 2, with reference to art.4 paragraphs (11) - (13) of Law no.77/2016: "(11) It is always considered that there is an unpredictability:*

*a) if the exchange rate of the credit currency has exceeded at least 20% the level of the exchange rate from the date the loan was contracted;*

*b) if the indebtedness level of the debtor exceeds by at least 20% the maximum level of the indebtedness level established by the National Bank of Romania;*

*c) if the debtor has been forced to execute the sale of the property with the destination of residence;*

*d) in other cases that show a contractual imbalance, within the meaning of art. 4 paragraph (3).*

*(12) In the situations provided for in article 4 paragraph (11) the parties have the obligation to renegotiate the agreement, and the renegotiation must be effective in relation to the new reality. The adaptation of the agreement, during its execution, to the new reality which has occurred, is equivalent to maintaining the social utility of the agreement, more precisely it allows the further execution of the agreement by rebalancing the benefits.*

*(13) It is the obligation of the creditor to prove before the courts that the debtor who has made a notification of datio in solutum does not fulfil the conditions of admissibility, including the condition regarding unpredictability. ";*

*- single article point 3, with reference to art.4 paragraphs (3) and (4) of Law no.77/2016: "(3) Unpredictability is presumed in favor of the consumer, who makes a notification under the conditions of art.5 or article 8 paragraph (5) of the law.*

*(4) In verifying the condition regarding the unforeseen situation, the critical state of the agreement and the presumption of imbalance provided for in paragraph (3) shall be given prevalence. The solution of judicial review of the agreement with a view to balancing and continuing it is a priority over the solution of termination of the agreement, which will be decided only in the case of a manifest impossibility of its continuation."*

*- single article points 6, 7, and 8, with reference to article 7 paragraphs (11), paragraph (4) and paragraph (51) of Law no.77/2016: "(11) The creditor's appeal must be preceded, necessarily, by a proposal addressed to the debtor, by which to try to restore the social utility of the loan agreement.*

*(4) Until the definitive resolution of the appeal made by the creditor, the suspension of any payment to him is maintained, as well as that of any judicial or extrajudicial proceedings initiated by the creditor or by the persons who subrogate in his rights against the debtor. From the date of the notification of datio in solutum, the forced executions in progress, including garnishments, are automatically suspended.*

*(51) During the period when the notification of datio in solutum was effective, both the interest rates, as well as the interests and penalties, can be claimed from the debtor only if the creditor proves that they were of bad faith."*

*- single article point 9, with reference to article 8 paragraph (5) of Law no.77/2016: "(5) The right to ask the court to ascertain the extinction of the debts arising from the loan agreements belongs to the consumer who was also subject to a forced execution of the mortgaged building, regardless of the holder of the debt, the stage in which it is found or the form of the forced execution that is continued against the debtor. In the case of a debtor against whom a forced execution procedure has been carried out and finalized, by selling the property with a residential destination, and against which the execution is continued, an absolute and irrefutable presumption of unpredictability is established."*

*31. The authors of the complaint claim that the criticized legal provisions contravene the constitutional provisions contained in article 1 paragraph (3) regarding the rule of law and paragraph (5)* ***regarding the principle of legal security*** *, in its component regarding the quality of the law, article 15 paragraph (2) regarding the principle of non-retroactivity of civil law, art.16 - Equality in rights, art.21 - Free access to justice, art.44 - Private property right, art.53 - Restriction of the exercise of rights and liberties, art.79 - Legislative Council, art.124 - Enforcement of justice, art.141 - Economic and Social Council and art.147 paragraph (4) regarding the effects of the decisions of the Constitutional Court.*

***(3.2.2.1.) Criticism of unconstitutionality regarding the single article pt.2 (with reference to art.4 paragraph (11) letter a) of the law***

