DECISION No.148
of April 16th 2003

on the issue of constitutionality of the legislative proposal to revise the Constitution of Romania

Published in the Official Gazette of Romania no.317 of May 12th 2003

On grounds of Article 144 sub-paragraph a) of the Constitution of Romania, the Constitutional Court adjudicates, *ex officio*, on initiatives to revise the Constitution.

Through the Interlocutory Order of April 8th 2003 the Plenum of the Constitutional Court ordered the initiation of the jurisdictional procedure concerning the constitutionality of the legislative proposal for the revision of the Constitution, submitted to the Court by the President of the Chamber of Deputies, together with the labels containing the signatures of 233 deputies and 94 senators, and with the advisory opinion of the Legislative Council.

The following deputies signed the legislative proposal for the revision:

{...}

The following senators signed the legislative proposal for the revision:

{...}

The legislative proposal to revise the Constitution of Romania has the following wording:

« **Article I** The Constitution of Romania, published in the Official Gazette of Romania, Part I, no.233 of November 21st 1991, shall be amended and supplemented as follows:

1. ***After paragraph (3) of Article 1*** *two new paragraphs, (4) and (5), shall be inserted, with the following wording:*

"(4) The State shall be organized based on the principle of separation and balance of powers - legislative, executive and judicial – within the framework of constitutional democracy.

(5) In Romania, the observance of the Constitution, its supremacy and the law shall be mandatory."

2. ***Paragraph (1) of Article 2*** *shall be amended and shall have the following wording:*

"(1) The national sovereignty shall reside within the Romanian people, that shall exercise it by means of their representative bodies, resulting from free, periodical and fair elections, as well as by referendum."

3. ***Paragraph (1) of Article 4*** *shall be amended and shall have the following wording:*

"(1) The State foundation is laid on the unity of the Romanian people and the solidarity of their citizens."

4. ***Article 9*** *shall be amended as follows:*

- The denomination shall be: **"Trade Unions, employers' associations, and professional associations"**
- *The wording of the Article shall be as follows:*

" **Article 9** - Trade unions, employers' associations, and professional associations shall be established and shall carry out their activity according to their statutes, subject to the law. They shall contribute to the protection of rights and the promotion of their members' professional, economic, and social interests."

5**. After paragraph *(2) of Article 11*** *shall be inserted a new paragraph, (3), with the following wording:*

"(3) If a treaty to which Romania is to become a party comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution."

6. Paragraph ***(3) of Article 16*** *shall be amended and shall have the following wording:*

"(3) Access to public, civil or military, positions or dignities is granted, according to the law, to persons whose citizenship is Romanian and whose domicile is within the country. The Romanian State shall guarantee equal opportunities for men and women to occupy such positions and dignities.."

7. ***Paragraph (1) of Article 19*** *shall be amended and shall have the following wording:*

"(1) No Romanian citizen may be extradited or expelled from Romania. Romanian citizens can be extradited based on the international agreements Romania is a party to, according to the law and on reciprocity basis."

8. ***After paragraph (2) of Article 21*** *two new paragraphs, (3) and (4), shall be inserted, with the following wording:*

"(3) All parties shall be entitled to a fair trial and settlement of their cases within a reasonable time.

(4) Administrative special jurisdictions are optional unless the law stipulates otherwise."

9. ***Article 23*** *shall be amended as follows:*

- Paragraph (4) shall have the following wording:

"(4) Detention pending trial shall be ordered only by the court of law."

- After paragraph (4), three new paragraphs, (4^1), (4^2) and (4^3), shall be inserted, with the following wording:

"(4^1) Once criminal proceedings have been taken, detention pending trial may only be ordered for thirty days at the most and extended for thirty days at the most each, without the overall length exceeding 120 days.

(4^2) During trial, preventive arrest will last 30 days when this measure was ordered during prosecution and it can be extended for another period of 30 days at the most, if the court finds that the conditions provided by the law are fulfilled.

(4^3) Court orders as to detention pending trial shall be subjected to appeal proceedings as are provided by the law."

- Paragraph (6) shall have the following wording:

"(6) The release of the detained or of the arrested person is compulsory, if the grounds for these measures do no longer exist, as well as in other situations provided by the law."

10. ***Paragraph (3) al Article 27*** *shall be amended and shall have the following wording:*

"(3) Searches shall only be ordered by a judge and carried out under the terms and forms stipulated by the law."

11. ***Paragraph (5) of Article 32*** *shall be amended and shall have the following wording:*

"(5) Education at all levels shall take place in State, private, or confessional institutions, according to the law."

12. ***Article 41*** *shall be amended as follows:*

- The denomination shall be: **"Right to private property"**

- Paragraph (2) shall amended and shall have the following wording:

"(2) Private property shall be equally guaranteed and protected by the law, irrespective of its owner. Foreign and stateless persons shall only acquire the right to private property of land under the terms resulting from Romania 's accession to the European Union and other international treaties Romania is a party to, on a mutual basis, under the terms stipulated by an organic law, as well as a result of lawful inheritance."

- After paragraph (3) a new paragraph, (3^1), shall be inserted, with the following wording:

"(3^1) Nationalisation or any other measures of forcible transfer of assets into public property based on the owners' ethnic, religious, political affiliation, or other discriminatory features shall be prohibited."

- After paragraph (7) a new paragraph, (7^1), shall be inserted, with the following wording:

"(7^1) The presumption provided under paragraph (7) is not applicable for the goods resulting from a criminal or administrative offence."

13. ***Under Article 46,*** *the terms "disabled persons" and "disabled" shall be substituted by the term "persons with disabilities".*

14. ***After Article 46*** *a new Article, 46^1, shall be inserted, with the following wording:*

- The denomination shall be: **"Environmental Protection"**

- The Article shall have the following wording:

" **Article46^1** – The State and the public authorities shall be bound to take measures to protect and restore the environment, as well as to maintain the ecological balance"

15. ***Article 48*** *shall be amended and shall have the following wording:*

"(1) Any person aggrieved in his legitimate rights or interests by a public authority, by means of an administrative act or by the failure of a public authority to solve his application within the legal deadline, is entitled to the acknowledgement of his claimed right or legitimate interest, the annulment of the act and reparation for the damage suffered.

(2 The conditions and limitations on the exercise of this right shall be regulated by law.

(3) The State shall bear liability in tort for any damage caused by miscarriages of justice. Liability of the State shall be determined according to the law and shall not eliminate liability of the magistrates having exercised their office in ill faith.

16. ***Paragraph (2) of Article 49*** *shall be amended and shall have the following wording:*

"(2) Restrictions shall only be ordered if necessary in a democratic society. The measure must be proportional to the situation which has engendered it, applied in non-discriminatory manner and without touching on the existence of the right or freedom as such."

17. ***Article 51*** *shall be repealed.*

18. ***Paragraph (2) of Article 52*** *shall be amended and shall have the following wording:*

"(2) The terms for doing the military service for men, Romanian citizens, who have reached the age of 20 years old, shall be set up in an organic law."

19. ***Article 55*** *shall be amended and shall have the following wording:*

"Article 55 - (1) The Advocate of the People shall be appointed for a term of office of four years, in order to defend the natural persons' rights and freedoms. The Advocate of the People's deputies shall be specialised per fields of activity.

(2) The Advocate of the People and his deputies shall not perform any other public or private office, except for professorial positions in higher education.

(3) The organization and functioning of the Advocate of the People institution shall be regulated by an organic law."

20. ***Article 62*** *shall be amended and shall have the following wording:*

- The denomination shall be: **"Sessions of the Chambers"**

- Paragraph (1) shall be amended and shall have the following wording:

"(1) The Chamber of Deputies and the Senate shall meet in separate sessions."

- The introductive part of paragraph (2) shall be amended and shall have the following wording:

"(2) The Chambers may also meet in joint sessions, based on the regulations passed by a majority vote of the Deputies and Senators, in order:"

- The provisions of sub-paragraphs f), g) and h), of paragraph (2) shall be amended and shall have the following wording:

"f) to approve the national strategy of homeland defence, to examine reports of the Supreme Council of National Defence;

g) to appoint, based on proposals by the President of Romania, the directors of the intelligence services, and to exercise control over the activity of such services;

h) to appoint the Advocate of the People;"

- After sub-paragraph h) of paragraph (2) two new sub-paragraphs, i) and j), shall be inserted, and shall have the following wording:

"i) to establish the status of the Deputies and Senators, their emoluments, and other rights;

j) to fulfil any other prerogatives, which - in accordance with the Constitution or the Standing Orders, shall be exercised in a joint session."

21. ***Paragraph (1) of Article 67*** *shall be amended and shall have the following wording:*

"(1) Deputies and Senators shall begin the exercise of their office on the day the Chamber whose members they are has legally met, on condition that the election is validated and the oath is taken. The form of the oath shall be regulated by an organic law."

22. ***Article 69*** *shall be amended and shall have the following wording:*

"(1) No Deputy or Senator shall be held judicially accountable for the votes cast or the political opinions expressed while exercising their office.

(2) Deputies and Senators may be subject to criminal proceedings and indicted for acts that are not in connection with their votes or their political opinions expressed in the exercise of their office, but shall not be searched or arrested without the consent of the Chamber whose member they are, after being heard. The High Court of Cassation and Justice shall have jurisdiction over this case."

23. ***Article 70*** *shall be repealed.*

24. ***Article 71*** *shall be repealed.*

25. ***Paragraph (3) of Article 72*** *shall be amended and shall have the following wording:*

"(3) Organic laws shall regulate:

a) the electoral system; the organization and functioning of the Permanent Electoral Authority;

b) the organization and functioning of political parties;

c) the status of Deputies and Senators, the establishment of their emoluments and other rights;

d) the organization and holding of referendum;

e) the organization of the Government and of the Supreme Council of National Defence;

f) the state of siege and emergency;

g) criminal offences, penalties, and the execution thereof;

h) the granting of amnesty or collective pardon;

i) the organization and functioning of the Superior Council of Magistracy, the courts of law, the Public Ministry, and the Court of Accounts;

j) the general legal status of property and inheritance;

k) the general organization of education;

l) the organization of local public administration, territory, as well as the general rules on local autonomy;

m) the general rules covering labour relations, trade unions and social protection;

n) the status of national minorities in Romania;

o) the general statutory rules of religious cults;

p) the other fields for which the Constitution stipulates the enactment of organic laws."

