CONSTITUTIONAL COURT OF THE REPUBLIC OF MOLDOVA

ANNUAL REPORT 2011

On the Execution of Constitutional Jurisdiction

CARTIER

CONTENTS

FOREWORD

Alexandru Tănase
President of Constitutional Court

One year has passed since the submitting of the last report on the implementation of the constitutional jurisdiction. I decided to list some thoughts about the role played by the Court and the results of its activities in 2011, as well as the prospects of the Constitutional jurisdiction for the following period of time.

The case law of the Constitutional Court in 2011 largely reflects the challenges faced by the legislative, executive and judiciary powers. Regardless of the complexity and degree of the difficulty of the cases, the Constitutional Court complied with the principle of *judging the legal issues, not the political expedience.*

Protection of the fundamental human rights is the main priority of the Constitution. The fight for rights and freedoms is permanent and will never be won forever. Therefore, protection of fundamental rights has always been on the agenda of the Constitutional Court.

The economic crisis forced the government to promote a series of projects aimed at reducing, modifying or canceling certain social payments and benefits. In this context, the Court had to establish whether the amendments had not violated the balance between the national economic capacity to ensure effective implementation of these social rights and the state's obligation to respect the property rights and the right to a decent life.

The political crisis, generated by the political parties' incapacity to elect the President of the Republic of Moldova, also marked the case law of the Constitutional Court. The dif-

ferent interpretations of the constitutional norms by different political actors, as well as the attempts to find legal solutions to political problems, have generated a large number of complaints for the interpretation of constitutional norms pertaining to presidential elections.

The conflicts between the authorities are an indispensable element of a democratic government. In this respect, the Court had to review a number of complaints aimed at clarifying the powers of various authorities, their scope and operation of institutions governed by the Constitution.

The domestic and the international law should not be separated by an impenetrable wall. In this respect, in 2011 the Constitutional Court reformed its work system, taking over many elements of the procedures applied by the Strasbourg Court. To make the decisions of the European Court of Human Rights part of the domestic law and to ensure the convergence between the practice of the Constitutional Court and the European Court practice, most of our decisions were based on the case law of the ECHR.

No constitutionalism is possible without democracy, just like political pluralism is impossible without the respect for the rights of the opposition. The interdependence between the ***constitutionalism*** and the ***democracy*** imposes an obligation of the Constitutional Court to ensure the functioning of political pluralism. In this context, the Court is particularly "interested" in analyzing and solving scrupulously the complaints coming from the opposition. The same interdependence also explains why a constitutional judge *a priori* should not be „convenient for the governing party". In the end, this kind of "convenience" generates the futility of the Constitutional Court as an institution.

Political actors' reaction to the judgments of the Constitutional Court is an indicator of the maturity of the rule of law. The culture and the political organization of mature societies are based on democratic and market economy values. The authoritarian past, characterized by a collective trauma caused by fear, resulted in a distorted perception by the society of the rights and fundamental freedoms, as well as of the democracy and the market economy as a whole. This situation led to misinterpretation of the constitutionalism, both by citizens and the political environment.

Therefore, the Constitutional Court has the subsidiary mission to provide necessary support for the development of democratic culture and political culture in Moldova by ensuring the consistency and the quality of its judgments.

TITLE I: GENERAL CHARACTERISTICS AND STATISTICS

I. CONSTITUTIONAL COURT - THE SOLE AUTHORITY OF CONSTITUTIONAL JURISDICTION

The Constitutional Court of Moldova was established on February 23, 1995. As the sole authority of constitutional jurisdiction in Moldova, the Constitutional Court is independent and is only subordinated to the Constitution, in order to guarantee the supremacy of the Constitution, ensure the principle of separation of powers and responsibility of the State towards the citizen and of the citizen towards the state (Article 134 of the Constitution of RM, Art. 1 of Law on the Constitutional Court and Article 2 of the Code of Constitutional Jurisdiction).

In exercising its powers, the Constitutional Court is guided by the Constitution of the Republic of Moldova, adopted on 29.07.1994, the Law on the Constitutional Court no.317-XIII of 13.12.1994 and the Code of Constitutional Jurisdiction no. 502-XIII of 16.06.1995.

In carrying out its activity, the Court takes into account the observance of the principles of independence (the Constitutional Court judges are subordinated only to the Constitution and cannot be held legally liable for their votes and opinions expressed during their mandate), collegiality, legality, publicity. The Court has financial autonomy and its own budget, included separately in the state budget.

II. STRUCTURE OF THE COURT

The Constitutional Court is composed of six judges, appointed for a term of six years, with the right to one more term. Two judges are appointed by the Parliament, two by the Government and two by the Superior Council of Magistracy (art. 136 para. (1) and (2) of the Constitution of the Republic Moldova, art. 6 of the Law on the Constitutional Court.

1.	President of the Constitutional Court	Alexandru TĂNASE
2.	Judge	Valeria ȘTERBEȚ
3.	Judge	Dumitru PULBERE
4.	Judge	Victor PUȘCAȘ
5.	Judge	Petru RAILEAN
6.	Judge	Elena SAFALERU

The President of the Constitutional Court is elected by secret ballot for a term of 3 years, with the majority of votes of the judges of the Court (art. 136 para. 3 of the Constitution of RM, art. 7 para. (1) of the Law on the Constitutional Court). If during the first round the candidates for President of the Constitutional Court do not gain the majority of votes, a second round is organized and the judge scoring the highest number of votes is elected as the President. If the candidates score the same number of votes during the second round, the President is elected by drawing lots among the candidates. The Constitutional Court elects a judge who will perform the duties of the President during his absence (art.7 para. (3), (4), (5) of the Law on the Constitutional Court).

In preparing the case for review each judge is assisted by an assistant judge.

1.	Assistant-judge	Ion ANTON
2.	Assistant-judge	Stephen AGACHI
3.	Assistant-judge	Ion BOT
4.	Assistant-judge	Nicanor CONOVAL
5.	Assistant-judge	Claudia NAMATOV
6.	Assistant-judge	Veaceslav ZAPOROJAN

III. THE COMPETENCE OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MOLDOVA

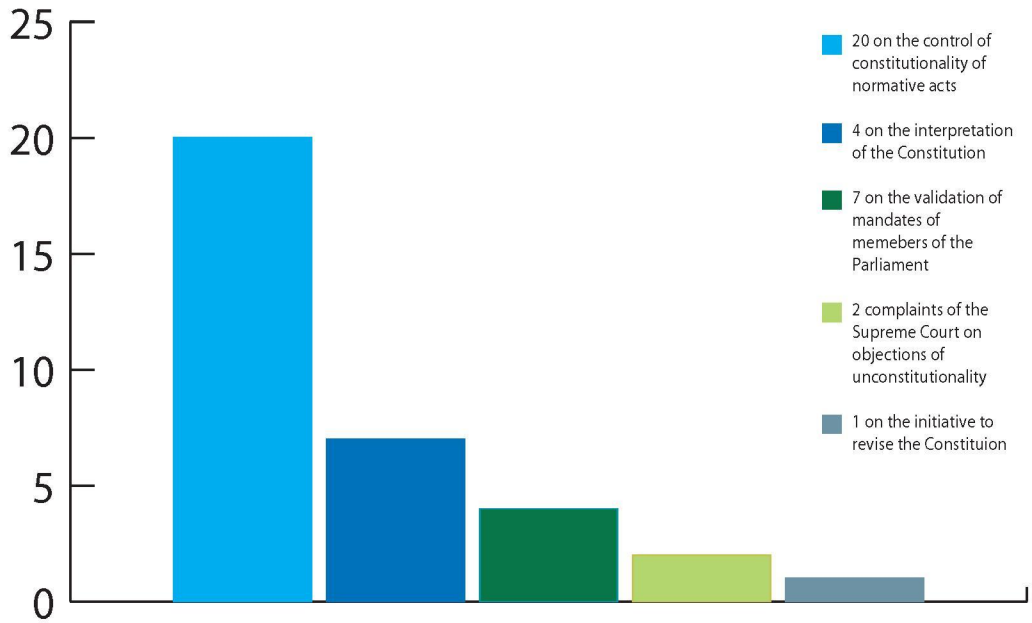
The Constitutional Court exercises its powers in accordance with the provisions of art. 135 of the Constitution, art. 4 of the Law on the Constitutional Court and art. 4 of the Code of Constitutional Jurisdiction:

- based on the complaints, exercises the constitutionality control of laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government and international treaties to which Moldova is a party;
- interprets the Constitution;
- decides on the initiatives to revise the Constitution;
- confirms the results of republican referendums;
- confirms the results of elections of the Parliament and the President of Moldova, validates the mandates of the members of the Parliament and the President of the Republic of Moldova;

- confirms the circumstances justifying the dissolution of the Parliament, dismissal of the President of Moldova, establishment of the interim office of Presidency, incapacity of the President of Moldova to exercise his/her powers for more than 60 days;
- resolves objections of unconstitutionality of legal acts, as claimed by the Supreme Court;
- decides on matters dealing with the constitutionality of a party.

During 2011, 39 complaints were filed with the Court, of which 34 were examined: 20 complaints on the constitutionality of provisions of normative acts, 4 complaints regarding the interpretation of the Constitution, 7 complaints regarding the validation of mandates of members of the Parliament, 2 referrals by the Supreme Court on objections of unconstitutionality, 1 opinion regarding the initiative to revise the Constitution.

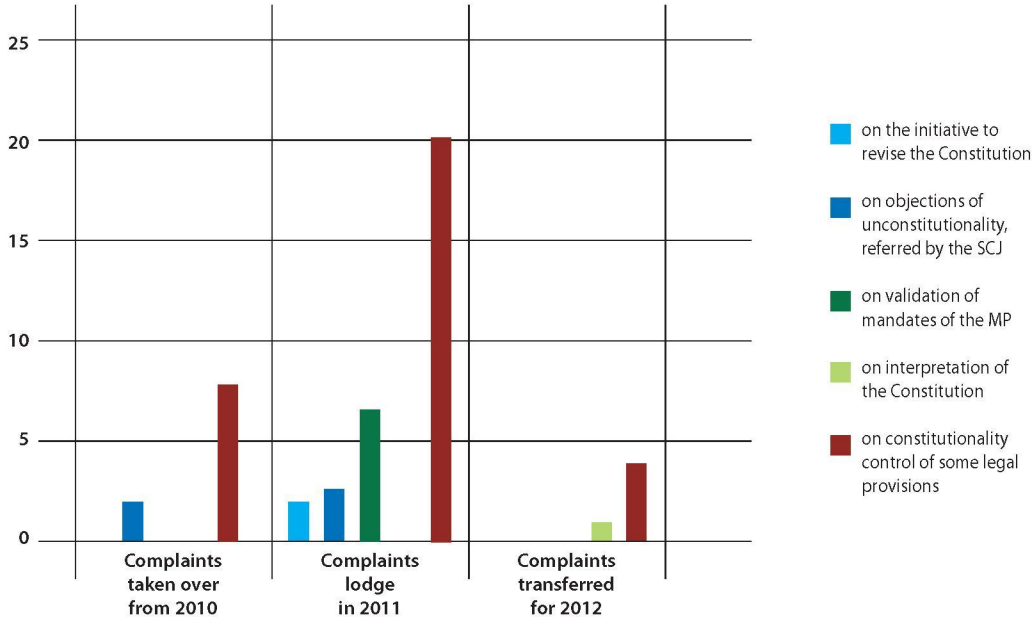
Complaints submitted and reviewed in 2011



10 complaints were taken over from 2010, of which 8 complaints on the constitutionality of some provisions of normative acts and 2 referrals from the Supreme Court on objections of unconstitutionality.

Thus, in 2011 the Court had to review 49 complaints, of which 44 were solved and 5 were transferred for review in 2012: 4 complaints on the constitutionality of normative acts and one request for interpretation of the Constitution.

Complaints under review in 2011



IV. SUBJECTS WITH THE RIGHTS TO LODGE COMPLAINTS WITH THE CONSTITUTIONAL COURT

The Constitutional Court exercises the constitutional jurisdiction upon the receiving complaints from the following subjects:

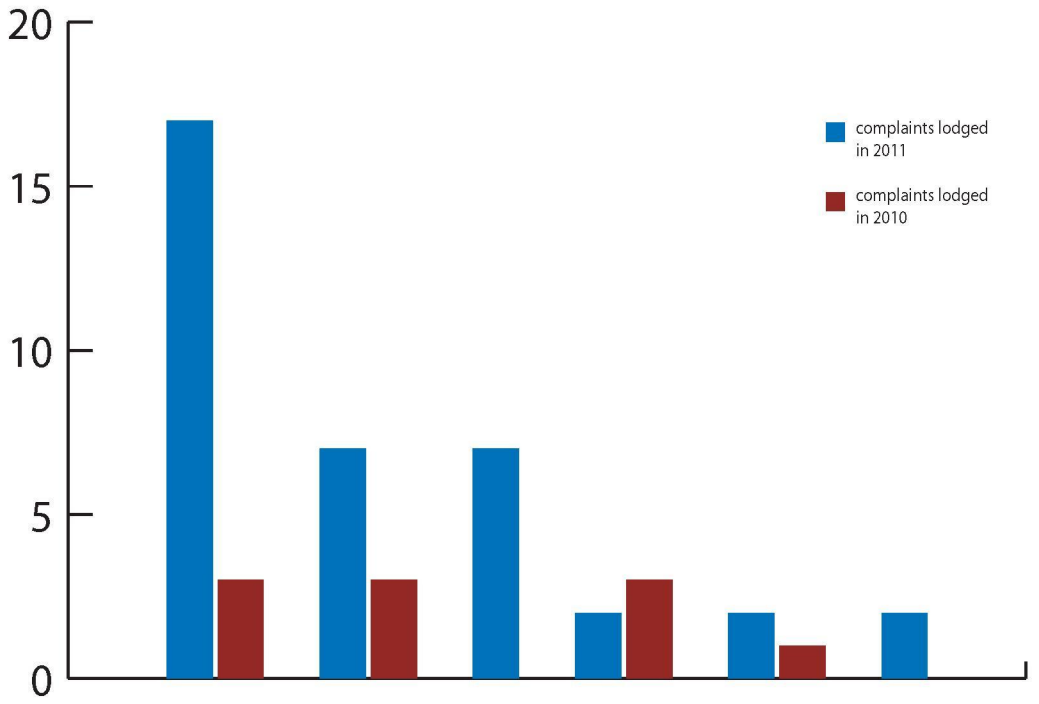
a) President of Moldova;
b) The Government;
c) The Minister of Justice;
d) Supreme Court of Justice;
e) General Prosecutor;
f) member of the Parliament;
g) political party in the Parliament;
h) the ombudsman;
i) the People's Assembly of Gagauzia (Gagauz- Yeri)

- on cases of constitutionality control of laws, regulations and decisions of the Parliament, the decrees of the President of the Republic of Moldova, the decisions and standing orders enacted by the Government, as well as the international treaties the Republic of Moldova is a party to, which infringe upon the powers of Gagauzia (art. 38 of the Code of Constitutional Jurisdiction, art. 25 of the Law on the Constitutional Court).

The analysis of complaints lodged with the Constitutional Court shows that the greatest number of complaints were signed by members of the Parliament - 17 in 2011, and 3 taken

over from 2010, ombudsmen - 7 complaints in 2011, plus 3 taken over from 2010; CEC - 7 complaints, the Supreme Court of Justice - 2 complaints in 2011 and 3 complaints taken over from 2010, Minister of Justice - 2 complaints in 2011 and 1 taken over from 2010, General Prosecutor - 2 complaints.

Complaints filed by the subjects entitled to this right



Of the total number of complaints submitted to the Constitutional Court in 2011, 14 complaints were signed by members of the Communist Party (which accounts for 32 percent), of which the Court ruled on the merits on the norms challenged by 9 complaints (64 percent), 5 complaints were returned. Of the 9 complaints, the Court judged in favor of the authors of 5 complaints (56 percent).

During the same period, members of the ruling alliance parties (Liberal-Democratic Party, Liberal Party, Democratic Party) submitted 4 complaints (9 percent of the total number of complaints filed with the Court), all examined on the merits, the Court judged in favor of the authors of 2 complaints (50 percent).

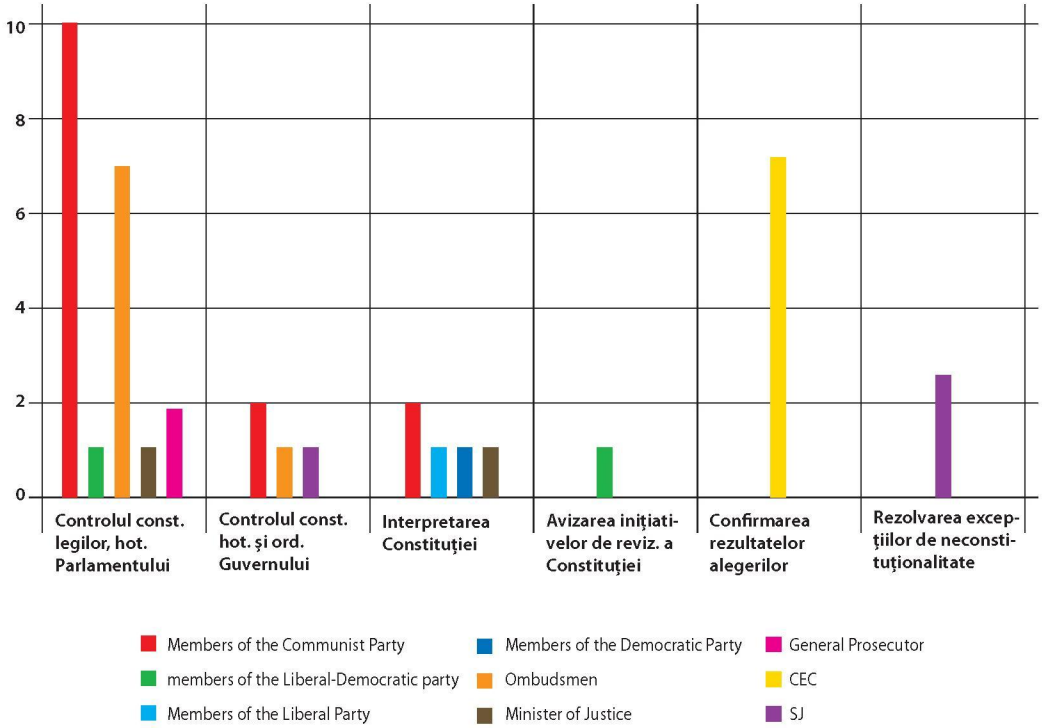
Ombudsmen filed 8 complaints (22 percent of the total number of complaints filed), the Court ruled on the merits in 5 cases, 3 complaints were returned.