*68. At the same time, the Court finds that the legal rule analysed has editorial deficiencies, as it does not establish the reference currency against which the 20% fluctuation of the currency rate of the loan agreement, namely the national currency, is calculated. From this perspective, Article 1 paragraph (5) of the Constitution is violated in its component of quality of the law and* ***legal security****.*

***(3.2.2.2.) Criticism of unconstitutionality regarding single article pt.2 (with reference to art.4 paragraph (11) letter b)) of the law***

*76. At the same time, given the very broad character of the wording of the text, the Court observes that exceeding the degree of indebtedness by 20% is not explicitly and implicitly related to the income level on the date of the loan agreement or on a later date. Therefore, the Court holds that Article 1 (5) of the Constitution is violated in its component of quality of the law and* ***legal security****.*

*89. In view of the foregoing, the Court finds that the criticized measure violates article 44 of the Constitution and, implicitly, article 147 paragraph (4), as a result of non-observance of the constitutional requirements regarding the relation between the right to private property and unpredictability, as established by the Decision of the Constitutional Court no. 623 of October 25, 2016. At the same time, the Court also notes the violation of article 1 paragraph (5) of the Constitution regarding* ***legal security.***

*The Constitutional Court, in the name of the law, decides:*

*1. It approves the objection of unconstitutionality formulated and finds that the provisions of the single article point 2 (with reference to article 4 paragraph (11)), point 3 (with reference to article 4 paragraph (3) and (4)) , point 6 (with reference to article 7 paragraph (11)), point 8 (with reference to article 7 paragraph (51)) and point 9 (with reference to article 8 paragraph (5) second sentence] of the Law for the modification and amendment of Law no.77/2016 regarding the datio in solutum of property in order to extinguish the obligations assumed by loans are unconstitutional.*

*2. It rejects, as unfounded, the objection of unconstitutionality and finds that the provisions of the single article point 2 (with reference to article 4 paragraph (13)) and point 7 (with reference to article 7 paragraph (4)) of The law for the modification and amendment of Law no.77/2016 regarding the datio in solutum of property in order to extinguish the obligations contracted by loans are constitutional in relation to the criticisms formulated.*

***Commentary:***

The unpredictability (Aksoy, 2014) is in fact an exception from the principle of the binding force of the agreement which has the effect of removing from the agreement the effects desired by the parties in two ways: the first way, through the possibility of the court to correct the agreement in order to equitably distribute (Ghestin, Jamin, & Billiau, 2001, 408-409) the possible benefits but also the losses that would result from the modification of the circumstances in which the agreement was concluded between the parties or in the second way to order the termination of the agreement in question, only at the moment and under the conditions that it establishes. (Pop, 1998, pp. 68-69) Moreover, the unpredictability only intervenes on circumstances arising after the agreement was concluded, objective, external changes which are beyond the control of the parties involved and merely a result of chance . (Pivniceru, 2009, 68)

By the decision given, the Court analyses and decides on the editorial deficiencies of the incidental legal rule because the text of the law "does not establish the reference currency against which the 20% fluctuation of the currency rate of the loan agreement, namely the national currency is calculate", and does not judge the principle of unpredictability on merits - in fact, it has no duties in this regard although the litigants would have wanted a ruling on this kind of agreements.

However, the Court also held that Article 1. (5) of the Constitution, which provides that "*in Romania, it is mandatory to obey the Constitution, its supremacy and the laws"*in its component of the quality of the law and *legal security*, was violated.

## 4. Conclusions

Therefore, once again the Court rules that the laws must be drafted clearly, concisely, soberly and unequivocally in order to guarantee the litigant's faith in justice, a fundamental faith in order to maintain the independence of justice as a final factor for the achievement and enforcement of the law, but also as a control factor of the legal rules that would violate the fundamental rights and liberties recognized and guaranteed by the Constitution. Through the jurisprudence of the Constitutional Court of Romania the legal security of the litigant is unequivocally guaranteed, regardless of their privileges, race or social position, but also for any subject of law that appeals to its judgement.

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