26. ***Article 73*** *shall be amended and shall have the following wording:*

- Paragraph (1) shall have the following wording:

"(1) A legislative initiative shall lie, as the case may be, with the Government, Deputies, Senators, or a number of at least 100,000 citizens entitled to vote. The citizens who exercise their right to a legislative initiative must belong to at least one quarter of the country's counties, while, in each of those counties or in the Municipality of Bucharest, at least 5,000 signatures should be registered in support of such initiative."

- Paragraph (3) shall have the following wording:

"(3) The Government shall exercise its legislative initiative by introducing bills to the Chamber having competence for its adoption, as a first notified Chamber."

- Paragraph (5) shall have the following wording:

"(5) Legislative proposals shall be first submitted to the Chamber having competence for its adoption, as a first notified Chamber."

27. ***After Article 73*** *a new Article, 73[1],shall be inserted and shall have the following wording:*

- The denomination shall be: **"Notification to the Chambers"**

- The Article shall have the following wording:

" **Article73[1]** - (1) The Chamber of Deputies, as a first notified Chamber, shall debate and adopt the bills and legislative proposals for the ratification of treaties or other international agreements and the legislative measures deriving from the implementation of such treaties and agreements, as well as bills of the organic laws stipulated under Article 31 paragraph (5), Article 37 paragraph (3), Article 52 paragraph (2), Article 55 paragraph (3), Article 72 paragraph (3) subparagraphs e), i), k), l), Article 79 paragraph (2), Article 101 paragraph (3), Article 104 paragraph (2), Article 116 paragraph (3), Article 117 paragraphs (2) and (3), Article 119 paragraph (2), Article 125 paragraphs (4) and (5), and Article 140 paragraph (4). The other bills or legislative proposals shall be submitted to the Senate, as a first notified Chamber, for debate and adoption.

(2) The first notified Chamber shall pronounce within thirty days. For codes and other particularly complex laws, the deadline will be forty-five days. If such terms are exceeded, it shall be deemed that the bill or legislative proposal has been adopted.

(3) After the first notified Chamber adopts or rejects it, the bill or legislative proposal shall be sent to the other Chamber, which will make a final decision."

28. ***Article 75*** *shall be repealed.*

29. ***Article 76*** *shall be repealed.*

30. ***Article 78*** *shall be amended and shall have the following wording:*

"The Law shall be published in the Official Gazette of Romania and come into force three days after its publication date, or on a subsequent date stipulated in its text."

31. ***Article 84*** *shall be amended as follows:*

- Paragraph (2) shall be amended and shall have the following wording:

"(2) The President of Romania shall enjoy immunity. The provisions under paragraph (1) of Article 69 shall apply accordingly."

- Paragraph (3) shall be repealed.

32. ***After paragraph (2) al Article 85*** *a new paragraph, (3), shall be inserted, with the following wording:*

"(3) If, through the reshuffle proposal, the political structure or composition of the Government is changed, the President of Romania shall only be entitled to exercise the power stipulated under paragraph (2) based on the Parliament’s approval, granted following the proposal by the Prime Minister."

33. ***Paragraph (1) of Article 91*** *shall be amended and shall have the following wording:*

"(1) The President shall, in the name of Romania, conclude international treaties negotiated by the Government, and then submit them to the Parliament for ratification, within a reasonable time. The other treaties and international agreements shall be concluded, approved, or ratified according to the procedure set up by law."

34. ***After Article 95*** *a new Article, 95[1],shall be inserted and shall have the following wording:*

- The denomination shall be: **"Impeachment"**

- The wording of the Article shall be as follows:

"**Article 95[1]** -The Chamber of Deputies and the Senate may decide the impeachment of the President of Romania for high treason, in a joint session, based on the votes of at least two thirds of the number of Deputies and Senators. The jurisdiction for trying such cases shall belong to the High Court of Cassation and Justice, in the conditions of the law. The President shall be dismissed *de jure* on the date his conviction by the court decision is final."

35. ***After paragraph (2) of Article 106*** *a new paragraph, (2[1]), shall be inserted and shall have the following wording:*

"(2[1]) The President of Romania cannot dismiss the Prime Minister."

36. **Article 111** shall be amended and supplemented as follows:

The denomination shall be: **"*Questions, Interpellations, and Simple Motions***"

- Paragraph (2) shall be amended and shall have the following wording:

"(2) The Chamber of Deputies or the Senate may carry a simple motion expressing their position as to a matter of domestic or foreign policy, or, as the case may be, a matter having been the subject of an interpellation."

37. ***Paragraph (3) of Article 113*** *shall be amended and shall have the following wording:*

"(3) If the Government has not been dismissed according to paragraph (2), the bill presented, amended, or supplemented, as the case may be, with the amendments accepted by the Government, shall be deemed as passed, and the implementation of the programme or general policy statement shall become binding on the Government."

38. ***Article 114*** *shall be amended and supplemented as follows:*

- Paragraph (4) shall have the following wording:

"(4) The Government can only adopt urgency ordinances in exceptional cases, the regulation of which cannot be postponed, and have the obligation to give the reasons for their urgency status within their contents. An urgency ordinance shall only come into force after it has been submitted for debate in an urgency procedure to the Chamber having the competence to be notified, and after it has been published in the Official Gazette of Romania, Part I. If not in session, the Chambers shall be convened by all means within five days after submittal, or, as the case may be, after forwarding. If, within thirty days at the latest of the submittal date, the notified Chamber does not pronounce on the ordinance, the latter shall be deemed adopted and shall be sent to the other Chamber, which shall also make a decision in an urgency procedure. An urgency ordinance containing norms of the same kind as the organic law must be approved by a majority stipulated under Article 74 (1)."

- After paragraph (4) a new paragraph, (4[1]), shall be inserted and shall have the following wording:

"(4[1] Urgency ordinances cannot be adopted in the field of constitutional laws, or affect the status of fundamental institutions of the State, the rights, freedoms and duties stipulated in the Constitution, the electoral rights of citizens, and cannot set out measures for a forcible transfer of assets to public property."

- Paragraph (5 shall be amended and shall have the following wording:

"(5) The ordinances the Parliament has been notified about shall be approved or rejected in a law which must also contain the ordinance that ceased to be effective according to paragraph (3)."

- After paragraph (5) a new paragraph, (5[1]), shall be inserted and shall have the following wording:

"(5[1]) The law approving or rejecting an ordinance shall regulate, if the case may be, the necessary measures concerning the legal effects caused during the time the ordinance was in force."

39. ***Article 117*** *shall be amended as follows:*

- Paragraph (1) shall have the following wording:

"(1) The Army shall be exclusively subordinated to the people's will in order to guarantee the sovereignty, independence and unity of the State, the country's territorial integrity, and the

constitutional democracy. Under the law and the international treaties Romania is a party to, the Army shall contribute to collective defence in military alliance systems, and participate in peace keeping or peace restoring missions."

- Paragraph (3) shall have the following wording:

"(3) The provisions of paragraphs (1) and (2) shall apply accordingly to the other components of the Armed Forces established according to the law."

- Paragraph (5) shall have the following wording:

"(5) Foreign troops may enter, station, carry out operations, or pass through the Romanian territory only under the terms of the law."

40. ***Article 118*** *shall be amended and shall have the following wording:*

"The Supreme Council of National Defence shall unitarily organize and co-ordinate the activities concerning the country's defence and security, its participation in international security keeping, and in collective defence in military alliance systems, as well as in peace keeping or restoring missions."

41. ***Article 119*** *shall be amended and shall have the following wording:*

"(1) The public administration in territorial-administrative units shall be based on the principles of local autonomy and disconcentration of public services.

(2) In the territorial-administrative units where citizens belonging to a national minority have a significant weight, provision shall be made for the oral and written use of that national minority's language in the relations with the local public administration authorities and the decentralized public services, under the terms stipulated by the organic law."

42. ***After Article 120*** *a new Article, 120[1], shall be inserted and shall have the following wording:*

- The denomination shall be: ***"Provisions concerning the elections"***

- The Article shall have the following wording:

" **Article 120[1]** – Once Romania has acceded to the European Union, the citizens of the Union who fulfil the requests of the law have the right to elect and to be elected for the constitution of the authorities of the local public administration and for the European Parliament."

43. ***Paragraphs (1) and (2) of Article 122*** *shall be amended and shall have the following wording:*

"(1) The Government shall appoint a Prefect in each county and in the Bucharest Municipality.

(2) The Prefect is the representative of the Government at a local level and shall direct the decentralized public services of ministries and other bodies of the central public administration in the territorial-administrative units."

44. ***After paragraph (1) of Article 123*** *a new paragraph, (1[1]), shall be inserted and shall have the following wording:*

"(1[1]) Justice shall be one and equal for all."

45. ***Article 124*** *shall be amended and supplemented as follows:*

- Paragraph (1 shall have the following wording:

"(1) The judges appointed by the President of Romania shall be irremovable, according to the law."

After paragraph (1) a new paragraph, (1[1]), shall be inserted and shall have the following wording:

"(1[1]) The appointment proposals, as well as the promotion, transfer of, and sanctions against judges shall only be within the competence of the Superior Council of Magistracy, under the terms of the law."

46. ***Article 125*** *shall be amended and shall have the following wording:*

"(1) Justice shall be administered by the High Court of Cassation and Justice and the other courts of law set up by the law.

(2) The jurisdiction of the courts of law and the conduct of court proceedings shall only be stipulated by law.

(3) The High Court of Cassation and Justice shall provide a unitary interpretation and application of the law by the other courts, according to its competence.

(4) The composition of the High Court of Cassation and Justice, and the regulations for its functioning shall be set up in an organic law.

(5) It is prohibited to establish extraordinary courts of law. By means of an organic law, courts of law specialised in certain matters may be set up, allowing the participation, as the case may be, of persons outside magistracy.

(6) The judicial review of administrative acts of public authorities, by way of the administrative contentious business before courts of law, is guaranteed, except for those regarding relations with the Parliament, as well as the military command acts. The courts dealing with administrative contentious business have the jurisdiction to solve requests filed by persons aggrieved by ordinances or, as the case may be, by provisions in ordinances declared unconstitutional. "

47. ***Article 127*** *shall be amended as follows:*

-The denomination of the Article shall be:

"Use of Mother Tongue and Interpreters in the Courts"

- Paragraph (2) of Article 127 shall be amended and shall have the following wording:

"(2) Romanian citizens belonging to national minorities have the right to express themselves in their mother tongue before the courts of law, under the terms of the organic law."

- After paragraph (2) a new paragraph, (3), shall be inserted and shall have the following wording:

"(3) Foreign citizens and stateless persons who do not understand or do not speak the Romanian language shall be entitled to take cognisance of all the file papers and proceedings, to speak in court and submit conclusions, by means of an interpreter; in criminal law suits, this right is ensured free of charge."