The Minister of Justice filed 2 complaints (5 percent of complaints), both were reviewed on the merits and partially satisfied.

The General Prosecutor filed 2 complaints (5 percent of the complaints), of which one was returned and another one rejected.

CEC signed 7 complaints on the validation of mandates of the MP (16 percent of the total number of complaints), which were examined by the Court.

The Supreme Court submitted 5 complaints (11 percent of the complaints): in one complaint the challenged provisions were declared unconstitutional, in 2 complaints the provisions were recognized constitutional, in one complaint the review was stopped and one complaint was returned.



V. EXERCISE OF CONSTITUTIONAL JUSTICE

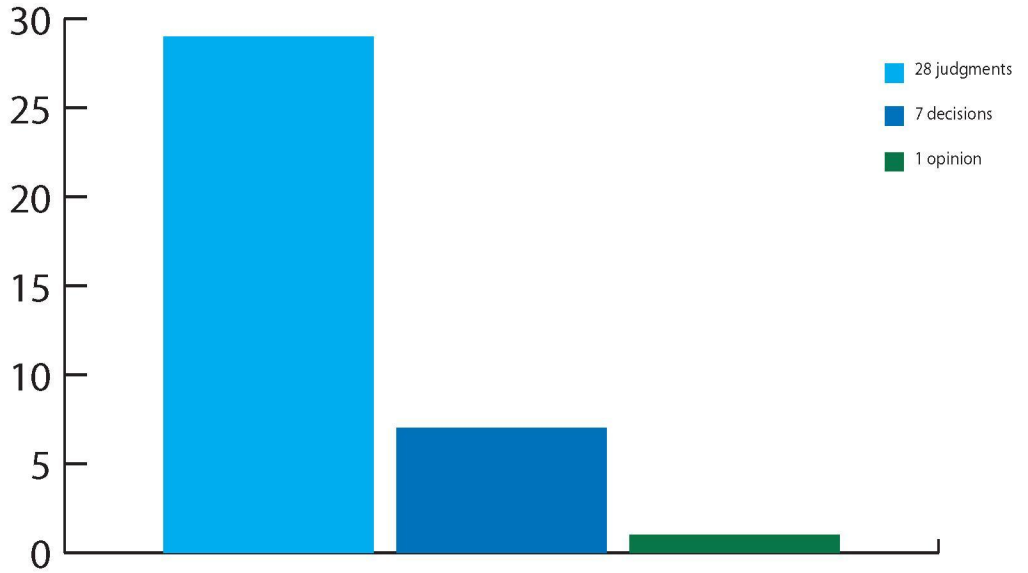
The Constitutional Court exercises the jurisdiction in plenary sessions. The sessions of the Constitutional Court are summoned by its President, on his/her own initiative or at the request of at least two judges of the Court. The President of the Court exercises the general management of preparations for the session. After the Constitutional Court has decided to accept the complaint for review and include it in the agenda, the President of the Constitutional Court appoints another judge as a rapporteur, fixes the term for review of the complaint and presentation of the report, which cannot exceed 60 days from the date of complaint's registration. If more research is necessary, this term may be extended by 30 days.

VI. ACTS OF THE CONSTITUTIONAL COURT

If the complaint is settled on the merits, the Constitutional Court issues a judgment or an opinion. If the complaint is not solved on the merits, a decision is issued as a separate document or recorded in the minutes (art. 61 of the Code of Constitutional Jurisdiction, art. 26 of the Law on the Constitutional Court).

During the reporting period, the Court delivered 28 judgments, 7 decisions and one opinion.

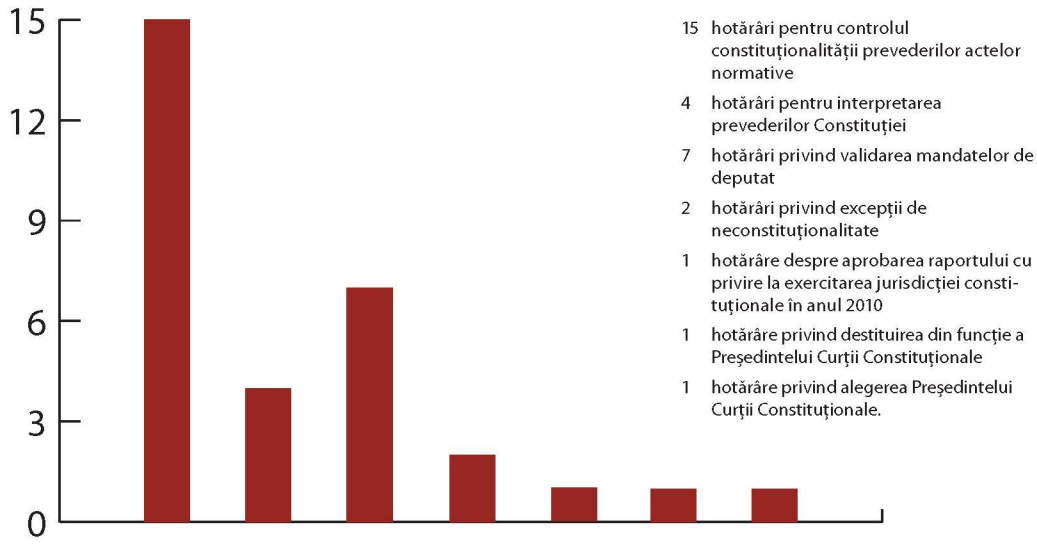
Graphic presentation of judicial acts delivered by the Court



The 29 jurisdictional judgments delivered by the Constitutional Court during the reference year are classified as follows: 15 judgments on review of the constitutionality of normative acts, 4 judgments for interpretation of the Constitution, 7 judgments on the validation of mandates of the Members of the Parliament, 2 judgments on objections of unconstitutionality.

The Court also delivered 3 functional decisions: 1 decision on approval of the report on the implementation of constitutional jurisdiction in 2010, 1 decision on dismissal of the President of the Constitutional Court, 1 decision on the election of the President of the Constitutional Court.

Classification of judgments delivered by the Court



TITLE II: EXERCISE OF CONSTITUTIONAL JUSTICE

I. PARTICIPANTS IN THE PROCESS. RIGHTS AND OBLIGATIONS

Participants in the trial are considered the parties, their representatives, experts and interpreters.

The parties in the constitutional jurisdiction have equal procedural rights. The parties have access to the works on the file, may present arguments and participate in their review, ask questions to other participants in the review, make statements, present explanations, both oral and written, object against statements, arguments and considerations of other participants in the review. The author of the complaint may change its grounds or objects, give up the complaint, partially or totally. The parties present the arguments referred to in the complaint. If several representatives of a party with the same powers are involved in the process, the Constitutional Court may request the appointment of a representative to express their final position and utter the concluding words.

The parties may appoint lawyers, specialists in the field concerned and others as their representatives, based on a proxy. Several representatives can participate on behalf of a Party. The representative's powers and rights are listed in the proxy.

Under preparation of the case for consideration, the Judge-Rapporteur and the Constitutional Court during the hearing may order an inquiry. The order on conducting of an inquiry is legalized by the nominal requirement by the Judge-Rapporteur or by decision of the Constitutional Court, stating the deadline for submitting the written report.

The interpreter is appointed by the Constitutional Court or the Judge-Rapporteur to interpret for the participants in the review who do not speak the official language.

II. EXERCISE OF THE FUNCTIONS PROVIDED FOR BY THE PROVISIONS OF ART. 135 OF THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

1.1. Constitutionality control over laws, regulations and orders of the Parliament, Presidential decrees, pursuant to art. 135 para. (1) let. a) of the Constitution

A. Judgments of the Constitutional Court declaring unconstitutional the provisions of laws and decisions of the Parliament, Presidential decrees

In 2011 the Constitutional Court delivered three judgments, declaring unconstitutional certain provisions of laws and decisions of the Parliament:

1. *Complaint no. 47a/2010, JCC no. 12/2011, OG no. 102/14 of 18.06.2011*
2. *Complaint no. 18a/2011,JCC no.18/2011, OG no. 170-175/26 of 14.10.2011*
3. *Complaint no. 28a/2011, JCC no.28/2011, OG no. 7-12/3 of 13.01.2012*

1. Judgment of the Constitutional Court of June 7, 2011 on constitutionality review of the provision of art. 22 para. (1) let. p) of the Law no. 544-XIII of July 20, 1995 "On the status of judges", as amended by the Law no. 152 of July 8, 2010 "on amendments and addenda to some legal acts"

(Complaint no. 47a/2010, JCC no.12/2011, OG no. 102/14 of 18.06.2011)

Circumstances of the case

The case originated in the complaint lodged by the Supreme Court. In the opinion of the Supreme Court of Justice, the author of the complaint, the challenged legal provision contradicts art. 6, art. 20 para. (1), art. 114, art. 115 para. (1) and para. (4), art. 116 para. (1) and para. (6) of the Constitution, section 4 of the Basic Principles on the Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Milan in 1985, approved by resolutions no. 40/32 of November 29, 1985 and no. 40/146 of December 3, 1985 of the UN General Assembly and other international standards on the status of judges.

Court's Findings

According to art. 22 para.(1) item p) of the Law on the Status of Judges, the following shall be considered a *disciplinary deviation:* delivery of a ruling which is later recognized by the European Court of Human Rights as violating the human rights and fundamental freedoms.

The Court held that, in accordance with the provisions of the constitution, the right of all people to an independent and impartial judicial process is fundamental, and full and effective judicial protection can be achieved only under the conditions of a true independence of the judiciary, which is exercised only by the courts *in the person of a judge.*

Thus, according to the Law on the status of judges, each judge must hear cases honestly and impartially, in accordance with the law, based on evidence, without being subject to external pressure or influence and without being intimidated.

Both the Constitution, art. 116 para.(6), and the legislation in force, art. 15 para. (6) of the Law on the Status of Judges and art. 15 para. (1) of the Code of Ethics of the Judges provide that *if the judge does not fulfill his/her duties, he/she shall be held liable as provided by the law.*

According to the subsidiarity principle, the European Court cannot replace the national courts. The European Court argues that the interpretation of national law is the primary task of national courts, but this interpretation in any case can not contradict the fundamental human rights.

The rulings of the European Court attest the breach of the Convention and the occurrence of miscarriages of justice, which were not detected and corrected by the national courts.

Concerning the qualifications of the effects of the European Court rulings, delivered based on the complaints against the Republic of Moldova, once adopted, they become *res judicata*, final and binding.

According to the meaning of the challenged legal norm, the sentencing of the Republic of Moldova by the ruling of the European Court involves the enforcement of the disciplinary liability of judges.

The Court noted that the judges enjoy immunity in the exercise of justice. The cancellation or modification of the judgment does not represent *grounds* for sanctioning the judge, and holding the judge liable for the opinion expressed in the course of justice and for the judgment cannot be enforced, unless the judge is found by a final judgment *guilty of criminal abuse.*

Thus, the judges cannot be forced to exercise their powers under the threat of sanctions, which may influence the decision to be adopted. In exercising their duties, the judges should have unfettered freedom to judge the cases impartially, in accordance with the law and their own assessment of the facts.

According to the principle of international law, any miscarriage of justice must be found and repaired as a priority through effective remedy.

The Court noted that the disputed legal provision was binding and implied unconditional disciplinary liability of the judge or the panel of judges as a result of finding by the European Court of the human rights through a judgment. In light of evolutionary and dynamic approach of the Convention by the European Court, the "automatic" accountability of judges in such cases, without proving the objective and subjective side of the disciplinary deviation is inadmissible.

Considering the above, the Court concluded that the judge's disciplinary accountability by a decision of the European Court of Human Rights condemning the Moldovan state without proving that the law had been violated by the judge intentionally or by gross negligence was an inadmissible interference in pursuing the principles of independence, impartiality and immovability of the judge. The challenged provision of Article 22 para. (1) let.p) of the Law on the Status of Judges was contrary to the provisions of Art. 6, Art. 114, Art. 116 para. (1) of the Constitution.

Decision of the Court

Based on the above, the Court declared *unconstitutional* the provision of art. 22 para.(1) let.p) of the Law no. 544-XIII of July 20, 1995 „On the Status of Judges" as amended by the Law no. 152 of July 8, 2010 „on amendments and addenda to some legal acts".

2. Judgment of October 4, 2011 on constitutionality review of the Parliament Decision no.122 of July 5, 2011 on the dismissal of the President of the Supreme Court of Justice

(Complaint no. 18a/2011, JCC no.18/2011, OG no. -175-175/26 of 14.10.2011)

Circumstances of the case

The case originated in the complaint lodged by the Members of Parliament Sergei Sirbu and Artur Resetnikov, who claimed, in particular, that the dismissal of the President of the Supreme Court by the act in question had occurred in violation of the process of adopting of decisions without respecting the fundamental principles of separation of powers and independence of justice and contrary to the provisions of Articles 1 para. (3), 6, 7, 8, 66, 116 and 123 para. (1) of the Constitution.

Court's Findings

Having heard the parties' arguments, the court held that after the expiry of the term of the office of the President of the Supreme Court of Justice March 29, 2011, this position became vacant, with all its consequences – declaration of the establishment of the interim position by the Superior Council of the Magistracy, organization and conducting of contest to occupy the vacant position of president. Thus, Mr. **Ion Muruianu was no longer the President of the Supreme Court, though he was exercising this function as an acting President.**

On July 5, 2011, the Superior Council of Magistracy proposed and the Parliament approved, by adopting the Decision no.122, the dismissal of Mr. Muruianu from the position held by him as an interim position after the expiry of the regular term of office of the President on March 29, 2011.

The Court noted that article 4 para. (1) let. e) of the Law on the Superior Council of Magistracy governing the interim position of president or vice president of the district court or the Court of Appeals, required vacation of these positions starting with the expiry of the term and until its occupancy as required by law. Therefore, **the power to exercise or occupy the interim position belongs exclusively to the Superior Council of Magistracy.**

In the same context, the Court noted that although Article 4 of Law on the Superior Council of Magistracy does not expressly mention the Supreme Court, based on the unitary status of judges of all courts (Article 2 of Law on the Status of Judges) and following the reasoning expressed in the Judgment no. 7 of March 18, 2004, the Court considers that **the management of the interim holding of the presidency of the Supreme Court of Justice falls under the exclusive competence of the Superior Council of Magistracy. Therefore, by adopting the contested decision, the Parliament has assumed the powers of the Superior Council of Magistracy concerning the interim occupancy of the presidency of a court.**

The Constitutional Court held that the provisions relating to the procedure of appointment as president of the Supreme Court and application of disciplinary sanctions, including dismissal, applied only during the regular term. **Special organic laws do not regulate such situations occurring after the expiry of the mandate.** For these reasons, the Court found it necessary to issue an address to remove this gap.

Decision of the Court

Based on the arguments described above, the Constitutional Court declared *unconstitutional* the Decision of the Parliament no. 122 of July 5, 2011 on the dismissal of the President of the Supreme Court of Justice.

Address

Given the unprecedented circumstances, where the Supreme Court - the highest body of the judiciary - has been managed for long by people who are not invested in accordance with the provisions of art. 116 para. (3) and para. 4) of the Constitution and pursuant to the provisions of para. (6) thereof, the Parliament is the authority responsible for establishing the form of sanction applied to the judge by law, ***the Court pointed out to the Parliament in an address*** that the special organic laws did not regulate the interim holding of the presidency or vice-presidency of the Supreme

Court, the statute of the interim presidency or vice-presidency of courts, including of the Supreme Court, the grounds and the procedure for holding liable the person acting in these positions, the deadline for the organizing and conducting of the contest for the occupancy of the vacant position of president or vice-president of the court after or before the expiry of the mandate.

3. Judgment of December 22, 2011 on constitutionality review of the Law no. 184 of August 2011 on the amendments and addenda to some legal acts

(Complaint no. 28a/2011, JCC no.28/2011, OG no. 7-12/3 of 13.01.2012)

Circumstances of the case

The case originated in the complaint lodged with the Constitutional Court by the members of Parliament, Mr. Artur Resetnicov and Mr. Sergei Sirbu, on constitutionality review of the Law no. 184 of August 27, 2011, in respect of the procedure for its adoption by Government's undertaking of the responsibility before the Parliament under Article 106[1] of the Constitution.

The applicants claimed that, in this context, the procedure for adopting a law subject to constitutionality control revealed where a draft law could become an organic law by Government's undertaking of the responsibility during the Parliament's vacation, by failing to submit the draft law in the plenum of the Parliament, when it was technically impossible to carry the motion of no confidence and contrary to the procedure prescribed by law for public consultation, opinion and expertise of the draft law, a situation which, according to the authors of the complaint, was contrary to Articles 7, 60, 66 let. a) and 1061 of the Constitution.

Court's Findings

Having heard the parties' arguments, the Court noted that the institution of Government's responsibility before the Parliament on a program, a general policy statement or a draft law was regulated by the Constitution only after its completion with article 1061 by Law no. 1115 -XV of July 5, 2000.

At the same time, the Court noted that the procedure of Government's undertaking of responsibility before the Parliament was not regulated in detail by Article 106[1] of the Constitution. Article 119 of the Rules of the Parliament does not provide more details about the procedure itself either, stating that the undertaking of responsibility is possible only for organic or ordinary laws and takes place by adoption of a decision by the Government.

The Court held that the procedure of government's undertaking of responsibility before the Parliament was a particularity of the legislative process, under which the draft law was no longer subject to the legislative procedure provided for in the Rules of the Parliament, and was subject to **strictly political debate,** resulting in maintaining or dismissal of the Government through the motion of no confidence carried by the Parliament.