48. ***Article 130*** *shall be amended and supplemented as follows:*

- Paragraph (2) shall have the following wording

"(2) The Public Ministry shall discharge its powers through Public Prosecutors, constituted into public prosecutor's offices, attached to the High Court of Cassation and Justice and to the other courts of law."

After paragraph (2) a new paragraph, (3), shall be inserted and shall have the following wording"

(3) The public prosecutor's offices shall direct and supervise the criminal investigation activity of the judicial police."

49. ***Article 132*** *shall be amended as follows:*

- The denomination shall be: **"Role and structure"**

- The Article shall have the following wording:

" **Article 132** - (1) The Superior Council of Magistracy shall be the guarantor for the independence of justice.

(2) The Superior Council of Magistracy shall be comprised of seventeen members, constituted in two sections, one for judges and one for public prosecutors. The first is comprised of seven judges, and the second of five public prosecutors. Of the Superior Council of Magistracy are part 4 representatives of the civil society, specialists in law, who enjoy a good professional and moral reputation, and who participate in plenary proceedings.

(3) The Minister of Justice, the President of the High Court of Cassation and Justice, and the General Public Prosecutor of the Public Prosecutor's Office attached to the High Court of Cassation and Justice are part of the Superior Council of Magistracy.

(4) The magistrates of the Superior Council of Magistracy are elected in the joint meetings of the judges and prosecutors and validated by the Senate. The President of the Superior Council of Magistracy shall be elected for one year's term of office, which cannot be renewed, from among its members.

(5) The length of the term of office of the Superior Council of Magistracy members shall be six years.

(6) The Superior Council of Magistracy shall make decisions by secret vote.

(7) The President of Romania shall preside over the proceedings of the Superior Council of Magistracy he takes part in.

(8) Decisions by the Superior Council of Magistracy cannot be challenged before the courts of law."

50. ***Article 133*** *shall be amended and shall have the following wording:*

"(1) The Superior Council of Magistracy shall propose to the President of Romania the appointment of judges and public prosecutors, except for the junior ones, according to the law.

(2) The Superior Council of Magistracy shall perform the role of a court of law, by means of its sections, as regards the disciplinary liability of judges and public prosecutors, based on the procedures set up by its organic law."

51. ***Article 134*** *shall be amended as follows:*

- Paragraph (1) shall be supplemented and shall have the following wording:

"(1) Romania 's economy is a free market economy, based on free enterprise."

- Sub-paragraph e) of paragraph (2) shall be amended and shall have the following wording:

"e) implementation of regional development policies in compliance with the objectives of the European Union;"

52. ***Article 135*** *shall be amended and shall have the following wording:*

"(1) Property is public or private.

(2) Public property is guaranteed and protected by the law, and belongs to the State or to territorial-administrative units.

(3) Underground mineral resources of public interest, the air, the waters with energy potential that can be used for national interests, the beaches, the territorial sea, the natural resources of the economic zone and the continental shelf, as well as other assets established by the organic law, shall be public property exclusively.

(4) Public property is inalienable. Under the terms of the organic law, the public property can be managed by autonomous *régies* or public institutions, or can be granted or leased; also, it can be transferred for free use to institutions of public utility.

(5) Private property is inviolable, in accordance with the organic law."

53. ***Paragraph (2) of Article 136*** *shall be amended, finally, as follows:*

"(2) Once Romania has acceded to the European Union, the circulation of, and replacement of the national currency by that of the European Union may be acknowledged, by means of an organic law."

54. ***Article 139*** *shall be amended as follows:*

- Paragraph (1) shall have the following wording:

"(1) The Court of Accounts shall exercise control over the formation, administration, and utilization of the financial resources of the State and public sector. Under the terms of the organic law, any disputes arising from the activity of the Court of Accounts shall be settled by the courts of law."

- Paragraph (4) shall have the following wording:

"(4) Audit advisers shall be appointed by the Parliament for a term of office of nine years, which cannot be extended or renewed. Members of the Court of Accounts shall be independent in exercising their term of office and irremovable throughout its duration. They shall be subject to the incompatibilities the law stipulates for judges."

- After paragraph (4) a new paragraph, (5), shall be inserted and shall have the following wording:

"(5) The Court of Accounts shall be renewed with one third of the audit advisers appointed by the Parliament, every three years, under the terms stipulated by the organic law of the Court."

55. ***After Article 139*** *a new Article, 139[1], shall be inserted and shall have the following wording:*

- The denomination shall be: **"The Economic and Social Council"**

- The Article shall have the following wording:

"**Article 139[1]** - The Economic and Social Council shall be an advisory body of the Parliament and Government, in the specialised fields stated by the organic law for its establishment, organization, and functioning."

56. ***Before paragraph (1) of Article 140*** *a new paragraph shall be inserted and shall have the following wording:*

"(1) The Constitutional Court shall be the guarantor for the supremacy of Constitution."

57. ***Article 144*** *shall be amended as follows:*

- Sub-paragraph a) shall have the following wording:

"a) to adjudicate on the constitutionality of laws, before the promulgation thereof upon notification by the President of Romania, one of the Presidents of the two Chambers, the Government, the High Court of Cassation and Justice, the Advocate of the People, a number of at least fifty Deputies or at least twenty-five Senators, as well as *ex officio*, on initiatives to revise the Constitution;"

- After sub-paragraph a) a new sub-paragraph, a[1]), shall be inserted and shall have the following wording:

"a[1]) to adjudicate on the constitutionality of treaties or other international agreements, upon notification by one of the Presidents of the two Chambers, a number of at least fifty Deputies or at least twenty-five Senators;"

-Sub-paragraph c) shall have the following wording:

"c) to decide on objections as to the unconstitutionality of laws and ordinances, brought up before the public authorities with jurisdictional powers; the objection as to the unconstitutionality may also be brought up by the Advocate of the People;"

- After sub-paragraph c) a new sub-paragraph, c[1]), shall be inserted and shall have the following wording:

"c[1]) to solve legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, one of the Presidents of the two Chambers, the Prime Minister, or of the President of the Superior Council of Magistracy;"

- After sub-paragraph i) a new sub-paragraph, j), shall be inserted and shall have the following wording:

"j) to carry out also other powers as provided by the organic law of the Court."

58. ***Article 145*** *shall be amended and shall have the following wording:*

"(1) The provisions found to be unconstitutional shall cease their legal effects within forty-five days of the publication of the decision of the Constitutional Court if, in the meantime, the Parliament or the Government, as the case may be, cannot bring into line the unconstitutional provisions with the provisions of the Constitution.

(2) If the constitutionality of a treaty or international agreement has been found according to Article 144 sub-paragraph [1]), such cannot be the subject of an objection of unconstitutionality.

(3) Decisions of the Constitutional Court shall be generally binding and effective only for the future. These shall be published in the Official Gazette of Romania, Part I."

59. ***After Article 145 a new title,*** *denominated* ***"Euro-Atlantic Integration",*** *shall be inserted, comprising two Articles:*

a) ***Article 145[1]****, denominated* ***"Integration into the European Union"*** *shall have the following wording:*

"**Article145[1]** - (1) Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the competencies stipulated in such treaties, shall be carried out by means of a law adopted in the joint session of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of Deputies and Senators.

(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other binding community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act.

(3) The provisions of paragraphs (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.

(4) The President of Romania, the Parliament and the Government shall guarantee that the obligations resulting from the accession act and the provisions of paragraph (2) are implemented.

(5) The Government shall send to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval."

b) Article 145[2]*, denominated* ***"Accession to the North Atlantic Treaty"*** *shall have the following wording:*

"**Article 145[2]** – The provisions under Article 145[1] shall be applied accordingly, also in concerns the accession of Romania to the North Atlantic Treaty."

60. ***Article 151*** *shall be amended and shall have the following wording:*

- The denomination shall be: **"Transitory provisions"**

- The Article shall have the following wording:

"**Article 151** - (1) The bills and legislative proposals pending the legislation shall be debated and adopted in compliance with the constitutional provisions existing before the coming into force of the revision law

(2) The institutions stipulated by the Constitution, existing on the date of coming into force of the revision law, shall operate until the setting up of the new ones.

(3) The provisions regarding the High Court of Cassation and Justice shall be implemented within two years at most of the date of coming into force of the revision law.

(4) The judges in office of the Supreme Court of Justice and the audit advisers appointed by the Parliament shall continue their activity until the term of office for which they were appointed expires. To ensure the renewal of the Court of Accounts every three years, on the

expiry of the term of office of the current audit advisers, these may be appointed for another three-year or six-year term of office.

(5) Former judges of the Constitutional Court who did not exercise the office for a mandate of 9 years can be reinvested for the difference of mandate."

61. ***Article 152*** *is amended and has the following wording:*

- The denomination is: ***"Republication of the Constitution"***

- The content of the Article is:

"**Article 152** The bill/draft or legislative proposal of revision of the Constitution shall be published in the Official Gazette of Romania, Part I, within 5 days from the date of the adoption. The Constitution, amended and supplemented after the approval by referendum, shall be republished, with the re-actualisation of the denominations and being given a new numbering, by the Legislative Council."

Article II – The revision adopted by the present law is submitted to approval by referendum organised according to the provisions of Article 147 paragraph (3) of the Constitution of Romania.»

Debating this legislative proposal of revision of the Constitution, on April 16th 2003,

THE COURT,

having examined the legislative proposal for the revision of the Constitution, the report drawn up by the judged-rapporteur appointed by the Plenum of the Court, as well as the provisions of Law no.47/1992 on the organisation and functioning of the Constitutional Court, holds as follows:

The competence of the Constitutional Court to settle the present case is provided in Article144 sub-paragraph a) final thesis of the Constitution, according to which the Constitutional Court *"adjudicates [...], ex officio, on initiatives to revise the Constitution".*

I. As regards the fulfilment of the conditions for the exercise of the right of initiative concerning the revision of the Constitution

The Court holds that the right of the Parliament's members to initiate a revision of the Constitution is regulated by the provisions under Article 146 paragraph (1) of the Constitution, according to which *"Revision of the Constitution may be initiated [...] by at least one quarter of the number of Deputies or Senators [...]".*

Verifying the compliance/fulfilment of this condition, from the examination of the lists that comprise the initiators' signatures, is held that the legislative proposal was signed by 233 deputies and 94 senators, which represents more than one quarter of the number of the members of the Chamber of Deputies (345), respectively of the number of the members of the Senate (140). Therefore, the constitutional right of initiative for the revision of the Constitution was exercised in compliance with the mentioned provisions of the fundamental Law. Also, the Court holds that the legislative proposal for the revision of the Constitution was presented to the court of constitutional contentious in compliance with the provisions under Article 36 paragraph (3) of Law no.47/1992 on the organisation and functioning of the Constitutional Court, republished.