The Court noted that the procedure of undertaking responsibility by the Government before the Parliament on a draft law, as a simplified method for passing a law, should be a

measure *in extremis,* determined by the urgency of adoption of measures contained in the law on which the Government had undertaken the responsibility, by the need for the regulation concerned to be adopted with maximum celerity, by the importance of the regulated area and by immediate enforcement of the law concerned. At the same time, the procedure of undertaking responsibility by the Government before the Parliament does not exclude and cannot be used to exclude the Parliament's control by initiating a motion of no confidence.

In this regard, the Court noted that a political debate on Government's dismissal by expressing no confidence could take place under the provisions of article 106 of the Constitution only in **the plenary session of the Parliament.**

In the same context, the Court noted that in countries where governments had frequently used the institution of assuming responsibility before the Parliament, the legislator had limited or sought to limit the abuse of this exceptional procedure by the executive power, and the presence of a representative of the executive power in the Parliament was mandatory.

Moreover, according to the law, the Parliament's operations are conducted in plenary meetings and meetings of the standing committees. Therefore, by submitting the Government decision on undertaking of the responsibility with the attached materials to the Parliament Secretariat, without presenting this political act of assuming responsibility in the plenary session, the Government failed to meet the constitutional standards on assuming responsibility "before" the Parliament.

Otherwise, such debate becomes impossible since, in accordance with article 37 para. (4) of the Rules of the Parliament, the Parliament is convened in extraordinary or special session within 3 days of the date of filing the request, unless the law provides otherwise. The deadline for submitting the motion of no confidence is also 3 days since the assuming of responsibility by the Government. Therefore, outside parliamentary sessions, the procedure of assuming the responsibility by the Government is subject to **convening an extraordinary or special session,** and the deadline of 3 days for the submitting of the no confidence motion runs from the moment of presenting the draft law on which the Government assumes its responsibility **in the plenum of the Parliament**, which should take place **after the entry into force,** as provided by the law, of the Government decision to assume its responsibility before the Parliament.

In taking the decision, the Court took into account the opinion of the Academy of Science of Moldova according to which, since it was published on August 26, 2011, **the Government Decision no. 633 of**

August 24, 2011 on assuming of responsibility on the challenged draft law was not in force when it was submitted to the Parliament Secretariat on August 24, 2011. Thus, the promulgation and publication of the Law no. 184 on August 27, 2011, **1 day** after the publication of Government Decision in the Official Gazette (August 26, 2011) was carried out with violation of the constitutional term provided for the carriage of the motion of no confidence.

Without expressing its opinion on the appropriateness or the contents of the challenged legal act, the Court noted that the Law no. 184 of August 27, 2011 had been passed

by the Government by assuming the responsibility **during the Parliamentary vacation, in the absence of the representative of the executive in the plenary session of the Parliament,** resulting in the **impossibility to carry any motion of no confidence** and implicitly, of any political debate on maintaining or withdrawing the confidence in the Government.

Therefore, the Court concluded that the manner in which the Government used the procedure of assuming responsibility before the Parliament effectively deprived the Parliament as the supreme representative body of the people of Moldova and the sole legislative authority of the state, to control such exceptional measures.

In this context, the Court recalled that, pursuant to the principle of primacy of the Constitution and the need to ensure the compliance of the laws and other legal documents with the Supreme Law (Article 7 of the Constitution), all participants in the legislative process are required to comply with the procedure established by the Supreme Law. The requirements imposed by the Constitution to adopt laws are binding and cannot be modified at the discretion of participants in the legislative process. However, a law has legal power only if the relevant legal rules were observed during the development and approval stages.

The Court concluded that the Law no. 184 of August 27, 2011 had been adopted following a procedure of assuming the responsibility by the Government contrary to Article 106[1] of the Constitution combined with Articles 7, 60 and 66 of the Constitution.

Decision of the Court

Based on the arguments described above, the Constitutional Court declared *unconstitutional* the Law no. 184 of August 27, 2011 on amendments and addenda to some legal acts, as adopted with violation of the procedures for adoption.

Address

In addition to the judgment, the Court issued an address to the Parliament, pointing out the need to amend and complete the Rules of the Parliament in line with the revision of the Constitution by the Law no. 115-XV of July 5, 2000 and to ensure a clear regulation of the procedures for employing Government's responsibility before the Parliament and legislative delegation.

Dissenting Opinion

The Judge Dumitru Pulbere exhibited a dissenting opinion, in which he explained why he disagreed with the decision of the Court.

The judge considered unfounded the conclusion of the Court, stating that the procedure for adoption of the Law no. 184 of August 27, 2011 had been violated. According to him, the Court misinterpreted Article 106[1] in conjunction with Article 106 of the Constitution.

He mentioned that employment of Government's responsibility is applied in exceptional cases and when the legislative process should be quick, a term of 3 days is sufficient for filing a motion of no confidence. Art.119 of the Rules of the Parliament does not stipulate that the responsibility before the Parliament shall be published in order to have legal force, this rule only provides that the Government Decision shall be presented on the same day to the Parliament with the attached draft law. As one can see, the term of 3 days since the Government's assuming of responsibility before the Parliament and submitting of the draft

legislation before the entry into force of the law has been respected.

The Law does not provide for publication of the draft laws in the Official Gazette and, in his opinion, it would not be rational since the Parliament may express no confidence in the Government and the law would become void.

Likewise, he stressed that the parliamentary vacation is not an impediment to convene the Parliament in extraordinary or special session, because under the Rules of the Parliament, the convening of the Parliament in extraordinary or special session shall be performed within 3 days from the date of filing the request. The Parliament had the opportunity to summon and request the presence of a representative of the executive power in the plenary session of the Parliament and, if necessary, to initiate the procedure of expressing no confidence in the Government.

B. Judgments of the Constitutional Court recognizing the constitutionality of the laws and decisions of the Parliament and decrees of the President of the Republic of Moldova

During 2011 the Constitutional Court handed down nine judgments confirming the constitutionality of the challenged provisions of laws and decisions of the Parliament:

1. *Complaint no. 25a/2010 and no.30a/2010, JCC no. 3/2011, OG no. 34-36/6 of 04.03.2011*
2. *Complaint no. 35a/2010, JCC no.7/2011, OG no. 58/9 of 12.04.2011*
3. *Complaint no. 42a/2010, JCC no.8/2011, OG no. 63-64/10 of 20.04.2011*
4. *Complaint no. 1a/2011, JCC no.11/2011, OG no. 96-98/13 of 10.06.2011*
5. *Complaint no. 2a/2011, JCC no.13/2011, OG no. 103-106/15 of 24.06.2011*
6. *Complaint no. 13a/2011, JCC no.14/2011, OG no. 118-121/16 of 22.07.2011*
7. *Complaint no. 10a/2011, JCC no.19/2011, OG no. 182-186/28 of 28.10.2011*
8. *Complaint no. 11a/2011, JCC no.22/2011, OG no. 192-196/30 of 11.11.2011*
9. *Complaint no. 26a/2011, JCC no.25/2011, OG no. 227-232/37 of 23.12.2012*

1. Judgment of February 10, 2011 on the constitutionality review of some provisions of art.I section 5, art.II and art. 111 of the Law no. 102 of May 28, 2010 "on amendments and addenda to some legal acts," art. 10. (3) let. a) of the Law no.1260-XV of July 19, 2002 "On the legal profession", republished

(Complaints no. 25a/2010 and no.30a/2010, JCC no. 3/2011, OG no. 34-36/6 of 04.03.2011)

Circumstances of the case

The case originated in the complaint lodged by a group of Members of Parliament from the parliamentary group of the Communist Party of Moldova and the complaint of ombudsman Tudor Lazar.

According to the members of the group - authors of the complaint, the provisions concerned aimed at establishing a monopoly on the provision of qualified legal services and representation in court, thereby limiting a person's right to be assisted in court by other persons than lawyers. Therefore they considered that these provisions contravened Art. 1. (3), Art. 15, Art. 16, Art. 22, Art. 26, art. 43, art. 46 and art. 54 of the Constitution.

The ombudsman believed that the phrase *"even if the conviction has been spent"* in art.10 para.(3) let.a) of the Law on the legal profession implied a prohibition to exercise the legal profession, a prohibition that could not be justified after the criminal records had been written off, as it violated the rights and the freedoms of some citizens with full legal capacity, graduates in law whose conviction has been spent. In his opinion, the disputed phrase restricts the principle of equal rights and right to work, thereby infringing art. 16, art. 20 and art. 43 of the Constitution, art. 8, art. 23 of the Universal Declaration of Human Rights, Art.8 and art.14 of the Convention on Human Rights and Fundamental Freedoms.

Court's Findings

The Court noted that legal representation contributes significantly to achieving the fundamental right of defense, stated in the Constitution. A person's right to seek justice in court is a prerequisite *sine qua non* in ensuring the effective exercise of his/her rights and freedoms and the right to defense is a fundamental, guaranteed right, which may be exercised by any person in an independent and free manner.

An important role in protecting human rights and freedoms is played by the lawyer. As the exponent of a profession governed by ethical and professional conduct standards, the lawyer can provide quality legal services.

In guaranteeing everyone's right to defense and to qualified legal assistance, the state promotes policies to ensure this guarantee, by establishing levers by which the qualified legal assistance in courts is provided by lawyers.

The Constitution (art. 26 para. (3) provides that any time during the trial the parties are entitled to access to lawyers, meaning a person qualified as a lawyer under the conditions stipulated by the law. This provision is a strong warranty, which prevents the provision of legal assistance activities by unqualified persons, who are not subject to professional control.

The provisions which exclude the right of other legal professionals to provide services for representation in court do not restrict the citizen's right, conferred by Article 26 para. (2) of the Constitution, to respond independently through legitimate means to the violation of rights and freedoms and to choose the manner and means of representation, established by law.

Although in reality, the non-lawyers representing the individuals and businesses perform lawyer specific tasks in civil cases, their activity is not subject to ethical and professional requirements, a fact which undermines the state's positive obligation to provide qualified legal assistance in court proceedings.

The Law no. 102 excludes the right of a person who is not qualified as a lawyer to be a representative in court, but it does not prohibit the right of such person to provide extrajudicial legal advice, to provide representation before administrative authorities and judicial representation of a legal entity, where he/she is employed. Thus, these legal rules are not an interference with the right to work of persons engaged in legal activity of providing legal services and representation in court. The state has the right to establish clear criteria for qualification of persons who provide certain services or activities.

The Court found that the amendments to the Code of Civil Procedure, which governs the institution of representation in court, do not prejudice the principle of availability, ruled by the civil procedural law, according to which the parties in civil trial employ freely their substantive right or legitimate interest subject to the court proceedings, as well as the *procedural means provided by the law.* This principle, regulated by art. 27 para.(1) of the Code of Civil Procedure and supported by other provisions of the Code, *entitles the party to select the procedural manner and means of defense.*

Concerning the constitutionality of the provisions of art. 10 para. (3) a) of the Law on the legal profession, the Court noted that given the important role of lawyers in protecting human rights and fundamental freedoms in a democratic society, the legislator imposed certain requirements for accession to this profession.

According to the challenged legal norm, the person who has applied for license to practice law is not considered someone with impeccable reputation and his/her request is not admissible if such person has been previously convicted of serious, very serious, exceptionally serious intentional offenses, even if they conviction has been spent.

Thus, the Court held that in order to practice the profession of a lawyer, one must necessarily have a good professional training and moral characteristics, and the lawyer's responsibility includes both his/her behavior in the profession and beyond it.

By establishing the rule, art. 10. (3) let. a) of the Law on the legal profession, the legislator assures the society and the judiciary that the justice will be done by people whose credibility cannot be doubted. The challenged prohibition is stipulated for the accession to the position of judge and prosecutor as well.

By emphasizing the professionalism and the impeccable reputation of the lawyer, the Court found that the law did not contravene the Constitution and the international law.

Decision of the Court

Based on the above, the Court recognized as *constitutional*

- the text *"Provision of qualified legal assistance provided by para. (1) let. c) and e) by an individual or legal entity, which is not qualified as a lawyer, shall be punished, unless otherwise provided by the law"* of sect. 5 art.I; art.II and art.III of the Law no. 102 of May 28, 2010 "on amendments and addenda to some legal acts";
- the phrase *"even if the conviction has been spent"* of art.10 para.(3) let.a) of the Law no. 1260-XV of July 19, 2002 "On the legal profession", republished.

2. Judgment of April 5, 2011 on constitutionality review of the provision of art. 8 let. g), art. 11 para. (4) of the Law No.269-XIII of November 9, 1994 on exit and entry in the Republic of Moldova, art. 64 of the Enforcement Code of the Republic of Moldova No. 443-XV of December 24, 2004 as amended by the Law no. 143 of July 2, 2010 on the amendment of the Enforcement Code of the Republic of Moldova

(Complaint no. 35a/2010, JCC no.7/2011, OG no. 58/9 of 12.04.2011)

Circumstances of the case

The case originated in the complaint filed by the ombudsman Tudor Lazăr, who requested the review by the Constitutional Court of the provisions of art.8 let.g), art. 11 para.(4) of the Law no. 269-XIII and art.64 of the Enforcement Code in terms of their compliance with art. 19, art.25, art.27 and art.54 of the Constitution. In his opinion, these provisions were adopted to circumvent the principle of proportionality, hindering thus the enforcement of the right to free movement and are an unjustified measure, which, although protect one right, compromise another right, and therefore cannot be considered constitutional.

Court's Findings

Having heard the parties' arguments, the Court noted that Article 27 of the Constitution guarantees the freedom of movement in the country. Every citizen of the Republic of Moldova is guaranteed the right to establish his/her domicile or residence anywhere in the country, to come, to emigrate and to return to the country.

Under the combined provisions of Articles 19 and 27 of the Constitution, all citizens, foreign citizens, stateless persons, refugees and beneficiaries of humanitarian protection are granted the right to free movement within the country and to go abroad.

The freedom of movement is also protected by art. 2 of the Protocol no. 4 to the European Convention on Human Rights and Fundamental Freedoms, art. 12 of the International Covenant on Civil and Political Rights, art. 13 para. 2 of the Universal Declaration of Human Rights.

Person's right to free movement, protected by art. 27 of the Constitution of the Republic of Moldova and international instruments, is not classified as absolute right, which cannot be restricted. This right can be restricted and its exercise requires meeting certain conditions prescribed by law.

The Court held that any limitation of the right to free movement, either by refusing to issue travel documents necessary to exercise this freedom, or by prohibiting a person to leave the country, must meet certain substantive and procedural requirements, to ensure its proportionality with the pursued aim.

Holding a passport and travel documents is a condition for the person to be able to leave the country. The refusal to issue these documents must be motivated and subordinated to the principle of proportionality.

The Court noted that the refusal to issue the passport or travel document or to extend its validity, the interdiction to leave the country, as legal measures aimed at ensuring the effective

enforcement of a court decision, are not an unjustified interference with the right to freedom of movement guaranteed by Article 27 of the Constitution and provisions of international acts.

According to the case law of the European Court of Human Rights, in the context of some disputes on the subject of interference with the right to leave the country, the measure of limiting a debtor's right to cross the state border may be ordered if necessary to protect the rights of others, namely to protect the legitimate rights and interests of creditors holding an enforceable title. Particularly in Reiner v. Bulgaria (no. 46343/99 of May 23, 2006), the European Court concluded that "... it follows from the principle of proportionality that a restriction on the right to leave one's country on grounds of unpaid debt can only be justified as long as it serves its aim – recovering the debt, and leaving of the country by the debtor may compromise the chances to recover this amount".

According to the European Court, this restrictive measure must be provided expressly by law, have a legal basis and be applied only after the expiry of the term established for the voluntary execution of the enforcement title and after undertaking reasonable efforts to collect the debt by other means, so that restriction be a last resort likely to influence debtor's behavior and responsibility for execution of the enforcement titles.

In terms of the subject of complaint, the Court pointed out the provisions of art. 174, art. 175 and art. 258 of the Code of Civil Procedure of the Republic of Moldova, which provide for the basis and measures to ensure action and enforcement of court decisions. The Court found that the courts are responsible for deciding on the proportionality in ensuring the action and enforcement of the decision by applying the prohibition to leave the country.

The Court concluded that the stipulations regarding the refusal to issue the passport or the travel document or to extend their validity and the prohibition to leave the country, as provided by the law and aiming at protecting the rights of others and to ensure enforcement of court decisions, do not infringe the provisions of art. 27 and 54 of the Constitution.

Decision of the Court

Based on the above arguments, the Constitutional Court recognized as *constitutional* the provisions of art.8 let.g) and art. 11 para.(4) of the Law No.269-XIII of November 9, 1994 on exit and entry in the Republic of Moldova, as subsequently amended, art. 64 of the Enforcement Code of the Republic of Moldova no. 443 of December 24, 2004 as amended by the Law no. 143 of July 2, 2010 on amendment of the Enforcement Code of the Republic of Moldova.

Address

In the context of the object of the complaint - restriction of the right to the freedom of movement of Moldovan citizens, stateless persons, refugees, beneficiaries of humanitarian protection who have financial obligations to the state, to individuals and legal entities, as decided by the court, - the problem of insolvency of an individual was addressed.

The Court held that the failure of the domestic law to regulate legal relations arising from the insolvency of individuals was a gap. The inclusion of express provisions on the insolvency of individuals in specific cases would help enforce the provisions of art. 1, art. 18, art. 19 and art. 27 of the Constitution and would fall within reasonable measures applicable in Moldova on the harmonization of the national legal framework with international law.

3. Judgment of April 12, 2011 on constitutionality review of the words "to dwellings" contained in Article 176 of the Contravention Code of the Republic of Moldova

(Complaint no. 42a/2010, JCC no.8/2011, OG no. 63-64/10 of 20.04.2011)

Circumstances of the case

The case originated in the complaint by the ombudsman Aurelia Grigirou, who alleged that the word "dwellings" in art. 176 of the Contravention Code contravened the provisions of art. 29 para. (1) of the Constitution of the Republic of Moldova, art. 8 of the European Convention Human Rights and Fundamental Freedoms, which enshrines the right of everyone to respect for his/her private and family life, home and correspondence, a text originating in art. 12 of the Universal Declaration of Human Rights, the provisions of art. 17 the International Covenant on Civil and Political Rights and the provisions of art. 7 of the EU Charter of Fundamental Rights.

Court's Findings

The Court held that the words "to dwellings" of art. 176 of the Contravention Code did not contradict the provisions of art. 28, art. 29 para. (1) and art. 54 of the Constitution, or art. 8 of the European Convention on Human Rights and Fundamental Freedoms.