II. As regards the content of the legislative proposal for the revision of the Constitution

According to the provisions of the fundamental Law, the Constitutional Court holds that is competent to examine the constitutionality of the legislative proposal for the revision of the Constitution, adjudicating on the whole of the regulation, and especially on the compliance with the conditions regarding the limits of the revision, provided by the provisions under Article 148 of the Constitution, and regarding the observance of the provisions of international treaties concerning human rights, to which Romania is party. The provisions of Article 148 of the fundamental Law have the following wording: *"(1) The provisions of this Constitution with regard to the national, independent, unitary and indivisible character of the Romanian State, the Republican form of government, territorial integrity, independence of the judiciary, political pluralism and official language shall not be subject to the revision.*

(2) Likewise, no revision shall be made if it results in the suppression of the citizens' fundamental rights and freedoms, or the safeguard thereof

(3) The Constitution shall not be revised during a state of siege or emergency, or at wartime."

The Constitutional Court, examining from this viewpoint the legislative proposal for the revision of the Constitution, notices that by the new regulation is concerned the achievement of the following objectives:

A. The fulfilment of the constitutional conditions for the integration of Romania into the European Union and for the accession to the North Atlantic Treaty

a) The Court finds that in order to create the constitutional framework necessary to the process of integration of Romania within the Euro-Atlantic structures the authors of the Constitution have in view the insertion of certain new constitutional provisions, which would allow for Romania to fulfil the criteria imposed to the candidate States for the Euro-Atlantic integration. In this respect is recommended the insertion of Article145[1] with the marginal denomination *"Integration into the European Union",* and Article 145[2] with the marginal denomination *"Accession to the North-Atlantic Treaty".*

In what concerns the text recommended at Article 145[1], the Court notices that this has in view the creation of a constitutional framework adequate to the integration of Romania into the European Union. The quality of member of this Union implies the transfer of certain powers connected with State's sovereignty to the European Union. The creation of this constitutional framework is necessarily imposed, at the present moment, considering Romania's strategic objectives/aims, which enjoy a large popular support. Likewise, the Constitutional Court holds that the integration into the European Union must occur after the express manifestation of will of the Candidate State and in compliance with the conditions imposed in the pre-accession agreements.

The provisions comprised in Article145[1] are meant to establish the rule according to which the accession to the European Union shall take place by means of a law, adopted in the joint session of the Chamber of Deputies and the Senate, with a majority of two thirds of the number of Parliament's members. Moreover, the text concerning the accession by means of a law is in full agreement with the provisions of Article 58 paragraph (1) of the Constitution, according to which *"Parliament is the supreme representative body of the Romanian people and the sole legislative authority of the Country."* The Court considers also that the provisions of accession by means of a law has the purpose the submit to the supreme representative body's attention not only the importance of the accession to the European Union, but also the responsibility of the Romanian State, in the conditions in which it achieves the quality of member of the European Union. This responsibility arises, first of all, from the positive or negative consequences that may result from the accession process, one of them arising precisely from the act of *" transferring certain powers to community institutions",* which may question the issue of national sovereignty.

As regards the issue of transferring certain powers of Romania to community institutions, the Constitutional Court holds that the text of Article 145[1] concerns the sovereign exercise of the Romanian State's will to accede to the constituent treaties of the European Union by means of a law, which adoption is conditioned by a qualified majority of two thirds. The act of accession has a double consequence, namely, on one hand, the transferring of certain powers to community institutions, and on the other hand, the exercising in common with the other member states of the competencies stipulated in such treaties. Regarding the first consequence, the Court holds that, by the simple membership/affiliation of a state to an international treaty, this diminishes its competences within the limits established by the international regulation. From this point of view, Romania's membership in the United Nations Organization, Council of Europe, Organization of the European Community States, Central European Free Trade Agreement etc. or Romania's quality of party to the Convention for the Protection of Human Rights and Fundamental Freedoms or to other international treaties represents a restriction of the State authority's competences, a revitalisation of the national sovereignty. But this consequence must be correlated with the second consequence, that of integration of Romania into the European Union. As regards this matter, the Constitutional Court holds that the accession act has also the signification of the division of the exercise of these sovereign powers with the other constituent states of the international body. Therefore, the Constitutional Court holds that through the transferring acts of certain powers to the structures of the European Union, these do not achieve, by endowment, a "supra competence", a personal sovereignty. In fact, the member states of the European Union decided to exercise in common certain powers, which, traditionally, are connected with the field of national sovereignty. It is obvious that in the present era of globalisation of mankind problems, of the interstates evolutions and of the inter-individuals communication to a planetary scale, the concept of national sovereignty can no longer be conceived as absolute and indivisible, without the risk of an unacceptable isolation.

As regards all these matters, the Court holds that, as the desideratum/will of accession of Romania to the Euro-Atlantic structures is legitimated by the Country's interest, sovereignty couldn't be interposed to the accession goal.

But, the Constitutional Court is going to examine if the provisions concerning the accession to the Euro-Atlantic structures infringe upon the limits of the revision, as against the concepts of sovereignty and independence.

As concerns state's sovereignty, as its peremptory feature, the Court notices that it does not come under the incidence of Article 148 of the Constitution, that establishes the limits of the revision of the Constitution, but the independent character of the Romanian State does. The independence is an intrinsic dimension of national sovereignty, even if it is enshrined separately in the Constitution. Mainly, the independence concerns the exterior dimension of national sovereignty, conferring the State the total freedom of manifestation in the international relations. In this respect it is obvious that the accession to Euro-Atlantic structures shall be made on the grounds of the independent expression of the Romanian State's will, not being involved a manifestation of will imposed by an entity exterior to Romania. From this point of view the Court finds that the insertion of the two new Articles in the Constitution – Article 145^1 and Article 145^2 – does not represent an infringement of the constitutional provisions regarding the limits of revision.

On the other hand, the Court also holds that the accession of Romania to the European Union, once achieved, implies a series of consequences that couldn't be produced without a proper regulation, of constitutional rank.

The first of these consequences imposes the integration in the internal law of community acquis, as well as the determination of the relation between normative community acts and internal law. The solution recommended by the authors of the initiative of revision concerns the regulation/settlement of the community law in the national space and the setting of the rule of the precedence of the community law over the opposite provisions of the national laws, in compliance with the provisions of the accession act. The consequence of the accession derives from the fact that the member states of the European Union agreed to place the community acquis - the constituent treaties of the European Union and the regulations derived from these ones – on an intermediary position between Constitution and the other laws, when are concerned compulsory European normative acts. The Constitutional Court finds that this provision, included in Article145^1, does not infringe the constitutional provisions regarding the limits of revision, nor to other provisions of the fundamental Law, being a particular application of the provisions of the present Article 11 paragraph (2) of the Constitution, according to which *"Treaties ratified by Parliament, according to the law, are part of national law."*

In the same time the Court notices that, for the integration within the Constitution of Romania of the European conception, is imposed the correlation of the provisions under Article 11 with a new paragraph, in which purpose is expressly provided in the legislative proposal of revision that, *"If a treaty to which Romania is to become a party comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution."* In order to ensure this constitutional provision an effective character, is recommended the insertion of another provision, included in Article 144 sub-paragraph a^1), according to which the Constitutional Court *"adjudicates on the constitutionality of treaties or other international agreements, upon notification by one of the Presidents of the two Chambers, a number of at least fifty Deputies or at least twenty-five Senators"*.

The provisions of paragraph (4) of Article 145^1 establish the competence of the President of Romania, of the Parliament and of the Government to guarantee that the obligations resulting from the accession act are fulfilled and that the constituent provisions of the European Union and of the mandatory regulations derived from these are implemented.

According to the provisions under Article 145^1 paragraph (5), the Government sends to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval. The Constitutional Court finds that this provision fits into the structure of the fundamental Law, without infringing the limits of revision, being a fair and necessary provision as the national parliament is a partner decisional structures of the European Union, thus being underlined the role of the national legislative authority.

In what concern the provisions of Article 145^2, the Constitutional Court enshrines that these cannot have the content of the legislative proposal of revision, because between the European Union and NATO there are main differences, which impose a different juridical treatment. Thus, if the European Union is an aggregation of States

competences, of economic, politic and legislative order, instead NATO is exclusively politic-military organization, without any juridical part/role in the life of citizens of the party states. Therefore, if the accession to the European Union implies a set of specific rules and the fulfilment of certain exigencies of constitutional nature, in the case of accession to NATO all the exigencies can be satisfied in the normal conditions of the accession to an international treaty, in compliance with the provisions of Article 11 and of Article 91 of the Constitution. Moreover, Article 10 of the North Atlantic Treaty, signed in Washington D.C. on April 4th 1949, provides that: ″The Parties may, by unanimous agreement, invite any other European State in a position to further the principles of this Treaty and to contribute to the security of the North Atlantic area to accede to this Treaty. Any State so invited may become a Party to the Treaty by depositing its instrument of accession with the Government of the United States of America. The Government of the United States of America will inform each of the Parties of the deposit of each such instrument of accession.″

Also, the provisions of Article 145^1 paragraph (2) are applicable only in the case of the European Union, NATO not having any competence of issuing regulations with mandatory character for the citizens of the party states. Nor the other elements of Article 1451 find applicability in the case of NATO. The only issue that can be held is the modality of accession to NATO, the Parliament being free to decide if the accession is carried out by means of a law adopted with a majority of two thirds, in the joint session of the Chamber of Deputies and the Senate, through an organic law or through an ordinary law. Only in the first hypothesis is imposed the insertion of Article 145^2, with a sole reference to Article145^1, respectively to the proper application of paragraph (1) of this article.

b) As concern the consequences of the accession to the European Union and to NATO the Constitutional Court hold that these are many and are reflected in the content of the legislative initiative of revision of other Articles of the Constitution.