The European Convention on Human Rights and Fundamental Freedoms allows interference proportionate to the pursued aim, of a public authority in the enforcement of one's right to the inviolability of private life, family life, home and correspondence, stipulated in its art. 8, where such interference is prescribed by law and is a measure which, in a democratic society, is necessary for national security, public safety, economic welfare of the country, protection of public order and crime prevention, protection of health or morals or the protection of rights and interests of others.

The failure to provide free access of the water supply and sewerage services providers to dwellings and business premises within the statutory inspection on the functioning of internal water supply and sewerage networks, reading of water meters, maintenance works of the metering equipment shall be qualified as a contravention. Art. 176 of the Contravention Code provides penalties for such contraventions as a warning or a fine of 10 to 40 conventional units for individuals and from 50 to 100 conventional units for the decision- maker within the legal entities.

The Court held that, although art. 176 of the Contravention Code are particularly targeting civil contractual relations, where the state intervenes, they are intended to ensure a reasonable balance between the public interest and the individual interest. Or, the protection of rights and freedoms of others, social and economic security are core values protected by the state.

The European Court of Human Rights in the case *Blecic against Croatia* of July 29, 2004 underlined that when state authorities have to take into account the interests of various groups of citizens, they are inevitably forced to choose the prevailing interests, without being always able to find the ideal solution, which is the reason why, in this area, authorities

should enjoy broader discretion. Thus, according to European jurisdiction, where alternative solutions are available, the states shall choose the most appropriate solution in the corresponding situation, within the limits of achieving the overall goal.

The Constitutional Court concluded that the failure of provide free access to the representative of water supply and sewerage services providers to dwellings may be sanctioned, and the person can challenge the act in a higher court. The protection of material and procedural rights is guaranteed by art. 20 of the Constitution, according to which everyone has the right to obtain effective protection from competent courts against acts that violate their legitimate rights, freedoms and interests.

Providing access to the representatives of water and sewerage service providers to dwellings is an obligation of the consumer, provided by law, and a necessary measure in the interests of the country's economic welfare, protection of rights and freedoms of others and fits within the allowable limits of restriction provided for in art. 54 of the Constitution.

Decision of the Court

Based on the above conclusions, the Constitutional Court recognized as *constitutional* the words „to dwellings" contained in art.176 of the Contravention Code of the Republic of Moldova.

4. Judgment of May 31, 2011 on constitutionality review of the wording „with keeping the average salary (for the employees paid for piecework or per units of time), para. (1) art. 111 of the Labor Code, as amended by the Law no. 168 „On amendments and addenda to the Labor Code of the Republic of Moldova"

(Complaint no. 1a/2011, JCC no.11/2011, OG no. 96-98/13 of 10.06.2011)

Circumstances of the case

The case originated in the complaint lodged by the ombudsman Tudor Lazar, who claimed that the phrase "with the payment of average salary (for the employees paid for piecework or per units of time)" of the Labor Code contradicted the provisions of art. 4 para. (2), art.43 and art.54 of the Constitution, art. 23 and art. 24 of the Universal Declaration of Human Rights and art. 7 let. d) of the International Covenant on Economic, Social and Cultural Rights.

Court's Findings

On July 9, 2010 the Parliament passed the Law no. 168 "to amend and supplement the Labor Code of the Republic of Moldova", setting out the new version of para. (1) art.111 of the Labor Code: „In the Republic of Moldova, the non-working holidays, *with keeping of the average wage (*for the employees paid for piecework or per units of time*)*, are...".

In the exercise of constitutionality control of the provision of para. (1) art. 111 of the Labor Code, the Court approached three issues of law mentioned in the complaint:

1) respect for labor rights, guaranteed by art. 43 of the Constitution;
2) compliance with the principle of equal rights of persons, in the perspective of equal

rights of the employees, regardless of the type of contract of employment signed with the employer (tariff-paid basis or position-based wage, for the employees paid for piecework or per units of time), the principle stated in art. 16 of the Constitution ;

3) compliance with the principle of supremacy of the international standards on the national standards, guaranteed by art. 4 of the Constitution.

The Constitutional Court stressed that the range of social guarantees provided by the right to work shows the vital character of this right for any individual of working age, and the provisions of art. 43 in conjunction with the provisions of art. 47 of the Constitution provide the opportunity for the individual to use equally and based on equitable principles any benefits resulting from the exercise of the right to work.

Established for the good of all society, the non-working public holidays should not override the right of the individual to a fair remuneration and decent living. In this context, the Court found that the right of all employees to equitable remuneration for non-working public holidays is one of labor protection measures provided for in art. 43 para. (2) of the Constitution. The legislator, the organic rules, can extend these safeguards.

Thus, the non-working public holidays, as an important part of spirituality and culture of the individual, must be paid fairly, in accordance with the provisions of art. 43 para. (1) and para. (2) and art. 47 para. (1) of the Constitution.

The previous wording of the rule required employers to keep the average salary for non-working public holidays. When interpreted restrictively, the rule was applied only to employees whose contracts of employment provided payment of a tariff-based wage or position-based wage, the employees paid by piecework or per units of time, who could not work during the public holidays (even if they wanted) being thus discriminated against, and the employer was not obliged to pay the average salary for those days. Thus, those employed for a tariff-based wage had an advantaged position compared to the employees paid by piecework or per unit of time.

The Constitutional Court found that paragraph. (1) art. 111 of the Labor Code, either in the previous or the current wording, did not exclude the remuneration for non-working public holidays of employees paid according to the tariff-based wage. The wage was kept, regardless of the number of non-working holidays during the month. Based on this finding, the Constitutional Court did not accept the argument of the author of the complaint that this category of employees had had a right which had been withdrawn by the Law no. 168, which did not comply with the principle of lawfully acquired rights.

Before the Law no. 168 was passed, the employees paid by piecework or per unit of time were at risk of a disadvantaged position created by the legal rule which established non-working holidays. The amendment eliminated this inequity, instituting the equality in the rights between the employees paid a tariff-based wage and those paid by piecework or per unit of time and the rule was aligned with the provisions of art. 16 of the Constitution.

The Constitutional Court concluded that the words „with *keeping the average salary (for the employees paid by piecework or per unit of time)* was in line with the provisions of art. 16, art.43 para.(1) and para. (2), as well as art. 47 para.(1) of the Constitution, ensuring fair and satisfactory working conditions and mandatory payment of the average wage for the non-

working public holidays for all employees, both those who were paid tariff-based wages and those paid by piecework or per unit of time.

Regarding the principle of priority of international treaties on human rights, raised in the complaint, the Constitutional Court found that exercise of constitutionality control of the disputed phrase in terms of this principle could only occur if the Constitution or national laws did not enshrine the principles and guarantees stated in international treaties or where international treaties guaranteed more extensive rights than those provided by the Constitution.

Art. 23 and art. 24 of the Universal Declaration of Human Rights, art. 7 letter d) of the International Covenant on Economic, Social and Cultural Rights and art. 2 of the European Social Charter (revised) do not provide more extensive rights and guarantees for employees in relation to the provisions of art. 43 and art. 47 of the Constitution, therefore, the phrase "with keeping the average salary (for employees who are paid by piecework or per unit of time") of para. (1) art. 111 of the Labor Code does not violate international treaties, raised in the complaint and thus is in line with art. 4 of the Constitution.

Decision of the Court

Based on the above arguments, the Constitutional Court recognized as *constitutional* the phrase „with *keeping the average salary (for employees who are paid by piecework or per unit of time)"* of para.(1) art.111 of the Labor Code as amended by the Law no. 168 of July 9, 2010 „for the amendment and completion of the Labor Code of the Republic of Moldova".

Address

The Court suggested to the Parliament for reasons of opportunity to operate standard grammar review of the para. (1) art.111 of the Labor Code. The Court found that paragraph (1) art. 111 of the Labor Code, both in its previous and in the current version, contained some uncertainties. In the initial version, the legal provision generated a restrictive interpretation, being reported by users on employees paid by piecework or per unit of time, while in the current wording it may lead to the idea that the average salary for non-working holidays shall be paid only to these categories of employees.

5. Judgment of June 14, 2011 on constitutionality review of art. IV of the Law no. 186 of July 15, 2010 on amendments and addenda to some legal acts

(Complaint no. 2a/2011, JCC no.13/2011, OG no. 103-106/15 of 24.06.2011)

Circumstances of the case

The case originated in the complaint lodged by the ombudsman Tudor Lazar on constitutionality review of the provisions of art. IV of the Law No. 186 of July 15, 2010, which he considered discriminating and contradicting art. 16, art. 47 and art. 54 para. (1) of the Constitution, art. IV of the Law no. 186, distinguishing veterans in employed or unemployed, as result of which, the employed veterans, including those in the public sector, could not

benefit from the health care services according to the Single Program and from provision of basic medications for some diseases specified by the law.

Court's Findings

By developing the constitutional provisions on the right to health and social protection, the Law on veterans regulates the state social policy for this group. Thus, the law provides for ensuring of the vital needs of veterans by granting them rights and safeguards, implementing measures that ensure their health and welfare, medical care and necessary social services, granting of pensions and allowances, providing government benefits and compensations in accordance with the law (art.3).

By the Law on Health Care No. 411 of March 28, 1995, all Moldovan citizens, regardless of their income, are given the opportunity to receive timely and quality health care within the compulsory health insurance system. The individuals who have lost their job and earnings are entitled to the minimum state guaranteed free health insurance to support their health and the health of those supported by them.

Under the general provisions of the Law no. 1585 of February 27, 1998 on compulsory health insurance (hereinafter - the Law no. 1585), the compulsory health insurance aims at guaranteeing a minimum autonomous system for the financial protection of the population in health care by establishing, based on the solidarity principles, at the expense of insurance premiums, some funds to cover the costs of treatment for the illnesses conditioned by the occurrence of insured events (disease or condition).

For unemployed persons residing in Moldova, included in the records of the competent institutions of the Republic of Moldova, particularly the disabled, pensioners, unemployed receiving unemployment benefits, etc., the Government plays the role of the insurer; the compulsory health insurance for these people is covered from the state budget (art. 4 para. (4), article 5 para.(3) of the Law no. 1585).

The compulsory health insurance of the employed individuals is covered from the funds of employers and employees, and the compulsory health insurance premiums for the employed individuals are paid from the employer and employee contributions (art. 5 para. (2), art. 17 para. (5) of the Law no. 1585.

According to the previous provisions of the Law on veterans, amended by art.IV of the Law No. 186, the costs of providing medical benefits for employed veterans were paid by the employers.

The Court noted that any stipulation on the state budget allocations for the cost of paying health contributions within the compulsory health insurance should correlate with the provisions of the Constitution and those of the special legislation on the health care and compulsory health insurance.

The Court found that by the amendments, the provisions of Article 14 para.(7), art. 15 para. (8), art. 16 para. (5) of the Law on veterans had been brought into conformity with the Constitution and the legislation on health care and compulsory health insurance.

According to the principle of social solidarity, any workable person is required to contribute to social insurance of those unable to work, including by paying compulsory health

insurance premiums from their wages and other income. In case of covering the costs related to provision of health benefits, under the compulsory health insurance, for the employed veterans, including in the public sector under the Single Program at the expense of the enterprise, institution or organization with any form of ownership, the priority state programs would be inconsistent with the constitutional principle of the rule of law, according to which the human rights and freedoms and justice are supreme values and shall be guaranteed (art. 1 para. (3)), with the constitutional provisions on the powers of the Parliament for the interpretation of laws and ensuring of the unity of legislative regulations throughout the country (art. 66 let. c)), with the legal principles of the operation of the compulsory health insurance system of equality, solidarity, compulsoriness, contributiveness etc.

The Court held that the conclusion of the author of complaint that the Law no. 185 restricted the right of the veterans to health care and provision of basic medications under the Single Program and priority state programs was unfounded, since the right of any person, including veterans, to health care was guaranteed by the Constitution and the national legislation.

The Court rejected the argument of the author of complaint about the suppression, by Law No. 186, of a legally acquired right, or, by the effects of art.IV of the Law No. 186, the insured persons had been placed in equal conditions, in accordance with art. 16 of the Constitution and with the principles of organization and operation of the compulsory health insurance system.

The Court concluded that art. IV of the Law no. 186 by which the words in art. 14 para. (7), art. 15 para. (8) and art. 16 para. (5) of the Law No. 190-XV on Veterans of May 8, 2003 "for employed veterans, including those employed in the public sector, shall be borne by the company, institution or organization with any form of ownership, while for retired veterans, unemployed, disabled unemployed veterans - by the state budget" has been replaced by "for retired veterans, unemployed veterans receiving unemployment benefits, unemployed disabled veterans shall be borne by the state budget" does not contradict art. 16, art. 47 and art. 54. para. (1) of the Constitution.

Decision of the Court

Given the above, the Constitutional Court ***recognized as constitutional*** the provisions of article IV of the Law no. 186 of July 15, 2010 on amendments and addenda to some legal acts.

6. Judgment of 7 July 2011 on constitutionality review of the Parliament Decision no.83 of April 21, 2011 "On appointment of the President of the Court of Accounts'

(Complaint no. 13a/2011, JCC no.14/2011, OG no. 118-121/16 of 22.07.2011)

Circumstances of the case

The case originated in the complaint lodged by a group of members of the Communist group in the Parliament, who claimed that in adopting the Decision No. 83 of April 21, 2011

"On appointment of the President of the Court of Accounts", the Parliament had violated the provisions of art. 1 para. (3), art. 4, art. 7, art. 15, art. 66 and art. 133 of the Constitution.

Court's Findings

The Constitutional Court noted that it would verify the constitutionality of an individual act, legally binding for one case only, related to the appointment of a person to a public position, in the light of development of the constitutional jurisdiction in that area.

The Court held that compared to other complaints, which challenged individual acts, this complaint had some peculiarities. While the previous complaints requested protection of individual rights in terms of free access to justice, challenging the provisions related to dismissal of persons holding public functions, people who, under the restrictions imposed by art. 4 of the Law on Administrative Contentious and the practice of the Constitutional Court of not accepting for review individual acts could not defend the violated rights in court, this complaint concerned the general interest of the society against an allegedly contrary to individual right as assigned by the Decision No. 83: unconstitutional holding of a public position.

As the European Court of Human Rights changed its case law, leading to the amendment of the national legislation, the Constitutional Court in the Decision No. 10 of 16.04.2010, decided to admit *this act and of the adoption procedure* for the constitutionality control *in terms of the competence of the authority to adopt* the acts issued by the Parliament, the President of the Republic of Moldova and the Government on officials representing particular public interest, elected or appointed for the term of office.

Contrary to the conclusions set out in Decision No. 10 of 16.04.2010, by the Law no. 95 of 21.05.2010 the Parliament amended art. 31 of the Law on the Constitutional Court and art. 4 of the Code of Constitutional Jurisdiction, excluding the control of decisions of the Parliament, decrees of the President of the Republic of Moldova and Government decisions of individual nature in constitutional litigation. These provisions were declared unconstitutional by the decision No. 29 of 21.12.2010. The conclusions under the Judgment no. 29, declaring the provisions excluding the constitutionality control of individual acts issued by central governments incompatible with the Constitution, allowed the Court to assume, under articles 135 of the Constitution, judicial review of this category of documents.

Since by article 4 of Law on Administrative Contentious some administrative acts issued by central governments have been exempted from any form of judicial review, the Constitutional Court held that it would examine the decisions of the Parliament, Presidential decrees and Government decisions related to recruitment, appointment and dismissal of public officials, with responsibility for protecting the general interests of the State or public institutions, public officials, exponents of special public concern based on complaints. With reference to these cases the Court reiterated that it would apply art. 31 of the Law on the Constitutional Court, which outlined the limits of competence and prescribed the obligation to exclusively examine legal matters.

Concerning the competence of the authority to adopt the Decision No. 83, the Court noted that art. 133 of the Constitution assigned the Court as the authority controlling the

public finance, and paragraph (3) of this article stipulated that the President of the Court of Accounts should be appointed by the Parliament upon the proposal of its Speaker, for a period of 5 years. According to para. 66 let. (a) of the Constitution, the Parliament adopts resolutions and motions, and letter (j) of the same article assigns the Parliament the function of selecting and appointing state officials as foreseen by the law. By developing the constitutional rules, art. 11 para.(2) let.(c) of the Law on legal acts provides that Parliament decisions shall be adopted for the election, appointment, revocation, dismissal and suspension from public positions. The Court concluded that the Decision no. 83 appointing the President of the Court of Accounts was in line with the requirements of art. 66 and art. 133 of the Constitution.

The Court held that *the procedure of adopting the Decision no. 83* was in line with all constitutional and legal standards.

The Court held with respect to the first argument of incompatibility - lack of an education degree in the areas specified by law, that according to submitted material, the person appointed as President of the Court of Accounts held the title of Ph.D. in economics. In this context the Court found weaknesses in the regulatory legislation pertaining to the heterogeneous use of terms that define the criterion of holding higher education degree by the candidates for public office.

Regarding the holding of position of the first deputy speaker of the Parliament during the last two years, the Court found that this was a matter of opportunity and the responsibility of the Parliament as the supreme representative and legislative body. In terms of the form and content, this position apparently does not fall within the positions defined by the legal provisions as invested with powers to manage public funds. The assessment of the relationship between these positions - President of the Court of Accounts and former First Deputy Speaker of the Parliament - would imply review of the factual circumstances, which is inadmissible for the Constitutional Court.

Decision of the Court

The Constitutional Court recognized as *constitutional* the Decision of the Parliament no. 83 of April 21, 2011 „on appointment of the President of the Court of Accounts".

Address

The Court pointed out some inconsistencies in the law relating to conditions of nomination of candidates for certain public positions. According to the Education Law no. 547-XIII of 21.07.1995, as subsequently amended, higher education consists of two cycles: education for Bachelor and Master degrees. The legal acts operate with the notions: "Higher education", "Bachelor" or "degree".

The legal provisions stipulate that aspirants to the position of a judge, prosecutor, notary, ombudsman, lawyer, secretary of the local council and other positions must have bachelor's degree in the competent area, but contain no reference to the requirement to hold Master degree, which, according to the standards of the Bologna process is a compulsory step in order for a person to be assumed as having complete higher education. Or, to be able to hold

certain positions in the areas of audit, accounting, civil aviation, real estate market values, broadcasting, tourism, etc., the individuals must hold higher education degree, but these laws do not specify the cycle: undergraduate or master.