1. The accession of Romania to NATO involves the change of the functions of the armed forces. This change reflects in the proposal of amendment of the provisions of paragraphs (1), (3) and (5) of Article 117 of the Constitution. By the amendment of paragraph (1) are instituted new roles/functions of the army, which in the future, under the law and of the international treaties Romania is party of, shall contribute to collective defence in military alliance systems, and participate in peace keeping or peace restoring missions. The provisions of paragraph (3) of this Article want to generalize this function to all the components of the armed forces. Finally, paragraph (5) of the same Article is amended in order to be inserted new restrictions regarding foreign troops in relation to the Romanian territory. In the present wording the provisions of this paragraph forbid the foreign troops to enter or cross the territory of Romania but on the terms established by the law. By the recommended amendment to these restrictions are added also those that represent a necessary completion/supplement of the constitutional text, regarding the station of these on the territory of Romania, respectively the carrying out of military operations on this territory.

2. An important consequence of the amendment of the army roles/function concerns the re-evaluation of the powers of the Supreme Council of National Defence. The Constitutional Court holds that, for the correlation of the provisions of Article 117 with those of Article 118, is recommended the amendment of the last one, as it follows: "Article 118. - *The Supreme Council of National Defence shall unitarily organize and co-ordinate the activities concerning the country's defence and security, its participation in international security keeping, and in collective defence in military alliance systems, as well as in peace keeping or restoring missions.*"

3. The integration of Romania into the European Union implied the observance of the provisions of the community acquis regarding the free circulation of capitals, to the rights of the European citizens to invest and to acquire goods in conditions of equality with the Romanian citizens. The Constitutional Court notices that the possibility of achieving these objectives is limited by the provisions of Article 41 paragraph (2) final thesis of the Constitution of Romania, by which if forbidden to the aliens and stateless persons to acquire the right of property on land. In order to remove this interdiction and to institute certain guarantees of the right to private property is recommended the amendment of Article 41. The first amendment concerns the denomination of the Article, namely that, instead of the denomination *"Protection of private property"*, is recommended the collocation *"Right to Private Property".* The second amendment concerns precisely paragraph (2) of Article 41. In the new wording private property is equally guaranteed and protected by the law, irrespective of its owner, and foreign and stateless persons may only acquire the right to private property

of land under the terms resulting from Romania 's accession to the European Union and other international treaties Romania is a party to, on a mutual basis, under the terms stipulated by an organic law, as well as a result of lawful inheritance. The Constitutional Court finds that are mentioned in this new wording enough constitutional guarantees for the exercise of this right according to the general interest and in compliance with the provisions of the community acquis. After paragraph (3) of this Article is inserted a new paragraph, (3^1), which prohibits the forcible transfer of assets into public property based on the owners' social, ethnic, religious, political affiliation, or other discriminatory features. This constitutional provision represents a solid guarantee of the right to private property, which removes the possibility of its forcible transfer into public property based on the owners' social, ethnic, religious, political affiliation, or other discriminatory features. Finally, after paragraph (7) is inserted a new paragraph, (7^1). The present paragraph (7) has the following content: *" Lawfully acquired assets shall not be confiscated. Lawfulness of acquirement shall be presumed."* The new text circumstantiates this presumption and establishes that it is not applied for "*any goods intended for, used or resulting from a criminal or administrative offence".*

The Court holds that this wording can be criticized and that it may lead to confusions. Thus, if the text means to permit the confiscation of the goods acquired lawfully, but which was based on a quantity of money results from criminal offences, its wording is inappropriate. From the present wording of paragraph (7^1) results that it meant the reverse burden of proof on the licit character of the assets, being provided the illicit character of the goods acquired through the capitalisation of the incomes resulted from criminal offences.

In this matter the Constitutional Court adjudicated by Decision no.85 of September 3rd 1996, published in the Official Gazette of Romania, Part I, no.211 of September 6th 1996, occasion in which was stated that the juridical security of the right to property over goods that constitute wealth of a person is indissolubly connected of the presumption of the lawfully acquiring of the goods. **That is why, the removal of this presumption has the significance of the suppression of a constitutional guarantee of the right to property, which is contrary to the provisions of Article 148 paragraph (2) of the Constitution. Therefore, the objective aimed on this way is unconstitutional.**

4. In order to be expressed certain exigencies of the community acquis, connected with the fight against terrorism, trans-national criminality, organised crime, traffic in drugs and humans beings, is necessary the circumstantiating of the constitutional interdiction regarding the extradition of Romanian citizens. In this regard is recommended the amendment of Article 19 paragraph (1), which shall have the following content: *"(1) No Romanian citizen may be extradited or expelled from Romania. Romanian citizens can be extradited based on the international agreements Romania is a party to, according to the law and on reciprocity basis."*

The Constitutional Court notices that this new wording of Article 19 paragraph (1) of the Constitution, at the first sight, is antinomian: in the first thesis is alleged Romanian citizen's right not to be extradited or expelled. **Instead, in the second thesis is alleged the contrary, namely that Romanian citizens may be extradited based on the international agreements Romania is a party to, according to the law and on reciprocity basis, which reflects a wording fault/deficiency.**

5. The citizens of the European Union have the right, in the conditions of fulfilling certain legal requests, to participate at the election of the public local authorities and of the European Parliament.

The Constitutional Court hold that, in the perspective of the European integration, is imposed the recognition of the European citizens' rights, resident in Romania, to elect and to be elected in the local public administration authorities and in the European Parliament, under the terms of the law. Therefore, in the legislative proposal is provided the supplementation of the Constitution with a new article, 120^1, with the following content:

"Article 120^1 – *Once Romania has acceded to the European Union, the citizens of the Union, who fulfil the requests of the law, shall have the right to elect and to be elected for the constitution of the authorities of the local public administration and for the European Parliament."*

From the wording of this new article results that the citizens of the European Union may occupy inclusively the office of mayor or vice-mayor, although the Directive 94/80CE permits the member states to reserve these offices only for their citizens. Such a reserve is available also for the local councillors, especially when these exercise powers that belong to the State. The Constitutional Court holds that these conditions of eligibility, the incompatibilities that

should exist between these offices and the ones occupied in the national state and others of the same nature considered by the constituent legislator to be included in the electoral law.

Therefore, the Constitutional Court considers that object aimed by the authors of the legislative proposal to amend and supplement the Constitution of Romania, for the compliance of its provisions with the provisions of the constituent treaties of the European Union and with mandatory regulations derived from these, represent a necessary political and juridical step, which has in view, on one hand, the exigencies provided by Article 148 of the Constitution and the necessity of the correlation of the new constitutional provisions with the other texts of fundamental Law. In the same time the Court considers that the insertion of these new regulations in the Constitution of Romania, in this moment, for a future integration in the European Union, represents a solution that cannot be abdicated, because the integration into the Euro-Atlantic structures cannot be achieved but on pre-existent constitutional grounds/basis.

B. As regards the enlargement of the institutional and constitutional guarantees of the fundamental rights and freedoms

The Constitutional Court holds that the achieving of this goal by Romania is determined by the evolution of the constitutional democracy, by the necessity of the correlation of the provisions of the fundamental Law regarding the fundamental rights and freedoms with the provisions of the Convention for the protection of human rights and fundamental freedoms and, especially, with the case-law of the European Court of Human Rights in this matter.

In order to answer to such an aim/objective, by the initiative of revision were recommended solutions that would permit the increase of the institutional guarantees, on one hand, and on the other, the insertion of certain new rights and obligations and the reconfiguration of the existent ones.

B1. **The increase of the institutional guarantees**

a) **The increase of powers of the Constitutional Court**

The stipulated provisions of the new paragraph (1) of Article 140 confer to the Constitutional Court the attribute of guarantor for the supremacy of Constitution. In what concerns the so-called enlargement of the powers of the Constitutional Court, the initiative of revision contains provisions that tend to extend the possibility to refer the Constitutional Court, under the terms provided under Article 144 sub-paragraph a), to the Advocate of the People, which, considering the nature of the notifications referred to it, to intervene in the legislative process through the Constitutional Court, for the protection of the rights and interests of the ones that referred to it complains, notifications or petitions. In the same time, after sub-paragraph a) a Article 144 is inserted a new sub-paragraph, a^1), by virtue of which the Constitutional Court is going to adjudicate on the constitutionality of treaties or other international agreements, upon reference upon notification by one of the Presidents of the two Chambers, a number of at least fifty Deputies or at least twenty-five Senators. It is held that this new power of the Constitutional Court is imposed by the necessity of the correlations of the provisions of Article 145^1, regarding the pre-eminence of the community law in relation with the national law, with those of Article 11 paragraph (3) of the Constitution, by virtue of which, *"If a treaty to which Romania is to become a party comprises provisions contrary to the Constitution, its ratification shall only take place after the revision of the Constitution."*

The international treaties are, mainly, an adequate field for the review procedure of the Constitutional Court. Likewise, it is reasonable for the procedure of the constitutionality of treaties to be clarified before their coming into force, through the specific procedures of an *a priori* review.

By the legislative proposal of revision is recommended the amendment of the provisions included in sub-paragraph c) of Article 144, namely that in the future the Constitutional Court is going to adjudicate on the objections of unconstitutionality concerning laws and ordinances, brought up before the public authorities with jurisdictional powers.

The Court holds that recommended amendment is imprecise, as it is used an inadequate notion, namely that of public authorities with jurisdictional powers, notion that cannot certainly determine if its sphere includes only the administrative jurisdictions or also other jurisdictions. In this last category also enters the Constitutional Court, and thus on objection of unconstitutionality could be brought directly before the court, which contravenes the spirit of the Constitution of Romania. In the same time the Court holds that the intention of the authors of the initiative of revision to enlarge the sphere of the subjects that can refer the Constitutional Court is, also, imprecise. In the conditions in which, in the present, the objection of unconstitutionality can be brought up only before the courts of law, **the insertion**

of any jurisdictional activity within the area/field of competence of the Constitutional Court is an excessive measure and impossible to be accomplished, in the conditions in which pension commissions, discipline commissions etc. exercise jurisdictional powers. The Constitutional Court is called to adjudicate in the matter of constitutionality of laws and ordinances, upon request made by the parties in a trial, and not out of it, fact for which is necessary the conservation of the present regulation of Article 144 sub-paragraph c).

As regards the hypothesis included in the same provision concerning the possibility of the Advocate of the People to raise the objection of unconstitutionality, the Court notices that this does not contain a judicious solution with legal norm vacation of constitutional rank, because the fact that the Advocate of the People raises an abjection in the benefit of a person cannot represent a real guarantee or a measure of protection of the citizen, as long as hat person, having the procedural capacity and being animated by a legitimate interest, can personally exercise the procedural right of raising the objection before the trial court. Moreover, the Constitutional Court holds that the Advocate of the People could not even invoke a procedural position that would legitimate its participation to a trial before the trial courts. As long as to the citizens are being guaranteed the right of free access to courts, as well as the right to defence, it means that, in the judiciary sphere, they can protect themselves against the application of certain unconstitutional legal provisions. That is why the Advocate of the People would be invested with a power as excessive, so inconsistent, that of raising an objection of unconstitutionality, outside of a trial, for the petitioner. **Moreover, the institution of the *ombudsman* at the European level is conceived as a public authority whose powers concern the relations between persons and the public administration and not with the courts of law. Therefore, this power must be eliminated from the constitutional provisions.**

As regards the text included in sub-paragraph c^1) it can be noticed that this provides the Constitutional Court power to solve legal disputes of a constitutional nature between public authorities, at the request of the President of Romania, one of the Presidents of the two Chambers, the Prime Minister, or of the President of the Superior Council of Magistracy. Such a power is provided also in the constitutional regulation from other States (for example Article 189 of the Constitution of Poland or Article 160 of the Constitution of Slovenia).

This concerns the authority disputes (or organic litigations). In such a case the Constitutional Court solves or settles constitutional litigations between authorities. These litigations may concern disputes between two or more constitutional authorities regarding the content or extension of their powers, resulting from the Constitution. This is a necessary measure, concerning the removal of certain institutional blockings. **In order to avoid the implication of the Court in the solving of certain political conflicts is necessary to be provided that are concerned only the institutional blockings, respectively the positive or negative disputes of competence.**

The legislative proposal of revision provided, also, under sub-paragraph j) that through an organic law the Constitutional Court can obtain also other powers, thing that is forbidden by the preset constitutional regulation/settlement. The Court finds that also this recommendation **is going to be eliminated in order to maintain the political neutrality of this public authority and to be observed the original constituent power will.**

Another novelty element, meant to enforce/consolidate the authority of the decisions of the Constitutional Court, is the recommendation of the amendment of Article 145. The new provisions of Article 145 paragraph (3) underlines the general binding character of the Court's decisions, which means that the effects of the decisions are opposable *erga omnes*, thus they concern equally public authorities, the legal persons of public or private law, as well as any other person who may be under their incidence.

In the same time the legislative proposal establishes a term of 45 days, after which the decision of the Constitutional Court by which a text of a law or ordinance found unconstitutional start to produce its legal effects, in which meantime, the Parliament or the Government may bring into line the unconstitutional provisions with the provisions of the Constitution. From the wording of this constitutional provision the Court finds that in all cases the decisions of the Constitutional Court produce legal effects within 45 days from their publication in the Official Gazette of Romania, Part I. The Court finds that such a provision is applicable only for the situations regulated by Article 144 sub-paragraphs a), b) and c), being excepted from this rule the decisions provided by Article 144 sub-paragraph a^1).

Likewise, as a result of the amendment of Article 11 of the fundamental Law, by virtue of which the ratification of an international treaty that comprises provisions contrary to the

Constitution, its ratification only takes place after the revision of the Constitution, on the basis of the decision of the Constitutional Court, is necessary to be avoided the double constitutional review on the same provision and, in this respect, Article 145 paragraph (2) provides that "*If the constitutionality of a treaty or international agreement has been found according to Article 144 subparagraph a[1]), such cannot be the subject of an objection of unconstitutionality*."

For an effective applicability of the provisions under Article 145 of the Constitution, the Court finds that it is necessary to be restructured this article being reversed the order of the paragraphs. **Thus, paragraph (3) would become paragraph (1), because this represents the general principle in this matter. Therefore, the provisions recommended to be introduced to the present paragraph (1) can have only a consequence derogatory from the provisions regarding the effects of the decisions provided in paragraph (3), which would become paragraph (1). Likewise, the date on which the decision of the Constitutional Court produces legal effects must be correlated with the provisions regarding the coming into force of the law, being mentioned that this occurs after 3 days from the publication in the Official Gazette of Romania, Part I.**

b) The guarantee of the judge independence and the consolidation of justice role

1. In this matter the legislative proposal of revision concerns, first of all, the field of the courts of law, the supplementation of Article 23 of the Constitution, by the insertion of a new paragraph (1[1]) with the following content: *"Justice is unique and equal for all".* This new constitutional provision is in agreement with the provisions of Article 16 paragraph (2), by virtue of which *"No one is above the law"*, and with the provisions of Article 1 paragraph (3), according to which Romania is a State governed by the rule of law, in which human dignity, the citizens' rights and freedoms, the free development of human personality, justice and political pluralism represent supreme values and are guaranteed.

The Court notices that for the compliance of the legislation of Romania with the community acquis the legislative proposal present a special interest under the aspect of removing contradictory debates on the direct application in the legislation of Romania of the provisions under the Convention for the protection of human rights and fundamental freedoms. In order to achieve this purpose the initiators recommend the insertion of certain new paragraphs (3) and (4) to Article 21 of the Constitution, which have the following content:

"(3) All parties shall be entitled to a fair trial and settlement of their cases within a reasonable time.

(4) Administrative special jurisdictions are optional unless otherwise provided by the law."

It is found that the provisions recommended to be inserted under paragraph (3) have the role to consolidate free access to justice, guaranteeing the right to a fair trial, settled within a reasonable time, exigencies provided by Article 6 paragraph (1) of the Convention for the protection of human rights and fundamental freedoms. In what concerns the provisions under paragraph (4), by virtue of which administrative jurisdictions are optional, unless the law provides otherwise, the Court considers that these do not have constitutional relevance. Thus, as the legislator did not provided the mandatory character of such an administrative jurisdictional procedure, it cannot be raised the issue of forbidding free access to justice, and if did provide such a procedure and this is mandatory, the constitutional text is of no use. **Therefore, the text is not necessary because it does not find applicability in the practice and is going to be eliminated. Moreover, it is noticed that free access to justice, pursuit Article 21, cannot be conditioned by an administrative jurisdiction optional or even mandatory, in which respect the Constitutional Court adjudicated in many decisions.**

2. As regards the judicial authority, fundamental mutations are going to occur also in what concerns the Superior Council of Magistracy. The essential element that defines the new regulation concerns the guarantee of the independence of this public authority by the restriction of the intervention of the representatives of the Ministry of Justice in its own activity.

In order to achieve these purposes the provisions under Article 132 paragraph (1) recommend the institution of the function/role of the Superior Council of Magistracy as guarantor for the independence of justice.

Likewise, the Superior Council of Magistracy will be comprised of **17 members**, constituted in two sections, one for judges (7 members) and one for the prosecutors (5 members). Four representatives of the civil society, specialists in law, who enjoy a good professional and moral reputation, complete the Plenum of the Superior Council of

Magistracy. Likewise, are part of the Superior Council of Magistracy: the Minister of Justice, the President of the High Court of Cassation and Justice, and the General Public Prosecutor of Romania.

From this enumeration established by the future Article 132 paragraph (2) the Court finds that in fact the **Superior Council of Magistracy consists not of 17 members, but of 19 members (7 judges, 5 prosecutors, 4 representatives of the civil society, the Minister of Justice, the President of the High Court of Cassation and Justice, and the General Public Prosecutor of Romania).** The recommended text has in view the affiliation of the General Public Prosecutor to the public prosecutors division, and of the President of the High Court of Cassation and Justice to the judges division, without being made the distinction between the members of right and the designated members. In the same time the text of Article 132 paragraph (1) expressly establishes that the structure of the Superior Council of Magistracy is limited to 17 members, without being made a distribution on divisions of the members of the civil society and of the other three representatives of the public authorities. Even if it is accepted that the General Public Prosecutor and the President of the High Court of Cassation and Justice are part of the divisions, it cannot be overlooked the fact that the Minister of Justice is excluded from the number of 17. But even in the case in which the Minister of Justice would be included in number of judges, it appears the issue of the difficulty of its validation by the Senate, in the conditions in which he is a member of the Government, which entitling depends on the competence of the joint sessions of the Chamber of Deputies and the Senate. Not even the possible submissions regarding the designation of the General Public Prosecutor or of the President of the High Court of Cassation and Justice in general elections of the judges cannot eliminate the antinomies that can arise after such procedures. **The Court finds that the number of the members of the Superior Council of Magistracy is of 19, and subsequently the constituent legislator shall regulate expressly the distinction between members elected and members of right. Here will be also necessary to be mentioned who validates the representatives of the civil society.**

The text recommended at paragraph (4) of Article 132 provides that the length of the term of office of the magistrates in the Superior Council of Magistracy shall be of 6 years, by elections in general meeting of the judges and of the prosecutors, the results of the elections being validated by the Senate. At its turn, the Council elects a President from among its members, on one year's term of office, which cannot be renewed.

The Constitutional Court holds that this last provision of Article 132 paragraph (4) is insufficiently elaborated in what concerns the separation of powers in state and of the insurance of the autonomy of functioning of this public authority. Thus, of the text that establishes that the President of the Superior Council of Magistracy is elected from among its members, it shouldn't be intended that **this could be the Minister of Justice, the General Prosecutor or the President of the High Court of Cassation and Justice.** These public authorities participate to the sessions of the Council with **a certain authority, conferred by the office they exercise. That is why, the Constitutional Court holds that the office of the President of the Superior Council of Magistracy cannot be exercised but by a magistrate elected or by a representative of the civil society. Therefore it should be instituted an incompatibility between the offices of Minister of Justice, President of the High Court of Cassation and Justice and General Prosecutor of Romania and the office of President of the Superior Council of Magistracy. It must be also held that the collocation "general prosecutor of Romania" does not appear in the Constitution.**

Regarding the text recommended at paragraph (7) of Article 132, the Court notices that this contains another provision that concur to the placing of the la Superior Council of Magistracy to the rank of an institution able to ensure the independence of justice, namely the one regarding the right of the President of Romania to preside the proceedings of the Superior Council of Magistracy he takes part in. The Court holds that this prerogative is a natural consequence of the fact that the President of Romania is the one who, on the grounds of Article 124, appoints judges and prosecutors, at the proposal of the Superior Council of Magistracy, with the exception of the junior ones [Article 133 paragraph (1)].