7. Judgment of October 18, 2011 on constitutionality review of some provisions of the Law no. 48 of March 26, 2011 on amendments and addenda to some legal acts

(Complaint no. 10a/2011, JCC no. 19/2011, OG no. 182-186/28 of 28.10.2011)

Circumstances of the case

The case originated in the complaint lodged by the Members of Parliament Vladimir Voronin, Sergei Sirbu, Iurie Muntean, Igor Dodon and Artur Resetnicov, who claimed, in particular, that the challenged legislative amendments had diminished significantly and unjustifiably the social protection and social benefits of the persons concerned and were incompatible with the provisions of Articles 1 para. (3), 7, 15, 16, 18, 43, 46, 47, 54 and 126 of the Constitution, Article 7 of the Universal Declaration of Human Rights, Article 2 para. (2) of the International Covenant on Economic, Social and Cultural Rights and Article 1 of Protocol no. 1 to the European Convention Human Rights and Fundamental Freedoms.

Court's Findings

Having heard the parties' arguments, the Court held that when the state implements a law that provides for automatic payment of social benefit - **whether or not the payment of such benefit depends on the previous payment of contributions** - such law shall be considered as generating a proprietary interest assimilated to a **property right.**

At the same time, the Court held that this right cannot be interpreted as conferring a right to a benefit of a determined value.

On the other hand, the Court noted that the margin of discretion available to states in this area is larger, therefore, the state authorities are entitled to consider some situations and adopt measures that would limit the guaranteed rights, however always respecting the principles of legality, proportionality and legitimacy of the goal. In this context, the Court noted that invoking the economic crisis and financial difficulties for restricting the rights and fundamental freedoms was inadmissible.

In this context, the Court held that persons who fell under the incidence of the challenged provisions were not entirely deprived of the disputed social benefits, only the amount of such benefits would decrease. The Court concluded that the challenged regulations did not result in suppression of rights and that, in the given circumstances, such decrease did not affect the livelihoods of people and did not impose an excessive and disproportionate burden on the legitimate interests of the community invoked by the authorities **and was therefore compatible with the protection of property.**

The Court also held that, regardless of the funding source - either the state budget or the budget of the state social protection system, all benefits provided by law are part of the social

protection system. Thus, the Court concluded that by the disputed provisions, the Parliament ensured the **observance of the principles of equality and uniqueness** stated in the Law on the social insurance system. Following the amendments, the amount of the allowance in case of death for the corresponding categories of peoples shall be established annually by Law on the state social insurance budget, while the unique dismissal benefits shall be established according to the rules applicable to all civil servants.

At the same time, the Court held that in case of beneficiaries of allowance in case of death or single dismissal benefit, the **right to work was already exhausted, as** they had already been guaranteed the right to work, to free choice of employment, to fair and favorable conditions of work and to protection against unemployment.

Concerning the status modification of the employees of the apparatus of the Superior Council of Magistracy, the Court held that **the disputed amendments were of both technical and legal nature,** the collision between the competing rules governing the same legal relationships of payment being thus excluded. The judges deployed to the Superior Council of Magistracy retain their capacity of judges, with all guarantees inherent to this status, while the other employees have the status of civil servants. At the same time, the Court found that the employees of the Superior Council of Magistracy apparatus holding the status of public official benefit from the guarantee of keeping the salary after the implementation of the Law no. 355-XVI of December 23, 2005 on public sector pay system for the period of activity in that public sector institution in the same or a more advanced position and thus, the challenged rules do not affect the previously acquired rights. In this context, the Court concluded that the challenged rules ensured the compliance with the principle of equity between categories of public service employees.

Decision of the Court

Based on the above arguments, the Constitutional Court recognized as *constitutional* the provisions of articles V, VII, X, XIX and XXX of the Law no. 48 of March 2011 on amendments and addenda to some legal acts.

8. Judgment of October 25, 2011 on constitutionality review of the provisions of Article IX, section 2, 3, 5 and 7 of the Law No. 48 of March 26, 2011 on amendments and addenda to some legal acts and article 20 let. a), b), d), f) and l) of the Law No. 52 of March 31, 2011 on the State Budget for 2011

(Complaint no. 11a/2011, JCC no.22/2011, OG no. 192-196/30 of 11.11.2011)

Circumstances of the case

The case originated in the complaint lodged by the Members of Parliament Mr. Vladimir Voronin, Sergei Sirbu, Igor Dodon and Mrs. Zinaida Greceanii who claimed, in particular, that the provisions amending Articles 9 para. (2), 11 para. (5) let.b), 36 para. (5) and 43 of the Law on the budgetary system and budgetary process, as well as the provisions of article 20 of

the law no. 52 of March 31, 2011 on the state budget for 2011 allowed for the use of public funds without the Parliament approval and thus, they contradicted the competence and procedures related to the building, management, use and control of financial resources of the state, violating the provisions of Articles 1, 6 , 60, 66, 72, 107, 130 and 131 of the Constitution.

Court's Findings

Having heard the parties' arguments, the Court held that, in essence, the disputed provisions focused on two aspects: (a) the possibility of public authorities to make expenditures not included in the budget approved by the Parliament, (b) the competence of the Parliament and the Ministry of Finance related to the use of financial resources of the state budget.

Regarding the alleged violation of the Parliament competence and of the constitutional procedures related to the management of the budget deficit, the Court held in its decision that the destination and use of funds granted as loans for projects financed from external sources, not included in the approved annual budget, were enshrined in the corresponding financial agreements, a category of international treaties and hence, as being ratified by **laws,** met the requirements provided by article 130 para.(1) of the Constitution.

Concerning the powers conferred to the Ministry of Finance by article 20 of the Law on the State Budget for 2011 and the alleged violation of articles 60, 66, 72, 130 and 131 of the Constitution by granting these powers, the Court held that the functions delegated by the legislator to one component of the executive power did not concern the regulation of the state financial sources management and use process, but only their administration under the law. Since the provisions at issue were covered by the annual budget law, the Court held that the constitutional provisions according to which the regulation of these processes was only executed by law and that budget expenditure should be approved only after establishing the source of funding had been complied with. In the same context, the Court held that the powers conferred to the Ministry of Finance **did not allow it to carry out expenditures without establishing the relevant funding sources, in order not to admit the increase of the approved budget deficit.**

Based on the analysis of the disputed provisions, the Court concluded that the powers conferred to the Ministry of Finance through the annual budget law did not aim at increasing the annual budget deficit, but to ensure effective management of savings in the budget execution process. Therefore, the Court held that, by Article 20 of the State Budget Law for 2011, the Parliament did not convey its powers to approve and control the state budget execution, as the **Ministry of Finance could not change the balance of payments or the state budget deficit.**

The Court also noted that the disputed financial and budgetary changes did not affect the essence of the budgetary control performed by the Parliament.

The Court considered plausible the arguments of the Parliament and Government representatives, presented at the public hearing, that the amendments to the Law on budgetary system and budgetary process and to the annual budget law aimed at simplifying the tax administration, strengthening and improving the use of public financial resources, encouraging domestic and foreign donors to invest in Moldovan economy.

The Court noted that the increasing complexity of modern societies, including in the context of the economic crisis, generated the objective need to have governments with flexible institutional mechanisms available to manage the economy. In this context, the Court noted that the Parliament's role is to focus on political addressing of issues of principle in the society, rather than the technical ones.

Based on the above, the Court held that the law by which the Parliament delegated some powers to the Ministry of Finance did not violate the principle of separation and collaboration of powers and was consistent with the Articles of the Constitution, invoked by the authors of the complaint.

Decision of the Court

Based on the above arguments, the Constitutional Court ***recognized as constitutional*** the provisions of art.IX section.2, 3, 5 and 7 of the Law no. 48 of March 26, 2011 on amendments and addenda to some legal acts, as well as the provisions of art. 20 let.a), b), d), f) and l) of the Law no. 52 of March 31, 2011 on the state budget for 2011.

Dissenting Opinion

One judge expressed a dissenting opinion concerning the judgment of the Court, highlighting the following. By completing art. 43 of the Law on the budgetary system and the budgetary process with para.(2^1), the Parliament admitted **the increase of the budget deficit** due to the inputs and use beyond the provisions approved in the budget of the loans for projects financed from external sources (ratified by the Parliament) and the use of balances from previous years from the loans for projects funded from external sources (ratified by Parliament) and from grants, donations, sponsorships, came into possession of public entities, **without separate amendment of the annual budget law,** thus violating the provisions of art.131 para.(5) of the Constitution.

He stressed that the laws ratifying loan agreements (international treaties) could not be considered as laws governing the management, use and control of financial resources of the State, public institutions, which are provided by art. 130 para. (1) of the Constitution

Following amendments to the Law no. 847-XIII, the Ministry of Finance, the role of which is to synthesize and coordinate the budgetary process, becomes an institution responsible for the regulation of budgetary processes and budgetary policies by law, which is the responsibility of the Parliament, in violation of provisions of Article 6 of the Constitution.

According to the author of the dissenting opinion, the amendments to the Law no. 847-XIII contradict the principles of universality and unity of the budget and violate the provisions of articles 3 para. (2) and 4 para. I(3) let. a) of the Law on legal acts.

9. Judgment of December 8, 2011 on constitutionality review of the provisions of art. 25 para. (1), 26 and 27, section 1) and 7) of the Law No. 64-XII of May 31, 1990 on the Government, as subsequently amended and supplemented

(Complaint no. 26a/2011, JCC no.25/2011, OG no. 227-232/37 of 23.12.2012)

Circumstances of the case

The case originated in the complaint lodged by a group of members of Parliament from the Liberal Democratic Party, who claimed, in particular, that the Government Presidium did not have a constitutional basis and was an instrument of full usurpation/substitution of the tasks of the Prime Minister and the Government in decision making and that the challenged decisions were contrary to articles 1 para. (3), 96 para (1), 97, 101 para (1) and 102 para (5) of the Constitution.

Court's Findings

Having heard the parties' arguments, the Court noted that constitutional rules concerned only the *principle* specification of the structure, organization and establishment of the Government and of the specialized central government bodies. Thus, the Constitution does not generically and exhaustively regulate the structure, the role and the functions of these bodies, since it regulates the fundamental social relations that are essential to establish, maintain and exercise the power.

In this context, the Court held that the Fundamental Law enshrines the principle of autonomy parliamentary regulation, applicable to the organization and operation of the Government officials, under which the Parliament develops by law the constitutional rules on its organization and functioning.

Thus, without seeking to conduct a political review of the appropriateness of the measures or their effects, the Court concluded that the establishment of the Presidium, although not covered by constitutional provision, **could not be qualified as determining in itself its unconstitutionality** and that the possibility of the Parliament, as the primary legislative authority, to legislate the Government Presidium was within the scope of the legislative body.

Concerning the **competences of the Government Presidium,** the Court noted that the criticized provisions referred to: **(a)** the proposed draft of the agenda for the Government meetings; **(b)** coordination of the internal activity of the Government; **(c)** examination of Prime-minister's proposals on the stimulation or application of disciplinary sanctions to members of the Government.

Regarding the **agenda** of the Government, the Court concluded that the review of the disputed text showed that: (1) **the draft** agenda approved by the **Presidium** has the value of a **proposal;** (2) **the final decision lies with the Government.**

Consequently, even if the possibility to establish the agenda by the Presidium is apparently limited to a limited circle of the members of the Government, the Government's right to decide on the appropriateness and the content of the agenda is **discretionary,** since the Cabinet of Ministers has the possibility to decide on proposals to change or supplement the agenda, submitted by the members of the Government during its meeting.

The Court found no reason for impediment of the right of the government members to submit proposals for amending or complementing the agenda directly in the Government meeting, as it was during the existence and functioning of the Presidium.

In addition, during the public hearing the Court found that there had been no case of rejecting the proposal of the Prime Minister for debate in the Government meeting, which had not been included in the draft agenda approved by the Presidium.

Also, during the public hearing the Court found that the functioning of the Government Presidium did not cause any failures in the normal, daily activity of the ministries or of the Government either in 2011 or during the previous years of existence of the Government Presidium.

Moreover, the Court noted that the rules establishing the approval of the draft agenda of Government meetings by the Presidium, by consensus, replaced the previous rules, according to which the Prime Minister unilaterally approved the draft agenda of Government meetings and this provision was more likely to cast doubt of political partisanship in promoting certain initiatives than the current provision.

The Court also held that the Government Presidium is established following negotiations between the leaders of parliamentary groups to form the Government, respecting the principle of Parliament's political configuration. Thus, in a natural connection with the formation of the Government, the Presidium ensured the coverage of Parliament's political options in the composition of its structure, providing political support of the Government. Thus, the Prime Minister has levers to influence the establishment of the government teams and implicitly the structure of the Presidium, in line with the provisions of article 98 para. (2) of the Constitution; the candidate for Prime Minister within 15 days of the appointment, requests the Parliament's vote of confidence for its program of activity and the complete list of the government, including deputy ministers, who are part of the Presidium.

The Court noted that since **in a coalition government, under the conditions of political and party pluralism, a permanent cooperation is required** between the representatives of its various components, a particular importance lies with the collaboration in various forms and activities of these components which mutually "temper" the dominance trends that may result in replacement of constitutional democracy with dictatorship.

The Court rejected the argument of the authors of the complaint that the disputed provision would be contrary to Article 101 para. (1) of the Constitution, which states that the Prime Minister leads the Government and coordinates the activities of its members, respecting their functions.

In Court's view, it was obvious that the disputed legal provision and the invoked constitutional provision referred to **different subjects:** the constitutional provision on the **powers of the Prime-Minister** refers to ***„members* [of the Government]"**, as individual representatives, while the legal provision on the **powers of the Presidium** refers to the ***„Government"***, as an entity.

Also, in terms of stimulation or application of disciplinary action against government member, the Court concluded that the review of the challenged legal norm showed that it established a discretionary and alternative power of the Prime Minister to submit such proposals or not to the Government Presidium or to the President of the Republic of Moldova.

Decision of the Court

Based on the above arguments, the Constitutional Court recognized as *constitutional* the challenged provisions of articles 25 para. (1), 26 and 27 section 1) and 7) of the Law no. 64-XII of May 31, 1990 on the Government, as amended by the Law no 5 of January 12, 2011.

Address

The Court noted that the legislation contained ambiguous provisions on the powers of the Government Presidium in terms of establishment of the agenda of government meetings, the powers of coordinating the internal activity of the Government and review of the proposals related to stimulation or disciplinary sanctioning of the Government member.

The Court pointed out to the Parliament on the contradiction in legal rules on delegation by the absent member of the Government of his/her representative to the meetings of the Presidium and the Government. According to Article 26 of Law on the Government, in the absence of the member of the Presidium, such member shall delegate another member of the Government to participate in full in Presidium meeting, given that, in accordance with Article 21 of the Law the Minister, and by default the Deputy Prime Minister is assisted by one or more deputy ministers, who replace him/her in case of the inability to exercise powers.

C. Judgments of the Constitutional Court partially recognizing the challenged provisions of laws and decisions of the Parliament, Presidential decrees as unconstitutional

During the reporting period the Constitutional Court delivered three such judgments:

1. *Complaint no. 26a/2010, JCC no.5/2011, OG no. 34-36/7 of 04.03.2011*
2. *Complaint no. 21a/2011, JCC no.15/2011, OG no. 166-169/22 of 07.10.2011*
3. *Complaints no. 34a/2010, 36a/2010, 19a/2011, 23a/2011, JCC No. 27, OJ No. 1-6/1 of 06.01.2012*

1. The Judgment of February 18, 2011 on constitutionality review of some provisions of the Law 175 of July 9, 2010 "To amend the Law No. 440-XV of July 27, 2001 on free economic zones", the Law no.176 of July 15, 2010 "To amend the Law no.451-XV of July 30, 2001 on control of regulating entrepreneurship activity by licensing" and the Law no.193 of July 15, 2010 "on amendments and addenda to some legal acts"

(Complaint no. 26a/2010, JCC no.5/2011, OG no. 34-36/7 of 04.03.2011)

Circumstances of the case

The constitutional review was based on the complaint lodged by the Minister of Justice Alexandru Tanase.

Court's Findings

The provisions concerning the legal status of free economic zones and of the residents of these areas provide some facilities to a particular territory under the jurisdiction of the State, but delimited from the rest of the territory by the customs border for public utility purposes - social and economic development of certain areas, attracting investment, production development etc.

The Court held that the differential treatment imposed by the Law no.175 was based on objective criteria, exposed with sufficient clarity and predictability. Or, the provision of preferential arrangements for the residents of free economic zones and certain categories of investors within the free economic zones, is in line with the legitimate goals pursued by the creation of free economic zones.

Authorized to regulate by law how the exclusive economic zones should be established, the Parliament enjoys a wide discretion in promoting economic development policies of the state. The Court found that the challenged provisions of the Law no.175 did not contradict the Constitutional provisions.

With reference to the challenged provisions of the Law no.176 of July 15, 2010 and the Law no.193 of July 15, 2010, the Constitutional Court concluded that they directly address the source of budget revenue and expenditure provided by the annual budget law, establish, modify and cancel taxes, grants and other budget revenue and expenditure and therefore contravene the Constitution.

By the Law no.193 the parliament introduced changes to the Tax Code and the Customs Code in respect of the VAT exemption for supplies of goods and services under a lease agreement (financial and operational) and exemption from the payment of import duties on release for free circulation of the leased object after expiry of the lease agreement, without the Government approval, although the law has an impact on budget revenues.

Referring to section 18 of Article 1 of the Law no.176 of July 15, 2010 the Court found that on April 7, 2010 the Government proposed completion of the Annex with sections 5 and 6, but during the Parliament session it requested the amendment of section 1 let. e) of the Annex, by reducing the tax for the maintenance of casinos with up to 6 tables, from 360,000 lei for each table to 180,000 lei, and for those with 7 or more tables - 360,000 lei.

This legislative proposal was adopted by the Parliament in the second reading without Government's approval, without conducting a detailed economic analysis, in violation of constitutional provisions of Article 131 para. (4) of the Constitution.

The imperative requirement of a priori control by the executive authority over the budgetary process is determined by the right and obligation of the Government to ensure the implementation of Government's domestic and foreign state policy, exposed in its Program of Activity, approved by the Parliament(art. 96, art. 98 para. (3) of the Constitution).

According to the Law on budgetary system and budgetary process no. 847-XIII of May 24, 1996, the overall responsibility for execution of the State budget lies with the Government(art. 32 (31)).

Thus, the Constitutional Court concluded that, in the meaning of art. 131 para. (4) of the Constitution, any amendment, which implies increasing or decreasing budget revenues or loans, and increase or decrease of budget spending, should be considered an amendment, which attracts increasing or decreasing of budget revenues or loans and increase or decrease of public spending, set forth in the annual budget law, and such amendment may be adopted only after being approved by the Government.

According to article 131 para. (6) of the Constitution, no budget expenditure may be approved without prior identification of a corresponding source of funding for it. This provi-

sion establishes a strict rule on legislation of budget expenditure only after identification of the source of funding and is valid for all budgets.

In interpreting the provision in paragraph 131 para.(4) of the Constitution, Court found that it would indirectly be combined with the provisions of the Law on the Budgetary System and Budgetary Process no. 847-XIII of 24.05.1997, according to which the procedure for the development and adoption by the Parliament of the annual state budget law is the exclusive subject of this law (Article 15 para. (1).

According to art. 11 para. (5) of the Law no. 847-XIII, after the adoption of the annual budget law, no proposed law, other than the Budget law proposal, which decreases State budget revenues or increases State budget expenditures may be considered by Parliament, unless the bill also includes the source of covering the losses for maintaining the level of the settled budget deficit; and no law, other than the amendments to the Annual Budget Law, may be adopted which reduces the approved State budget surplus or increases the estimated State budget deficit.

Thus, the Court held that by ignoring the procedure for drafting and adopting amendments which implied the increase or decrease of budget revenues and expenditure, the Parliament had violated art.6, art. 126 para. (2) and art. 131 para. (4) of the Constitution.

Decision of the Court

Based on the arguments stated above, the Constitutional Court recognized as *constitutional* the provisions of art.I section 3 of the Law no. 175 of July 9, 2010 "for amendment and completion of the Law no. 440-XV of July 27, 2001 on the free economic zones" and declared as *unconstitutional* the Law no. 193 of July 15, 2010 "on amendments and addenda to some legal acts; section 1 letter e) of the Annex to the Law no. 451 -XV of July 30, 2001 "On Regulating Entrepreneurial Activity Through Licensing" as amended by the Law no. 176 of July 15, 2010.

2. Judgment of September 13, 2011 on constitutionality review of the article 18 para. (3) of the Law no. 152-XVI of June 8, 2006 on the National Institute of Justice

(Complaint no. 21a/2011, JCC no.15/2011, OG no. 166-169/22 of 07.10.2011)

Circumstances of the case

The case originated in the complaint lodged by the Member of Parliament, Mr. Sergei Sirbu, who claimed in particular that the limitation of the right of the graduates of the National Institute of Justice to participate in the contest for the vacancies of the positions of judge and, respectively, of prosecutor, to a period of 3 years, which begins from the graduation of this institution, violated the property rights, the right to education and the right to access to public office and was incompatible with the provisions of articles 16, 35 para. (1), 39 para. (2), 46 and 54 of the Constitution and Articles 1 and 2 of the Additional Protocol to the European Convention.

Court's Findings

The Constitutional Court reiterated that in its case law, the European Court states as a principle that the term "assets" in article 1 of the Protocol no. 1 to the European Convention has an autonomous meaning and is independent from the formal classification in the national law and that this term is not limited to the ownership over some tangible assets only. Thus, the issue to be examined in each case is whether the circumstances of the case, examined together, provide the person concerned the right to property interests protected by Article 1 of the Protocol. According to the European Court case-law, the license to conduct a certain activity has been consistently considered an "asset" in the meaning of Article 1 of Protocol No.1 to the European Convention, to the extent that individuals concerned are provided with a right of a material interest regardless of whether the act is administrative. Likewise, the European Court held that the license of a lawyer or an accountant is an "asset" guaranteed by Article 1 of the Protocol No. 1 to the European Convention, given that it involves property elements that allow generating some revenues.

According to the Constitutional Court, the right involved by holding the certificate of graduation from the National Institute of Justice can be treated as a property right enshrined in Article 46 of the Constitution and Article 1 of the Protocol No.1 to the European Convention because, thanks to the activity it allows to perform, its holder has the opportunity to earn income, involving thus a financial benefit in the meaning of the right guaranteed by the Constitution and the European Convention.

The Court held that the proceedings before the Superior Council of Magistracy/ Superior Council of Prosecutors is not a contest for the vacant position, but a procedure for the deployment of the graduates from the National Institute of Justice to the courts / prosecutors' offices in different localities based on the general average mark obtained upon graduation. Therefore, the application of paragraph (2) of Article 18 is not subject to a condition of accession, such as specialized education, but a criterion for deployment, while the award of the position is quasi-automatic.

Also, the Constitutional Court did not consider relevant the argument that the graduates of the National Institute of Justice are subject to reasonable limitations in time because after a period of 3 years there would be the "risk of professional regression."

The Constitutional Court considered unfounded the claim of the author of the complaint that the first sentence of paragraph (3) of article 18 provided for the graduates' obligation to enter the contest within three years after graduation, on the contrary, this provision merely limited the time for such obligation for the graduates who had not passed the contest and could not be considered incompatible with the provisions of the Constitution.

Similarly, the Court found that the graduate's obligation was in line with the possibility for the Board of the National Institute of Justice, provided for in paragraph (4) of the same article, to sanction the failure to fulfill this obligation by requesting the refund by the graduate of the scholarship received during the initial training to the accounts of the institution.

Decision of the Court

Based on the above, the Constitutional Court recognized as *constitutional* the text „The graduates who have not passed successfully the contest for available vacancies for the posi-

tion of judge or prosecutor shall further take part in any open contest for the above mentioned positions during three years after graduation from the Institute" and declared *unconstitutional* the words „After three years the graduates cannot participate in such contests based on the average general mark received in the graduation examinations" in paragraph (3) of article 18 of the Law on the National Institute of Justice.

Dissenting Opinion

The judge Victor Puscas underlined that, according to the Constitutional Court, the certificate of graduation from the National Institute of Justice is an "asset", protected by Article 46 of the Constitution and by the European Convention, but the ECHR describes without reserve as "assets" within the meaning of Article 1 of the Protocol No. 1, only those documents, the values of which can be economically assessed and which are issued for the conduct of private business.

Also, the judge presents arguments that the Constitutional Court made wrong and unjustified parallels between the certificate of graduation from the National Institute of Justice and licenses of lawyer, notary or accountant "which involve property elements that allow generation of revenues." These licenses do not justify the right to claim these professions, but the right to exercise them. When exercising a public position, the equivalent of a license is the act of appointment. The certificate of NIJ is not a license, which involves property elements, but a document that allows participation in the contest, which acquires property elements characteristic to an "asset" only after passing the contest and designation of the holder of the position.

According to the Judge Victor Puscas, by how it approached the status of NIJ certificate, the Court totally ignored the role of the Superior Council of Magistracy in appointing judges.

By declaring the provision of the law as unconstitutional, the Court excluded the obligation of the graduates, who did not participate in the contest without founded reasons, to repay the expenses incurred by the state for their training.

Address

The Constitutional Court issued an address by which it suggested to the Parliament that it should develop the legal mechanism for establishing the ratio between the vacancies for the graduates of the National Institute of Justice and those for other categories of persons admitted to the contest, and develop clear rules for determining the option for the proposal of vacancies in each category of contest - ordinary, by derogation or by transfer.

3. Judgment of December 20, 2011 on constitutionality review of some laws amending the conditions for providing pensions and other social benefits to certain categories of employees

(Complaints no. 34a/2010,36a/2010,19a/2011,23a/2011, JCC no. 27, OG no. 1-6/1 of 06.01.2012)

Circumstances of the case

The case originated in the complaints submitted by the ombudsman Tudor Lazar, the Member of the Parliament Vasile Balan, the Supreme Court of Justice and the Member of the Parliament Serghei Sirbu on constitutionality review of some provisions of the Law no. 100 of May 28, 2010 and the Law no. 56 of July 9, 2011 on amendments and addenda to some legal acts, which successively changed the conditions for the provision of pensions, including anticipated or beneficial, and other social benefits to certain categories of employees (President of the Republic of Moldova, Members of Parliament, members of the Government, judges, prosecutors, civil servants, local officials, soldiers and members of the control body and and troops of the internal affairs bodies).

Through the challenged provisions, the Parliament tightened the retirement conditions as follows:

- For **all categories of employees** (except military personnel and members of the control body and troops of the internal affairs bodies) - gradual increase, over 9 years, from 30 to 35 years of the length of general retirement contribution to acquire the right to pension;
- For the **President of the Republic of Moldova, members of the parliament and Members of the Government** - increase of retirement age from 55 to 62 years for men and from 50 years to 57 years for women, lowering the pension amount from 75% to 42% of the all insured payments;
- For the **military personnel and the members of the control body and troops of the internal affairs** - gradual increase over 9 years of the length of retirement contribution from 20 to 25 years to have the right to pension;
- For **civil servants and local elected officials** - gradual increase over 9 years of the retirement age from 57 to 62 years for men and from 52 to 57 years for women;
- For **judges and prosecutors:**

a) gradual increase over a period of 23 years, of the retirement age from 50 years to 62 years for men and 57 years for women;

b) increase of the length of special retirement contribution from 12 years and 6 months to 15 years;

c) increase over a period of 7 years, of the length of the general retirement contribution from 20 to 35 years;

d) reduction of the size of the pension - from 80% of the average wage to 75% of the amount of all payments covered by the social insurance;

e) exclusion of the possibility of recalculation of the pension and life-long monthly allowance, taking into account the current salary of the judge or the prosecutor in office;

f) exclusion of payment of life-long monthly allowance together with the payment of salary for the retired judges quit performing another function in the judiciary system;

g) modification of the calculation basis for the life-long monthly allowance: from the average salary to the salary covered by the social insurance;

h) exclusion of payment of the single allowance for the family of the judge diseases

during the exercise of the function, previously paid in the amount and under conditions provided for the resigned or retired judge.

The authors of the complaint claimed that the amendments to the conditions of retirement limited the social rights of certain categories of public employees, that the disputed provisions were contrary to the right to health and social protection, the guarantees of the property rights and other principles stated in Articles 1, 6, 7, 15, 16, 18, 22, 46, 47, 54, 116, 121, 126 of the Constitution.

Court's Findings

Having heard the parties' arguments, the Court held that an attribute of the rule of law is its social character, involving the establishment of a political system that would allow adoption of appropriate measures to redistribute property in accordance with principles of social justice, so that all members of the society enjoy a guaranteed minimum social insurance.

At the same time, the Court noted that the principles that define the social character of the state and the principle of legal certainty cannot protect the person against any disappointment, including in the conditions for granting pension or other social benefits.

The Court held that the State has a broad margin of appreciation in social rights and the rights to social assistance and protection provided by Article 47 of the Constitution do not guarantee their exact amount, including of the pension.

The Court concluded that the materials submitted by the Government representatives in the plenary meeting allowed concluding that the changes to the legal framework on early or favorable retirement were determined by the demographic situation in the recent years and the economic decline of the social security system in Moldova. Thus, according to the figures released by the authorities, from 1990 to 2009, the birth rate in Moldova fell from 17.7 to 11.4, and the natural population growth dropped from 8% to -0.4%. Thus, currently a retired individual is supported by 1.84 employed people, compared to 2.11 in 2003.

Thus, the Court accepted the arguments of government officials that, in this particular context and under the conditions of erosion of the state's financial capacity, the tightness of retirement conditions and the exclusion of certain benefits for some categories of employees resulted from needs to insure a balance between the state's economic possibilities and the welfare of the whole society and therefore the balance between the legal interests of certain persons and the interests of all society.

For these reasons, the Court concluded that tightening the retirement conditions was in line with the pressing social needs, was necessary in a democratic society and therefore fell within the constitutional requirements.

On the other hand, concerning the extension of the length of the general retirement contribution for women from 30 to 35 years, the Court noted that upon the full execution of this provision - year 2020, upon reaching the retirement age of 57 years, the women who had started working after the age of 22 years would not be able to gain the length of the general retirement contribution of 35 years and thus would not acquire the full right to pension (57-35 = 22). The impossibility to accumulate the length of the general retirement contribution of 35 years at the age of 57 years for women with higher education degree is confirmed by

the Education Law. According to this law, the primary education starts at 7 years, the duration of the secondary education cycle is 12 years, plus the higher education, comprising 4-5 years for both cycles, proving that a person becomes a skilled specialist with higher education degree at the age of 23-24 years. Thus, the real retirement age for women with higher education degree will be 58-59 years.

These calculations have led the Court to regard the establishment of the length of the general retirement contribution of 35 years for women as disproportionate, as it is not correlated with the general retirement age of 57 years.

The Court's view, though it cannot be interpreted as giving the right to a benefit of a specified value, article 47 of the Constitution guarantees a minimum social security for all.

In this context, the Court held that, given the impossibility to accumulate the length of the general retirement contribution of 35 years at the age of 57 years by women holding higher education degree, the legal provision did not provide the women with the minimum social security upon retirement, guaranteed by Article 47 of the Constitution.

The Court also held that only the right to paid pension, which already had a determined economic value, was an ownership right of the person, not just the hope for the future keeping of the retirement conditions, potential or random. The Court found that the challenged provisions did not raise issues of compatibility with protection of property guaranteed by Article 46 of the Constitution.

The Constitutional Court reiterated that the principle of judicial independence, guaranteed by Article 116 of the Constitution, by the Law on the Status of Judges, as well as by numerous international instruments, was a guarantee of judicial efficiency.

The Court noted that the constitutional status of the judge was not his/her personal privilege, but a good of the whole society, having the duty to ensure effective protection of the rights of each member of the society.

In this context, the Court held that the remuneration of judges, which included any material or social protection means, was one of the basic components of his/her independence, a counterbalance to the restrictions, prohibitions and responsibilities imposed by the society, and the status of judge should not be likened to that of other civil servants, regardless of their hierarchy in the State.

The Court held that, except for the data mentioned *above* on the population decline, the statistics presented by the authorities and the statements of the officials on recording by the Republic of Moldova of an economic growth of 7% during 2011, this being the most pronounced economic growth in Europe, did not evidence a deep economic crisis of the state. Thus, the existing situation does not show an urgent need to adopt austere economic measures of a scale that would justify interference with the basic link of the rule of law - the judicial independence.

At the same time, the court held that the prosecutor's status was different from that of the judge and that the prosecutors did not have the same amount of inherent guarantees of judicial independence under the status of magistrates, and thus the tightening the retirement conditions for the prosecutors was not contrary to constitutional norms.

Decision of the Court

Based on the above arguments, the Constitutional Court concluded that of all disputed provisions of the laws no. 100 and no. 56 the provisions establishing the *length of the general retirement contribution of 35 years for* ***women*** and the provisions amending *the conditions of retirement and other social guarantees of the* ***judges*** were considered ***unconstitutional.*** In other aspects, the challenged provisions were *recognized as* ***constitutional.***

Dissenting Opinion

While agreeing with the Court's arguments on the unconstitutionality of the provisions of art.II and sections 7 and 9 of Art.III of the Law no.56 of June 9, 2011 in the part concerning art 46[1]of the Law no.156-XIV of October 14, 1998, amending the retirement conditions for the **judges** and considering them entirely relevant to the provisions related to the new conditions for establishing the pension for the prosecutors, the Judge E. Safaleru had a dissenting opinion on the Court's judgment in the part concerning Article 4 6^2 of the Law no.156-XIV.

According to her, the amendments by which the legislator has set new conditions for the establishment of the pension for the prosecutors while simultaneously reducing the size of the pension, reduce the social protection of this category of people stated by the Law on prosecution.

For prosecutors, like for the judges, the old-age pension granted under special conditions is a necessity that comes from their professional status, which imposes prohibitions which the other categories of the insured do not have.

The judge underlined that the establishment of special retirement conditions for prosecutors, like for the judges, was not a privilege, and it was objectively justified as partial compensation for the inconveniences resulting from the rigors of the special status established by the law, the strict and restrictive status which should be respected by prosecutors. In its previous rulings the Court emphasized that "given the social importance of the obligations of prosecutors and prosecution investigators, their increased responsibility, the risk posed by the exercise of their functional duties, these categories of employees should benefit from a system of clear legal guarantees."

According to the judge, the diminution of property rights, increased retirement age and contribution period for prosecutors resulted in delayed acquiring of the right to old age retirement, made by the disputed legal provisions, pose to the persons to whom these provisions apply an excessive and disproportionate burden, without maintaining a fair balance between the public interest and the needs to protect the fundamental human rights.

Given all these considerations and taking into account the case law of the Constitutional Court concerning the pensions of judges and prosecutors, the judge stressed that their constitutional status required provision of social guarantees (including the right to old-age pension under special conditions) as a component of independence of the prosecutors, guarantee of the rule of law, stated by Article 1 para. (3) of the Basic Law.

D. Dismissed Complaints

During 2011 the Constitutional Court dismissed four complaints, which called for review of the constitutionality of laws issued by the Parliament and the President of the Republic of Moldova:

1. *Complaint no. 14a/2011, PCI-01/14a*
2. *Complaint no. 22a/2011, JCC, OG no. 128-130/18 of 05.08.2011*
3. *Complaint no. 25a/2011, JCC, OG no. 156-159/21 of 23.09.2011*
4. *Complaint no. 29a/2011, JCC no.6/2011, OG no. 238-242/33 of 30.12.2011*

1. On July 11, 2011, by a letter, the Court dismissed the complaint on constitutionality review of some provisions of the Law no. 90-XVIII of December 4, 2009 on amendments and addenda to some legal acts and of the Law no. 46 of March 24, 2011 amending art. 40 of the Law on Police No. 416-XII of December 18, 1990.

(Complaint no. 14a/2011, PCI-01/14a)

Circumstances of the case

The complaint lodged by the Member of Parliament Sergei Sirbu concerned the amendments to 20 laws regulating the status of certain categories of officials. The amended or repealed legal provisions referred to provision of housing to these individuals.