The Court finds that, by virtue of Article 132 paragraphs (5), (6) and (8), the length of the term of office of the Superior Council of Magistracy members is of six years, its decisions are adopted by final vote and cannot be challenged before the courts of law. **This last provision is in an antinomy relation/report with the provisions under Article 21 paragraph (1) of the Constitution, according to which *" Every person is entitled to bring cases before***

the courts for the defence of his legitimate rights, freedoms and interests". **Moreover, in a state governed by the rule of law the non-insuring of the free access to the courts of law is unacceptable. Therefore, to prohibit the appeal to justice, regarding such decisions, is contrary to the principle established by Article 6 of the Convention for the protection of human rights and fundamental freedoms, by virtue of which every person is entitled to a fair trial, such a trial being excluded outside of a court which would guarantee effectively the judge independence.**

The Superior Council of Magistracy carries out the role of court of law, in divisions and in plenum, in the field of disciplinary jurisdiction of judges and prosecutors, without the vote of the Minister of Justice and of the General Prosecutor, according to the procedure established by its organic law. **This constitutional provision cannot forbid free access to justice of the person judged by this extra judiciary "court", without the infringement of the provisions under Article 6 of the Convention for the protection of human rights and fundamental freedoms.**

B 2. The insertion of certain new rights and obligations, as well as the reconfiguration of the existent ones

1. The Court finds that this dimension of the revision of the Constitution finds a proper reflection in the insertion of Article 46[1] within the fundamental Law, with the following content: *"Article 46[1]. – The State and the public authorities must ensure environmental protection and recovery, as well as the preservation of the ecological balance."*

It can be noticed that the transfer of this rule, from the constitutional provisions of Article 134 paragraph (2) sub-paragraph e), to the chapter concerning fundamental rights and freedoms is contrary to the logic of systematisation of the normative act. In order to ensure the achievement of the purpose of the legislative proposal, the Court finds that is necessary to be inserted under chapter II of the Title II of the Constitution the human right to a healthy environment, with the correlative obligation of everyone to contribute to the protection and recovery of the environment, on this way being legitimised the action of the legislator to establish sanctions for the pollution of the environment.

2. The amendment of Article 32 paragraph (5) of the Constitution concerns a formal transformation of the present text of the constitutional regulation. The present Article 32 paragraph (5) provides that the education establishments, including the private ones, are set up and conduct their activity according to the provisions of the law. The new regulation has in view the following wording of the constitutional text: *"(5) Education at all levels shall take place in State, private, or confessional institutions, according to the law."*

This new wording of the provisions under Article 32 paragraph (5) is not meant to modify the present constitutional order concerning education. Thus, education may be carried out in State or private establishments, thus being instituted a dichotomy specific to the most profound legal constructions. The insertion of this new criterion, the confessional one, is not connected with the dichotomy logic, adding to a logical criterion a new determination, inadmissible by the fact that it can be found in the two, defined in the present by the Constitution. Thus, confessional education neither is excluded from the private nor from the state education. Therefore, there is a confessional education both private and public, which justifies the amendment, under this aspect, of the fundamental Law. The Court considers that the examined norm becomes coherent if the logical pair of confessional, respectively lay education is inserted in the text submitted for revision. Thus, the new constitutional text would provide that education of all levels **may be lay or religious and conducted in Stat or private institutions, according to the law.**

C. The improving of the decision-making process of the public authorities

Examining the legislative proposal, it is held the desideratum/wish of eliminating certain lacks noticed in the functioning of the public authorities by providing certain solutions meant to contribute to their improving up to democratic standards in this matter, as it follows:

a) **The rationalisation of the parliamentary activity is stipulated** to be performed by the amendment of Article 62, Article 67 paragraph (1), Article 69, Article 72 paragraph (3), Article 73, Article 73[1], Article 78 and by the repealing of Article 70, which provisions are placed at Article 69 paragraph (1), Article 71, which provisions are placed at Article 72 paragraph (3) sub-paragraph e), Article 75 and Article 76.

These amendments have in view to realise a better delimitation of the powers of the two Chambers of Parliament, to redefine the statue of deputies and of senators and the constitutional elements of the legislative procedure.

The Constitutional Court notices that though the amendment of Article 62 is concerned the setting of the principle by which the two Chambers work in separate sessions. The exception from this rule is the joint session, which competence is strictly determined by the fundamental Law. In this respect, the legislative proposal concerns the insertion of certain new competences on the agenda of the joint session of the Chambers, through the amendment of sub-paragraph f), g) and h) of paragraph (2) of Article 62 of the Constitution and the insertion of new sub-paragraphs, i) and j). Thus, in the joint sessions of the Chamber of deputies and of the Senate are going to be approved/passed also the following matters: national strategy of homeland defence, appointment of the directors of the intelligence services and the exercise of the control over the activity of such services, appointment of the Advocate of the People, setting of the status of the Deputies and Senators, their emoluments, and other rights, fulfilment of any other prerogatives, which - in accordance with the Constitution or the Standing Orders, shall be exercised in a joint session.

The Court finds that, as a rule, the setting of the competence of the parliamentary Chambers, in joint or separate sessions, does not involve constitutionality issues.

But it can be noticed that **the setting of such powers through organic law or through regulations is contrary to the provisions of Article 61 paragraph (1) of the Constitution,** which is not recommended to be amended and establishes that the *"The organisation and functioning of each Chamber shall be regulated by its own Standing Orders".* This provision gives expression to the regulation autonomy of each Chamber, from which results the consequence that, besides of a constitutional regulation of the common powers of the two Chambers, these cannot be separated through organic law of through the Standing Orders of the joint sessions, without endangering the functioning of the bicameral Parliament. Thus, there could be transferred powers of one of the Chambers, besides of a constitutional provision, to the joint sessions, which constitutes an infringement of the fundamental Law.

In what concerns the setting up by Constitution of the powers exercised in joint session, the Constitutional Court can have no objection as long as this thing represents an exclusive power of the derived constituent power. Nevertheless, the Court holds that the amendment of Article 62 paragraph (2) sub-paragraph j) represents a contradiction of the provisions of Article 62 paragraph (1), which institutes the rule of separate sessions of the two Chambers. **Therefore, the setting of certain competences for the joint sessions of the Parliament, by means of an organic law, represents a denial of these constitutional provisions and a juridical antinomy, difficult to be settled in the practice.**

If, on the grounds of the constitutional provisions in force, the Government opt for the reference of either Chamber of Parliament with a bill, in the future this possibility is restricted to certain fields, established by Article 73^1, for each Chamber. The division of these competences is available also in the case of the legislative proposals being established certain matters on which a Chamber may be referred for the adoption thereof on first reading. Thus, for the division of the powers of the Chamber of Deputies and of the Senate, Article 73^1, in the opinion of the authors of the legislative proposal, establishes that certain legislative proposals and bills are obligatory submitted for debate to the Chamber of Deputies, and other to the Senate. Also this option of the derived constituent power is absolute, and it cannot be submitted to the censorship of the Constitutional Court.

The Court notices that in the new wording of the constitutional provisions regarding the legislative competence of the Chambers is not eliminated the principle of bicameralism, but its rigors are simplified, in the respect that a bill adopted by a Chamber is forwarded to the other for a final examination. The novelty is that the first Chamber referred is regarded only as a chamber that pre-examines the bill before the decisive vote of the second Chamber. It is a rationalised formula of the law passing/adoption in the bicameral system by the decisive vote of the political or inferior Chamber of the Parliament. This option cannot be censored either by the Constitutional Court as two Chambers have equal positions and the same legitimacy. Nevertheless, the Court notices the fact that by the division of the competences of examination of bills between the two Chambers can result a competence dispute. During the examination of the bill forwarded by the Government the parliamentary opposition of the Chamber of Deputies finds that this is connected with the primary competence of the Senate. Or, during the same parliamentary procedure, an ordinary bill is transformed in an organic one, and the examination of this one is connected with the competence of the other Chamber. I**n this situation legislative blockings may arise and, in order to avoid them, the Constitutional Court recommends to be inserted under Article 73^1 a new paragraph that will stipulate the possibility of the retraction of the reference made to the Chamber**

invested contrary to the Constitution and the sending of the bill to the other Chamber. This procedure is favourable to the respective Chamber, because, thus, it becomes the Chamber that has the last word in the examination of the bill or of the legislative proposal.

Yet, by this modality of work, of distribution of certain exclusive competences to a Chamber, can be denied, in fact, any contribution of the first Chamber, phenomena that could present certain political risks, especially in the case in which the Senate and the Chamber of Deputies have different political configurations. The advantage that the new competence of the Chamber presents is the elimination of the procedure of mediation and of the debate in the plenum of the two Chambers of the texts in conflict, as a result of the failure of the mediation or of the non-approval of the report drawn up by the mediation committee in a Chamber or in both Chambers.

In the same matter, the Court notices that the use of the collocation "first reading" for the notification of one Chamber and of the collocation "second reading" for the forwarding of a bill from one Chamber to the other is improper for the language of the parliamentary law. The use of first, second or even third reading (for example: the case of the Danish Parliament) is proper to the debate in one Chamber. Even in a bicameral parliament each Chamber may have one, two or more readings. Instead, the sequential examination of the bills in a Chamber, on first reading, and in the other Chamber, on second reading, transforms the bicameral Parliament in a bicameral one.

As regards the recommendations concerning Article 114, the Court notices the fact that the restriction regarding the settlement by means of urgency ordinances of the electoral rights of citizens is not correlated with the other constitutional provisions that entitle the European citizens, resident in Romania, to participate to the local elections and to the ones for the European Parliament. The Court considers that such a discrimination is not justified, recommending, therefore, **the elimination of the collocation "of citizens" after "electoral rights" from the wording of paragraph (4^1) of Article114.** Not less important is the fact the express mentioning to the electoral rights is redundant, because these are part of the rights provided by the Constitution, field already excluded from the settlement by means of urgency ordinances.

b) **Reconfiguration of certain constitutional provisions regarding the President of Romania**

The Constitutional Court, holding that the powers of the President of Romania increase, pursuit the mentioned provisions of Article 132 paragraph (7), finds that this must be correlated with the provisions of the present Article 94, which have the denomination *"Other powers",* by the insertion of a new paragraph that would stipulate the power of the President of Romania to preside over the sessions of the Superior Council of Magistracy he takes part in, after the model already instituted in Article 87 of the Constitution. This correlation is necessary, because the prerogatives of the constitutional authorities must be structured within the body of the fundamental Law, expressly, in the chapter or in the section that groups the competences of this authority.

c) **The statue of the local public administration**

The Constitutional Court notices that by the text recommended at paragraphs (1) and (2) of Article 119 of the Constitution is inserted a new concept that of disconcentration, by replacing the concept of decentralisation used by the constituent legislator in 1991. This text must be amended, first of all, for reasons related with the public law, considering that the mentioned concept tends to replace, in an absolute and erroneous way, the one of decentralisation of the public services. In order to be given a settlement/regulation in compliance with the principles of the public administration, there must be necessarily noticed that in the administrative-territorial units co-exist public services of the State with authorities of the local public administration. In the fist case the legitimating of the existent public services of the State in the administrative-territorial units is submitted to the disconcentration principle, and in the second case we talk about administrative decentralization, which concerns the granting, by means of a law, of certain competences proper to the territorial collectivities, which exercise is conferred, in the examined case, to the local council and to the municipal councils. Thus, the exclusive insertion in the Constitution of the administrative disconcentration principle eliminates the possibility of its coexistence with the decentralisation principle, which concerns not only the authorities of the public local administration, but also the public services. **Under this terms, the Constitutional Court finds that the wording of Article 119 is going to suffer an amendment, namely of submitting to the public administration of the administrative-territorial units both the disconcentration**

principle, and the decentralisation of the public administration, one of the forms of this principle being the local autonomy.