Court's Findings

Reviewing the complaint in advance, according to art. 40 of the Code of Constitutional Jurisdiction, the Court found that it did not meet the procedural requirements of constitutional jurisdiction. In a letter the Court suggested to the author that he should specify the scope of the complaint more concretely.

The Court also noted that the grounds of unconstitutionality had not been exposed expressly for each challenged legal provision and the infringed constitutional provision had not been mentioned specifically. The author concluded generally that the amendments and addenda made by provisions of the criticized laws contravened the provisions of art. 1 para. (3), art. 7, art. 15, art. 16, art. 18, art. 43, art. 46, art. 47, art. 54 and art. 126 of the Constitution.

The general nature of the complaint, the lack of arguments in relation to each disputed legal provision do not allow establishing the causal link between the provisions of the challenged laws and the allegedly violated constitutional provisions.

According to art. 24 para. (2) of the Law on the Constitutional Court and art. 39 of the Code of Constitutional Jurisdiction, the complaint must include the object of the complaint. The author of the complaint is required to justify the non-conformity of the challenged legal provision with the constitutional provisions, specify the causal link between the challenged provisions and the invoked constitutional provisions. These requirements had not been met.

2. Decision of July 26, 2011 on the complaint for constitutionality control of a provision of the Law on the Superior Council of Magistracy no.947 of July 19, 1996

(Complaint no. 22a/2011, JCC, OG no. 128-130/18 of 05.08.2011)

Circumstances of the case

The case originated in the complaint submitted by the ombudsman Anatolie Munteanu. According to him, the provision of the law contradicts the constitutional principles of separation and collaboration of the state powers (art. 6), free access to justice (art. 20), independence and impartiality of the judge (art. 116 (para. 1)).

Court's Findings

The Court held that the complaint was reduced as a whole to the state policy on justice, the main directions of which were approved by the Parliament, according to the basic tasks stated by the Constitution. The author of the complaint addressed a matter of law that involved the character of rationality, but rationality issues were not part of the constitutional jurisdiction.

According to art. 31 of the Law on Ombudsmen no. 1349-XIII of October 17, 1997, the ombudsmen are entitled to submit referrals to the Constitutional Court to review the constitutionality of laws and decisions of the Parliament, Presidential decrees, decisions and standing orders of the Government, on their correspondence to generally accepted principles of the international human rights instruments. For the purposes of Article 31 of the Law no. 1349-XIII, only the breach of constitutional principles and international human rights standards by the provisions of a legal act may serve as the basis for complaint of the Constitutional Court by the ombudsman.

Court Decision

As the subject of the complaint was beyond the competence of the ombudsman as a subject with the right to notify the Constitutional Court, taking into account the provisions of art. 13, art. 15-17, art. 21-24, art.27-31 of the Law on the ombudsmen, the Court dismissed the complaint, holding that it did not meet the requirements of art. 39 of the Code of Constitutional Jurisdiction.

3. Decision of September 15, 2011 on the complaint on constitutionality review of some provisions of the Code of Criminal Procedure and the Law no.836-XIII of May 17, 1996 "On the military courts system"

(Complaint no. 25a/2011, JCC, OG no. 156-159/21 of 23.09.2011)

Circumstances of the case

The case originated in the complaint by the parliamentarian Sergei Sirbu on constitutionality review of the phrase "the Department of Emergency Situations, the Security

and Information Service, the State Protection and Defense Service" in item 1) art. 37 of the Criminal Procedure Code, the provisions of item 2) and item 4) of the same article, as well as the phrase "employees of the special service" in Article 1 of the Law no.836-XIII of May 17, 1996 "On the military courts system".

The author of the complaint claimed that the mentioned phrases and legal provisions contravened the provisions of art. 16 para. (2) of the Constitution and art. 6 of the Convention on Human Rights and Fundamental Freedoms.

Court's Findings

During the preliminary examination of the complaint, the Court found that on July 22, 2011 the Parliament had passed the Law no. 163 "on amendments and addenda to some legal acts", repealing the Law no.836-XIII of May 17, 1996 "On the military courts system ", as subsequently amended and supplemented and art. 37 of the Criminal Procedure Code.

Thus, the Court found that the objection of unconstitutionality of the challenged laws had been resolved, and the complaint was superfluous.

Court Decision

For the reasons explained above, the Court ***did not accept for review on the merits*** the complaint on constitutionality review of the phrase *„Emergency Situations Department, Information and Security Service, State Protection and Defense Service"* of item.1) art.37 of the Criminal Procedure Code, of the provisions of items 2) and 4) of the same article, as well as of the words „and of the employees of the special service" in the art. 1 of the Law no. 836-XIII of May 17, 1996 „On the military courts system".

4. Decision of December 14, 2011 on suspension of the process of constitutionality control of the article 21, para. (2) and para (3) of the Law no. 344-XIII of December 23, 1994 on the special legal status of Gagauzia (Gagauz-Yeri) and article 40 para. (5) of the Law no. 294-XVI of December 25, 2008 on the Prosecution

(Complaint no. 29a/2011, JCC no.6/2011, OG no. 238-242/33 of 30.12.2011)

Circumstances of the case

The review of the case originated in the complaint lodged by the Prosecutor General Valeriu Zubco, who challenged the provisions of Article 21 para. (2) and (3) of the Law on the Special Legal Status of Gagauzia (Gagauz Eri) and Article 40 para. (5) of the Law on the prosecution, considering them contrary to Articles 6, 109, 111, 124 para. (3) and 125 para. (1), (2) and (5) of the Constitution.

Court Decision

As the Prosecutor General had withdrawn the complaint, arguing that on November 25, 2011 the Parliament passed in the final reading the justice sector reform strategy for 2011-2015, which also provided for modification of the criteria and procedures of the selection,

appointment and promotion of the prosecutors, the Court **suspended the** constitutionality review process for the challenged provisions of the Law on the Special legal Status of Gagauzia (Gagauz-Yeri) and of the Law on the Prosecution.

E. Returned Complaints

During the reporting period the Constitutional Court returned two complaints:

1. *Complaint No. 8a/2011*
2. *Complaint No. 7a/2011*

1. On April 12, 2011 the Court returned the complaint for constitutionality review of Article 21 of the Law no. 344-XIII of December 23, 1994 on the special status of Gagauzia (Gagauz Eri) and art. 40 para. (5) of the Law no.294-XVI of December 25, 2008 on the prosecution, in order to be aligned with the provisions of art. 39 of the Code of Constitutional Jurisdiction.

(Complaint No. 8a/2011)

2. On April 13, 2011 the Constitutional Court returned the complaint on constitutionality review of some provisions of the Family Code, the Law on Health Care No. 411 of March 28, 1995 and the Law on Children's Rights Protection No. 338-XIII of December 15, 1994, to define the object of the complaint and bring it in line with the provisions of art. 39 of the Code of Constitutional Jurisdiction.

(Complaint No. 7a/2011)

Circumstances of the case

In the lodged complaint, the ombudsman Aurelia Grigoriu requested the constitutionality control of the following provisions:

- the word "compulsory" in art. 13 para. (l) of the Family Code;
- the words "required" in the first sentence and the word "compulsory" in the second sentence of art. 46 para. (2) of the Law on Health protection no. 411-XIII of March 28, 1995;
- the word "required" in art. 15 para. (1) of the Law for the protection of the rights of the child no. 338-XIII of December 15, 1994.

According to the author of the complaint, the disputed provisions, which stipulate the obligation to undergo a medical examination of persons wishing to register their marriage is a state interference with the right to get married and the right to intimate, family and private life.

Court's Findings

According to art. 24 para. (2) of the Law on the Constitutional Court and art. 39 of the Code of Constitutional Jurisdiction, a complaint shall be well – grounded and it shall include the object of the complaint and the circumstances on which the subject could submit its demands, the description of the legal provisions and the arguments proving that the challenged provision contravenes the Constitution.

The complaint does not meet the requirements in form and content of constitutional jurisdiction procedure, in particular, the requirements concerning the object of the complaint have not been met.

According to the law, the author of the complaint shall define the object of the complaint clearly, argue the mismatch between the challenged legal act or provision with the constitutional provisions, the legal framework of the Republic of Moldova or the international treaties to which the Republic of Moldova is a party.

In accordance with the provisions of art. 40 para. (3) of the Code of Constitutional Jurisdiction, the Court returned the complaint to its author.

1.2. Constitutionality control of the decisions and standing orders of the Government, according to art. 135 para. (1) let. a) of the Constitution

A. Suspended reviews

In 2011 the Constitutional Court suspended two proceedings related to constitutionality control of Government's decisions and standing orders

1. *Complaint no. 20a/2011, JCC no.5/2011, OG no. 227-232/38 of 23.12.2011*
2. *Complaint no. 33a/2011, JCC, OG no. 15/4 of 17.01.2012*

1. Decision of December 8, 2011 on the suspension of the proceedings on constitutionality review of the provisions of section 3 of the Annex no. 5 to the Government Decision no.667 of July 8, 2005 on measures to implement the Law no.283-XV of July 4, 2003 on the activity of private detectives and guards

(Complaint no. 20a/2011, JCC no.5/2011, OG no. 227-232/38 of 23.12.2011)

Circumstances of the case

The case originated in the complaint lodged by the Parliamentarian Sergei Sirbu, who claimed that by the provisions of section 3 of the Annex no. 5 to the Decision no.667 the Government had established a monopoly on the activity of transport valuable goods and on revenues, thus exceeding the limits established by the law, for the implementation of which the Decision no. 667 had been adopted, thus violating the constitutional provisions of Article 1 para. (3), art. 6 and art. 102 para. (2) of the Constitution.

Court's Findings

The Court concluded the author of the complaint had not brought relevant evidence of the limitation of citizens' rights to exercise security activities for the transport of valuable goods and revenues by the section 3 of the Annex no; 5 to Government Decision no. 667 of July 8, 2005.

On January 24, 2006, by the Decision no. 2, the Constitutional Court conducted the constitutionality control of the provisions of art. 5 para. (2), art. 22 para. (2), art. 23 para. (10), art. 24 para. (1)-(3) of the Law no. 283-XV of July 4, 2003 on the activity of private detective and guard and Annex no. 2 of the Government Decision no.667 of July 8, 2005, which approved the Regulation on the conditions of education, training and certification of the personnel of security organizations.

The Court stressed the relevance of the Decision no. 2 of January 24, 2006 on constitutionality review of some provisions of the Law no. 283-XV, recognized as constitutional, for this case.

Arguing in this decisions the constitutionality of the legal provisions, which empower the government to stipulate by decision the obligations of the security personnel, of the heads of organizations, to approve the Regulations on conditions of education, training and certification of the personnel of private security organizations, the Court also referred to the provisions of sections (1) - (4) of the Annex 5 to the Government Decision no.667 of July 8, 2005.

Court Decision

The Court held that in its Judgment no. 2 of January 24, 2006 it approached the issues referred to in the complaint and therefore, in accordance with the provisions of art.60 let.e) of the Code of Constitutional Jurisdiction, it decided to **suspend the proceedings.**

Address

During the review of the complaint, the Court found that the Parliament had not established by law the list of objectives the security of which could not be assured by private security organizations.

In this context the Court emphasized that the Government Decision no.1510 of December 12, 2003 "On approving the list of objectives the security of which cannot be ensured by private security organizations" was in force and the approved list included banks, although paragraph (10) art. 23 of the Law no.283-XV contained no restrictions on the provision of security services for the banks.

The Court drew the attention of the Government to the need to amend the challenged provisions of the Decision no. 667 and to regulate the conditions under which such services were to be provided by private security organizations.

The Court pointed out that in developing new regulations, the Government should take into account the provisions of art. 9 para. (3) of the Constitution.

The Government did not enforce the provisions of art. LXXIII section(1) of the Law no. 280-XVI, according to which it had to bring its normative acts in line with the law within 6 months.

2. Decision of December 30, 2011 on suspension of constitutionality control proceedings for some provisions relating to disconnection from the centralized heating systems

(Complaint no. 33a/2011, JCC, OG no. 15/4 of 17.01.2012)

Circumstances of the case

The case originated in the complaint lodged by the parliamentarians Sergei Sirbu, Maria Postoico and Vladimir Vitiuc on constitutionality review of some provisions of the Regulation of provision and payment of housing services, metering services and the conditions for the disconnection/reconnection of the apartments to heating and water supply systems, approved by Government Decision no. 191 of February 19, 2002, as amended by the Government Decision no. 707 of September 20, 2011 on certain measures to increase the efficiency of the centralized heating systems.

Court's Findings

Having heard the parties' arguments, the Court held that the management of the shared property, its use and maintenance, were covered by Articles 344-373 of the Civil Code and other laws.

The Court noted that according to relevant applicable legislation, the record of normative heat losses in technical rooms (technical floors and basements) necessary for the maintenance of the functional state of the engineering water supply and sewerage systems during the cold season and the needs related to the heating of shared places were the responsibility of the housing managers.

The Court held that the authors of the complaint had not challenged the laws, based on which this Regulation had been developed.

The Court concluded that the issue addressed in the complaint was not subject of constitutionality control, pointing out that the challenged provisions of the Regulation, being developed for implementation of laws, which had not been challenged, were subject to **lawfulness control,** which was the responsibility of the **ordinary courts.**

In this context, the Court underlined that **the individuals who considered that their right had been infringed by the abovementioned provisions could seek justice in ordinary courts.**

Court Decision

Based on presumption of constitutionality of the legal provisions, for the implementation of which the Government, by its Decision no. 191 of February 19, 2002, approved the regulation in question and since the problem in question was related to judicial review, within the competence of ordinary courts in accordance with Article 60 c) of the Code of Constitutional Jurisdiction, the Constitutional Court ordered the **cessation of the proceedings.**

B. Returned Complaints

On March 18, 2011 the Court ***returned the complaint*** on constitutionality review of the text *„condemned by final court decision"* of section 3 paragraph two of the Regulation on employment within the internal affairs bodies, approved by Government Decision no. 334 of July 8, 1991, as amended by GD no.1445 of December 19, 2006, since it did not meet the requirements of article 39 of the Code of Constitutional Jurisdiction.

(Complaint No. 4/2011)

1.3. Constitutionality Control of international treaties, according to art. 135 para. (1) let. a) of the Constitution

During the reporting period the Court did not receive any complaints on constitutionality review of international treaties.

1.4. Interpretation of the Constitution, according to art. 135 para. (1) let. b) of the Constitution

A. Admitted complaints

In 2011 the Constitutional Court accepted for review on the merits four complaints on interpretation of the Constitution:

1. *Complaint no. 3b/2011, JCC no.2/2011, OG no. 31/4 of 22.02.2011*
2. *Complaint no. 9b/2011, JCC no.17/2011, OG no. 166-169/23 of 07.10.2011*
3. *Complaint no. 17b/2011, JCC no.21.2011, OG no. 187-191/29 of 04.11.2011*
4. *Complaint no. 32b/2011, JCC no.23/2011, OG no. 203-205/32 of 25.11.2011*

1. Judgment of February 8, 2011 on interpretation of art. 90 para. (4) of the Constitution

(Complaint no. 3b/2011, JCC no.2/2011, OG no. 31/4 of 22.02.2011)

Circumstances of the case

The case originated in the complaint lodged by the Members of Parliament Sergei Sirbu and Artur Resetnicov for the interpretation of Article 90 para. (4) of the Constitution of the Republic of Moldova in two respects:

1) Is the time line specified in Art.90 para.(4) also applicable in case when the function of the President of the Republic of Moldova was carried out as the interim office?

2) Within which period of time the newly established Parliament shall organize the procedure for the election of the President of the Republic of Moldova in case when, previously, the function of the head of state was exercised by establishing the interim term of office, and when this period starts running?

Court's Findings

The Court held that, by regulating the organization and functioning of the institute of president in Moldova, the legislative constituent provided some exceptional circumstances, determined by the early termination of the office of the President. In order to ensure the principle of continuity of power and following the analogy with other public positions, it provided for the vacancy and interim office of the President of the Republic of Moldova.

The Constitutional Court considers that in the constitutional meaning, the position's vacancy is the time when a position is not occupied. The Court referred to its decisions: no. 43 of 14.12.2000, which provided that the vacancy of President of the Republic of Moldova *"emerges as a result of situations that lead to definite termination of the mandate, which actually means the cessation of presidential mandate"*, and no. 18 of 27.10.2009, according to which *"The vacancy of the position of President of the Republic of Moldova is the time starting from the termination of office of the President until the election of new President"*.

To elucidate the significance of the institution of interim office of the President of the Republic of Moldova, the Constitutional Court, by its Judgment no. 43 of 14.12.2000, examined the provisions of Article 90 para. (1) in conjunction with the provisions of Article 91 of the Constitution and found that *"Establishment of interim President of the Republic aims at ensuring the continuity of the office of the President when the President can no longer perform his duties, so this will be regarded as vacancy of the position due to resignation, dismissal of the President, to the temporary or definitive failure to exercise one's duties or to death"*.

Having analyzed the provision of para (4) of art. 90 of the Constitution for the purpose of applicability, the Constitutional Court found that the legal situation resulting from the vacancy and interim office of the President existing at the time of review of the case, reported to the date of elections for the Presidency was not regulated by the Constitution of the Republic of Moldova. In ordinary conditions, governed by Article 80 of the Constitution, the President, whose term expired, exercises his mandate until the newly elected President takes his/her oath.

In order not to arrogate the powers of the legislative body, the Constitutional Court noted that it would not establish the term within which the newly elected Parliament should organize the procedure of electing the President of Moldova. Neither the Constitution nor the previous rulings of interpretation allow the Court to extend the range of situations employing the establishment of interim office of the President. The extension of this range and establishment of a time line for holding elections for the position of President of the Republic of Moldova would mean the exercise by the Constitutional Court of an improper competence and substitution of the legislative constituent, which is inadmissible.

Decision of the Court

The court held that para. (1) art.90 of the Constitution provided that **The office of the President of the Republic of Moldova may become vacant in consequence of expiry of the presidential mandate of resignation from office, removal from office, definite impossibility of executing his duties, or death. The provisions of para.(4) Art.90 of the Constitution only apply in cases provided in para.(1) Art.90 of the Constitution.**

The Court noted that it could not rule on the applicability of the term of two months provided by Article 90 para. (4) of the Constitution in case of successive establishing of interim office of President, given that such situation was not regulated by the Constitution. For this reason, the Court **suspended the proceedings of** interpreting the provision of para. (4) art.90 of the Constitution concerning this aspect.