By such an amendment are re-established the normal concepts in the organisation of the local public administration. **Therefore, the replacement of the disconcentration term with the one of decentralisation is imposed also in the content of Article 122 paragraph (2) of the Constitution.**

According to Article 6 paragraph (2) of the Constitution the protecting measures taken by the State for the preservation, development and expression of identity of persons belonging to national minorities must be conform to the principles of equality and non-discrimination in relation in relation to the other Romanian citizens.

In the situation in which in an administrative-territorial unit the persons belonging to a national minority have significant weight, it can appear a disequilibria/lack of balance between these ones and the Romanian citizens of the respective administrative-territorial unit or the members of another ethnic group that have no longer the possibility to be elected in the local councils, which creates a discrimination, in the meaning of Article 6 paragraph (2) of the Constitution, of Article 7 of the Universal Declaration of Human Rights, of Article 14 of the Convention for the protection of human rights and fundamental freedoms, as well as of other international regulations that forbid the discrimination. In order to eliminate this possible lack of balance the constitutional text would provide that the persons belonging to a minority ethnic group in an administrative-territorial unit have the right to be represented in the local council. Thus Romanian citizens of Romanian nationality or of other nationality from the administrative-territorial units in which are in minority would have the possibility to accede to public offices at the local level and to preserve their ethnic identity.

d) **The amendment of the constitutional provisions concerning the Advocate of the People.** By the legislative initiative is recommended the supplementation of Article 55 paragraph (1) of the Constitution, for the admission of the specialization of the deputies of the Advocate of the People on fields of activity. Thus is recommended the adding of the following thesis: *"The deputies of the Advocate of the People are specialized on fields of activity."*

The Constitutional Court considers that **such a provision is not of constitutional nature, existing the possibility to be adopted by the amendment of the organic law of the institution of the Advocate of the People. In this respect it is alleged that this is a ratione materiae specialization of the functions of the institution as such, which does not affect the present possibilities of distribution of competences between deputies, on one hand, and between these and the Advocate of the People, on the other hand.**

D. The amendment of other constitutional provisions

Beside the objectives mentioned above the Constitutional Court considers that there are a series of other amendments recommended by the authors of the legislative proposal, which do not fit in the purposes provided al paragraphs A, B and C, but which answer to other commandments of connection/joining of the provisions of the fundamental Law to the exigencies of the international practice of Romania or to certain requests of legislative technique.

a) In this sphere of amendments recommended to be brought to the Constitution is also the amendment and supplementation of Article 134 of the Constitution, regarding the national economy.

The legislative proposal of revision concerns, through others, the amendment of sub-paragraph e) of paragraph (2), for the elimination of the present text concerning *"environmental protection and restoration, as well as preservation of the ecological balance "* – text placed in an amended form to Article 46^1 under the denomination *"Protection of the environment"*. The Court finds that, **if under Article 46^1 shall be inserted the right to a healthy environment, it should be maintained sub-paragraph e) of paragraph (2) to Article 135, here being regulated the obligations of the State.**

b) The Constitutional Court notices that the legislative proposal of revision of the Constitution concerns also the amendment of Article 151 of the fundamental Law, by the insertion of certain transitory provisions which would ensure the continuation of the mandates/terms of office by the present judges of Court of Accounts, as well as the reinvestment of certain former judges of the Constitutional Court.

The recommended texts have the following content: *paragraph 4 "[...] In order to ensure the renewal of the Court of Accounts every three years, at the expiration of the term of office of the present audit advisers these may be appointed for another term of 3 or 6 years.*

(5) The former judges of the Constitutional Court who did not exercise the office for a term of office of 9 years may be reinvested for the difference of mandate."

As regards **the recommendation concerning the audit advisers, the Constitutional Court finds that this text must be eliminated because the regulation is not of constitutional level, considering that the present paragraph (4) of Article 139 does not regulate the length of time for the exercise of the term of office of the members of the Court of Accounts not the periodicity of the appointment in the office.** If the legislator has this intention of legislation, it can do it by means of legal regulation, namely by means of a normative act o the same rank.

In what concerns the reinvestment of the former judges of the Constitutional Court, which did not exercise the office for a term of office of 9 years, for the difference of mandate, the Court finds that this would produce a series of perturbations in the activity of the court of constitutional contentious and would infringe the will of the original constitutional power. Thus, there are situations in which a judge resigned after one year of activity, being appointed another for the difference mandate of 8 years. The two, according to the new provisions of Article 151 paragraph (5) would have, equally, the vocation of being reinvested in public offices at the Constitutional Court; yet both of them cannot return in the same time, which would create real differences of juridical treatment.

In the same time the Constituent Assembly established that only in the first Constitutional Court the term of office of the judges might be of 3, of 6 and of 9 years. In the case in which would be inserted today, by means of the revision, terms of office of 1 year, of 3 years, of 4 years, of 6 years or of 8 years, this would contravene to this original will, which would perturb the whole activity of the Court.

The conception of the constitution of the Constitutional Court as political-jurisdictional authority, predisposed to a cyclic renewal, is a guarantee of its political neutrality as guarantor of the supremacy of the Constitution in the normative juridical system, meant to ensure a fair balance in the activity of carrying out the constitutional justice.

As regards the wording of paragraph (2) of Article 151, the Court considers that the term *"political institutions",* which could be used at the coming into force of the Constitution, should be abandoned because, according to the provisions of the fundamental Law, the definition given to the present bodies/organs of the State is that of public authorities.

c) The amendment of Article 152 concerns the elimination of the present constitutional provisions regarding future institutions, considering the fact that these have no longer an object, and their replacement with a provision regarding the republication of the Constitution. The wording of this is faulty/defective, because it refers to the bill or to the legislative proposal of revision of the Constitution, pointing out that this shall be published in the Official Gazette of Romania, Part I, within 5 days from the date of adoption. By virtue of the constitutional provisions in force, a bill or legislative proposal adopted by the Parliament cease to be a bill or a legislative proposal, this becoming a law. On this, **the Court considers that the text of Article 152 must have in view that the law on the revision of the Constitution shall be published in the Official Gazette of Romania, Part I, after its adoption, in order to inform the public of its content and in order to be approved by referendum. Moreover, even Article 147 paragraph (3) of the Constitution provides that: *"The revision shall be final after approval by referendum held within 30 days from the days of passing the draft or proposal of revision."* Of this legal provision it arises the idea that there are two stages of the revision, the parliamentary one, which concludes by a law, and a popular one, when the law is approved by referendum. Otherwise, the use of the formula *"within 30 days from the days of passing the draft or proposal of revision "* represents the setting of the date from which starts the term for the organisation of the referendum.** In this respect the Court notices that the provisions of Article 147 paragraph (3) are correlated with the provisions of Article 144 sub-paragraph a) according to which the Constitutional Court adjudicates on the constitutionality of laws before the promulgation thereof, which consolidates the assertion that a bill adopted by the Parliament is no longer considered a "bill", this becoming a "law". In the same respect is precisely Article II of the proposal of revision, which states *"the revision adopted by the present law shall be submitted to approval by referendum [...]".*

d) Finally, the Constitutional Court finds that **the insertion of certain provisions regarding the submitting of the law for revision to a referendum, according to Article II of the legislative proposal, is superfluous** in the conditions in which this obligation is

expressly provided by Article 147 paragraph (3) of the Constitution, article that does not suffer any amendment by this work of revision of the Basic Law.

For the reasons set forth herein, on the grounds of Article 144 sub-paragraph c), of Article 146 paragraph (1), of Article 148 paragraphs (1) and (2) of the Constitution, as well as of Article 36 of Law No.47/1992 on the organisation and operation of the Constitutional Court, republished,

THE COURT
In the name of the law
DECIDES:

1. Holds that the legislative proposal of revision of the Constitution was initiated in compliance with the provisions of Article 146 paragraph (1) of the Constitution.

2. Holds that the provisions under paragraph 7^1) that are going to be inserted under Article 41 are unconstitutional, because the effect would be the suppression of a guarantee of the right to property, thus being infringed the limits of the revision provided by Article 148 paragraph (2) of the Constitution.

3. Holds that the provisions that are to be inserted under Article 132 paragraph (8) are unconstitutional, because they contravene the provisions of Article 6 of the Convention for the protection of human rights and fundamental freedoms and will have the effect of suppression of the access to justice, being infringed also, the limits of the revision provided by Article 148 paragraph (2) of the Constitution.

4. Submits to the Parliament's attention the remarks of the reasoning of the present decision, regarding certain provisions of the legislative proposal for the revision of the Constitution: Article 11 paragraph (3), Article 19 paragraph (1), Article 21 paragraph (4), Article 32 paragraph (5), Article 46^1, Article 55 paragraph (1), Article 62 paragraph (2) sub-paragraph j), Article 73 paragraphs (3) and (5), Article73^1, Article94, Article 114 paragraph (4^1), Article 119, Article 120^1, Article 132 paragraphs (2), (3) and (4), Article 134 paragraph (2) sub-paragraph e), Article 144 sub-paragraph a^1), sub-paragraph c), sub-paragraph c^1) and sub-paragraph j), Article 145, Article 145^2, Article 151 paragraph (2) and paragraph (4) second thesis and paragraph (5), Article152 and Article II.

5. It is hold that the other provisions do not contravene the constitutional provisions.

The decision shall be communicated to the Presidents of the two Chambers of Parliament and shall be published in the Official Gazette of Romania, Part I.

The proceedings took place on April 16th 2003 and were attended by: Nicolae Popa, President, Costică Bulai, Nicolae Cochinescu, Constantin Doldur, Kozsokár Gábor, Petre Ninosu, Şerban Viorel Stănoiu, Lucian Stângu şi Ioan Vida, Judges.

PRESIDENT OF THE
CONSTITUTIONAL COURT,
Prof. Dr. NICOLAE POPA

Assistant-Magistrate-in-chief,
Claudia Miu