Address

Noting that the law does not regulate the procedure for transmission and reception of the duties of President of the Republic of Moldova or the mechanism for establishing the interim office of the President when the office becomes vacant and Presidential mandate has been terminated early, the Constitutional Court adopted an *address.*

2. Judgment of September 20, 2011 for the interpretation of Article 78 of the Constitution of the Republic of Moldova

(Complaint no. 9b/2011, JCC no.17/2011, OG no. 166-169/23 of 07.10.2011)

Circumstances of the case

The case originated in the complaint lodged by the Members of Parliament Mihai Ghimpu, Tudor Deliu and Raisa Apolschii, based on the incapacity to elect the President of the Republic of Moldova as stipulated by Article 78 of the Constitution by a vote of three fifths of the elected members of the Parliament. The authors considered that the solution of this problem, which was a political-legal one, could be identified by interpreting the provisions of Article 78 of the Constitution.

Court's Findings

The Court noted that the provisions of Article 78 of the Constitution apply in full in case of Parliament vested following early elections, if the previous Parliament was dissolved in connection with the failure to elect the president.

In case of failure to elect the President, the dissolution of the Parliament is imminent, as the provisions of paragraph (5) of Article 78 are mandatory.

Earlier, the Court held that Article 78 para. (5) of the Constitution expressly provides that the acting President shall dissolve the Parliament if the President of the Republic of Moldova has not been elected after repeated elections either. The Court recognized the non-participation in the election of the head of the state of the majority of the Parliamentarians, which is 61 members according to the Constitution, as circumstance justifying the dissolution of the Parliament (Opinion No. 4 of 26.12.2010).

The Court noted that the provision contained in para. (5) art. 78 of the Constitution was intended to ensure the functionality of the state constitutional bodies. Considering the principle of unity of the a constitutional matter, the obligation of the acting President to dissolve the Parliament, according to Article 78 para. (5) of the Constitution shall be done in compliance with the provisions of art. 85 para. (3) of the Constitution, according to which the Parliament can only be dissolved once during a year.

The Court held that the provisions of art. 78 para. (5) of the Constitution, in conjunction with the constitutional provision of art. 85 para.(3) and art. 10 para. (3) of the Law on the election of President of the Republic of Moldova state clearly that after one year since the last dissolution of the Parliament, but not earlier, the acting President, based on the opinion of the Constitutional Court concerning the confirmation of circumstances justifying the dissolution of the Parliament, adopted upon complaint, in accordance with art. 135 para. (1) f) of the Constitution, shall issue a decree to dissolve the Parliament and set the date for early elections within the period prescribed by art. 76 para. (3) of the Election Code. The Court emphasized that, in accordance with Art. 78 para. (5) of the Constitution, the President shall dissolve the Parliament whenever the President of the Republic of Moldova is not elected, including in case of the Parliament vested based on early elections following the dissolution of the previous Parliament due to failure to elect the president.

In its Decision no. 2 of 08.02.2011 on interpretation of art.90 para. (4) of the Constitution of the Republic of Moldova the Court stated that *"the time line for the organization of presidential elections during the exercise of the interim office of the President refers to the procedure of electing the President, the Parliament, in accordance with para.(6) art.78 of the Constitution, having the full power to regulate this matter by law, by complying with the principles stated in the Constitution"*

Concerning the argument invoked in the complaint on the failure to build the parliamentary majority required to elect the President of the Republic, which also led to the decision not to organize the election of the head of the state, as the Parliamentarians were aware of the fact that the elections would fail, the Court pointed out to the Parliament the Opinion no. 4 of 26.12.2000, where it stated that the non-participation of the members of the Parliament in the elections of the head of the state was not only a violation of art. 84 para. (1) of the Rules of the Parliament, but also a violation of art.68 para.(1) of the Constitutions, providing expressly that **during the exercise of their mandate, the members of the Parliament shall only act in the interest of the people.** The Court noted that the President's constitutional right to dissolve the Parliament in such circumstances was a way to respond to the obstruction of repeated presidential elections. In this case, the head of state is not only entitled to dissolve the Parliament, but, according to Supreme Law, has also the obligation to do so.

With reference to development by law of a mechanism for the institutionalization of procedures that would ensure the election of the head of the state and would not admit the repeated dissolution of the Parliament, the Court noted the following: the importance and the role of the Constitution, as the state's supreme law, requires a rigorous procedure for the adoption and thus revision of the Constitution. Title VI of the Supreme Law expressly regulates the procedure for the revision of the Constitution, establishing subjects entitled to initiate the revision, the limits of the revision and the order of passing the legislation enacting the amendment of the Constitution.

The specific regulation of the procedure for revising and completing the Constitution aims at avoiding the interventions into the text of the Constitution depending on the situation.

Paragraphs (3) - (4) of art. 78 of the Constitution, subject to textual analysis, show that they contain both provisions of substantive law and procedural provisions. Thus, para. (3) of art. 78, according to which "the candidate who has gained the votes of three-fifths of the

elected members of the Parliament shall be elected", establishes the required majority for the election of the head of the state. In terms of its content, this provision is substantive, as its stipulates the prerequisite for validation of the head of the state, and regardless of the steps involved in the actual voting, governed by other provisions, it is binding for the Parliament.

The Court reiterated that for the enforcement of the provisions of art. 78 para.(6) of the Constitution, on September 22, 20000, the Parliament adopted the Organic Law no.1234-XIV "On the election of the President of the Republic of Moldova".

In Article 9 of the Law no. 1234-XIV the legislator regulated the ordinary elections (first round and second round). According to article 10 of this law, the repeated elections shall be held within 30 days of the last regular elections, if the President of the Republic of Moldova has not been elected. The legislator is entitled to develop by an organic law the procedure and the steps for the repeated elections, the procedures for nomination of candidates and their number, the possibility to appoint new candidates, the organization of repeated elections, etc. However, the provisions of the organic law but must be in strict accordance with the constitutional principles, should not affect the substance of the constitutional provision contained in para. (3) art. 78 of the Constitution, which states that the election of the head of the state requires the votes of 3/5 of the elected members.

Decision of the Court

According to the ruling of the Court, in the meaning of paragraph (5) of article 78 of the Constitution, the President shall dissolve the Parliament whenever the President of the Republic of Moldova is not elected as provided in the Constitution. Article 78 of the Constitution applies in full for the Parliament vested following early elections, if the previous Parliament was dissolved due to the failure to elect the president. In the meaning of the provisions of the paragraph (6) of Article 78 of the Constitution, the Parliament is entitled to develop a mechanism appropriate for the organization of repeated elections in the law on the election of the President of the Republic of Moldova, provided that the constitutional principles are not violated. Taking into consideration the principle of supremacy of the Constitution, the Parliament may not establish by an organic law a different majority for the election of the President in case of multiple dissolution caused by the failure of the Parliament to elect the President, which might prejudice the provisions of paragraph (3) of Article 78 of the Constitution.

Dissenting Opinion

The Judge Victor Puscas considered that the provisions of Article 78 of the Constitution had to be subject not only to textual interpretation, but also to functional interpretation.

By reviewing the text of Article 78 only, he concluded that it allows the Parliament to regulate by the Law on the election of the President another majority required for the election of the President following the first round as provided by the Supreme Law.

In this context he stressed that the term "necessary number of votes" in para. (4), analyzed in terms of para. (6): "The procedure for electing the President of the Republic of Moldova is determined by organic law.", entitles the Parliament to regulate by the Law no.1234 the second round of the presidential election with another majority of votes, which is a logical procedure.

In his view, the election of the President under the conditions of successive exercise of the interim office of the President as result of the incapacity to elect the head of the state, concerns the procedure of the election of the President and, in accordance with para. (6) art. 78 of the Constitution, the Parliament has full power to regulate this issue, respecting the constitutional principles.

3. Judgment of October 20, 2011 on interpretation of article 46 para. (3) of the Constitution

(Complaint no. 17b/2011, JCC no.21.2011, OG no. 187-191/29 of 04.11.2011)

Circumstances of the case

The case originated in the complaint lodged by the Minister of Justice, Mr. Oleg Efrim, who asked the Court to explain whether the presumption of the legality of acquisition of wealth, established by Article 46 para. (3) of the Constitution, equally protected the property of the public officials and of other individuals paid from the public budget.

Court's Findings

Having heard the parties' arguments, the Court held that the complaint basically referred to the possibility of overthrowing the burden of proof for civil servants and other persons paid by the state budget in order to confiscate the wealth, the acquirement of which could not be proven. Consequently, it follows that ***the wealth of a public official or another person paid by the state budget would be presumed to be acquired illegally,*** unless proven otherwise by the holder of this property, thus relieving the state, in the person of the prosecutor, from the obligation to prove the illegality of the acquired property.

The Court noted that the state has a dominant position in relation to the individual and has all the tools necessary to conduct the research of the illicit acquisition of property. Also, the state has other mechanisms in place for verifying the assets of civil servants and officials through the income statements system

The Court held that it could admit that the state's instruments to fight corruption and organized crime were not always perfect, but believed that whatever the interpretation of other articles invoked by the author of the complaint was, when it came to the interference with property rights, the Court returned to Article 46 paragraph (3) of the Constitution, providing for the presumption of legal acquisition of property. In this context, the Court held that there was no reason that would preclude application of this standard for civil servants or other persons paid by the state budget.

In this Context, the Court held that according to article 54 para. (1) of the Constitution, the Republic of Moldova could not adopt laws that would suppress or diminish the rights and fundamental freedoms of the person and the citizen. Similarly, article 142 para. (2) of the Constitution provides that no revision shall be made if it implies the suppression of guarantees of the fundamental rights of the citizens. Therefore, the Constitutional Court held that, especially **through an interpretation, it could not suppress the guarantee of a constitutional right.**

The Court also held that the wording of Article 46 of the Constitution showed clearly the will of the Parliament acting under the Constitution to apply this constitutional guarantee including for civil servants and other persons paid by the state budget. Therefore, the Court concluded that the **approach of the author of the complaint aimed at a veiled amendment of the Constitution,** which was legally inadmissible.

The Court noted that the principle of presumption of the legal acquisition of the property was a ***substantive rule,*** which could not be reached and changed by interpretation. In this context, the Court held that neither the literal nor the functional interpretation allowed it to see a text which was missing in the Constitution and therefore the referral of the author of the complaint was not only constitutionally unfounded, but also contrary to the text and spirit of the Constitution.

Decision of the Court

Based on the above arguments, the Constitutional Court ruled that, for the purpose of paragraph (3) of article 46 of the Constitution, **the constitutional principle of the presumption of lawful acquisition of property established a general protection applying to all persons, including, equally and to the same extent, to civil servants and other persons paid by the state budget.**

4. Judgment of November 9, 2011 on interpretation of article 116 para. (4) of the Constitution

(Complaint no. 32b/2011, JCC no.23/2011, OG no. 203-205/32 of 25.11.2011)

Circumstances of the case

The case originated in the complaint by the member of Parliament Mrs. Raisa Apolschii on the interpretation of article 116 para. (4) of the Constitution, according to which: *„The President, Vice-Presidents and judges of the Supreme Court of Justice shall be appointed by Parliament following a proposal submitted by the Superior Council of Magistracy."*

Court's Findings

The Court underlined the fundamental importance of the principle of separation and cooperation of powers as a principle of organization of the rule of the law.

The Court held that the separation of powers is not rigid, absolute, as this would lead to institutional blockades and unbalances. Therefore, within institutional architecture of state, the principle of separation of powers takes the form of delimitation of some independent public authorities (one to each other) with different prerogatives (by which specific activities are being performed) and of the cooperation between powers doubled by peer review, as well.

in this context, the Court held that the principle of institutional balance, known today as the *„checks and balances""* is at the basis of democracy and assumes the balance of powers and their peer review so that state powers should be approximately the same weight and be balanced in order to be able to limit each other, thus avoiding that state power is abused.

This *brakes and counterbalance system* is the *sine qua non* condition of the modern society, hindering the omnipresence of the Parliament, of the Government or of the Judiciary.

In this context, the Court reiterated that the appointment and dismissal of judges and court presidents are made with the participation of at least two authorities: on the one hand, the Superior Council of Magistracy and on the other hand, the President or the Parliament, as appropriate.

Given the fact that the Parliament and the Superior Council of Magistracy must act jointly to fulfill the mission of appointing judges, the President and Vice-Presidents of the Supreme Court of Justice, it is normal to have institutional gears to make the connection between them, such as the Parliamentary Commission on Appointments and Immunities. Thus, the legislative system is conceived based on **a common institutional task** of the Superior Council of Magistracy and the Parliament to appoint judges, the President and the Vice-Presidents of the Supreme Court of Justice, this fragmentation being as a tool for mutual control and surveillance.

Thee Court noted that the mechanism (procedure) for applying the provisions of Article 116 para. (4) of the Constitution in case a proposed candidate did not meet the necessary qualities and conditions for being appointed as judge, the President or Vice President of the Supreme Court of Justice should be developed by law. Thus, following an opinion of the Legal Commission on Appointments and Immunities, the Chairman of Parliament notifies the Superior Council of Magistracy about finding one of the three situations set out exhaustively in the law, namely: (1) detection of compelling evidence of the candidate's incompatibility with the respective function, (2) infringement of legislation by him/her or (3) breaking of legal procedures on his selection and promotion (Article 9 of Law on the Supreme Court of Justice). The Superior Council of Magistracy may repeatedly submit the proposal to the Parliament to be dealt with according to law.

Considering its previous case law, the Court reiterated, as a principle, that **these proposals of the Superior Council of Magistracy cannot be binding for a collegial body such as Parliament because each Member of Parliament is free to vote according to his/her own conviction.**

At the same time, the Court considers that taking into account the principle of separation and collaboration of powers in state and independence of the judiciary, the Parliament shall meet the legal provisions in case it will not proceed with appointment of a candidate at the respective proposal of the Superior Council of Magistracy.

Consequently, the Court concluded that the Superior Council of Magistracy and Parliament had a common constitutional task to appoint to the offices of judge, the President and Vice President of the Supreme Court of Justice, they must be complying with legal provisions referring to the way of interaction.

In this context, the Court also holds that the constitutional text does not set a specific term within which the Parliament has to decide on the appointment of judges, the President and Vice-Presidents of the Supreme Court of Justice after the submission of respective proposal by the Superior Council of Magistracy.

At the same time, the Court noted that the provisions of art. 116 para.(4) of the Constitution are developed by legal provisions, according to which the Parliament has established a **30-days term** for the appointment of judges, the president and vice-presidents of the Supreme Court of Justice.

In this context, the Court notices that this period may be extended only by 15 days or until the beginning of the session, and this only in the event of circumstances that require further examination or in case of Parliament's vacation upon complaint of the Superior Council of Magistracy. Hence, the Court concluded that the deadline of 30 days established by law for the appointment by the Parliament of judges, the President and Vice-Presidents of the Supreme Court of Justice was restrictive and not extensive.

Taking into account the constitutional principle of legality in a state of law, the Parliament is constitutionally obliged to meet the deadline fixed by law, being expected to show celerity upon examination of the proposals of the Superior Council of Magistracy because the functionality of the judiciary depends upon it.

Regarding dismissal mechanism, the Court reiterated that in case of constitutional or legal regulation of appointment procedure, the settlement of dismissal procedure is not absolutely necessary, this one being presumed and hence the dismissal implies a simpler procedure than the appointment or at least an equivalent procedure.

Decision of the Court

Based on the arguments stated above, the Constitutional Court decided that, in the meaning of paragraph (4) of article 116 of the Constitution, **the decision of the Parliament is an indispensable decision act** for the accession of candidates proposed by the Superior Council of Magistracy to the offices of judge, President and Vice-Presidents of the Supreme Court of Justice, the acts of those two authorities – Superior Council of Magistracy and the Parliament – being interdependent.

The Court ruled that the **period** in which the Parliament should decide on the appointment of judges, the President and Vice-Presidents of the Supreme Court of Justice after the submission of the respective proposal by the Superior Council of Magistracy **is that one fixed by law** being **restrictive,** so that Parliament has the constitutional obligation to observe it and **the violation of this term represents an obstruction of functionality of the judiciary by the legislative.**

Also, the Court ruled that the **dismissal of judges, the President and Vice-Presidents of the Supreme Court of Justice for any reason should be examined by Parliament under conditions and terms foreseen for their appointment.**

B. Dismissed Complaints

On *January 11, 2011* **the Constitutional Court** ***dismissed*** **the complaint on the interpretation of art.32 para.(1) of the Constitution on the freedom of opinion and expression, art. 41 para.(4) of the Constitution on the freedom of political parties and other socio-political organizations.**

(Complaint No. 41b/2010)

Circumstances of the case

According to the Member of Parliament Mr. Victor Stepaniuc, the author of the complaint, the Minister of Justice and the General Prosecutor's Office, according to the provisions of art. 3 para. (1) of the Law on political parties, had to take urgent measures to combat the anti-state activities of some political parties.

Court's Findings

In its opinion of December 9, 2008 the Court ruled on the draft law amending Article 32 para. (3) of the Constitution to ensure compatibility of the constitutional provisions with Article 10 of the European Convention on Human Rights and Fundamental Freedoms and the case law of the interpretation of it.

Thus, when examining the initiative to revise art. 32 para. (3) of the Constitution, the precise meaning of constitutional provisions on freedom of opinion and expression (art. 32), freedom of parties and other social-political organizations (art.41) was revealed.

The Court held that the finding of violations of the Supreme Law and settlement of the issues related to the activities of parties and other socio-political organizations were part of the competence of the Parliament (art. 66 let. d), let. f), let.r), of the President of the Republic of Moldova (art. 77), the Government (art. 96), courts (art. 114), the prosecution bodies (art. 124).

According to Article 31 para. (3) of the Law on the Constitutional Court and Article 4 para. (3) of the Code of Constitutional Jurisdiction, the Court examines the matters of law only. However, finding of a situation or of the existence of a fact or of a truth cannot be considered a matter of law.

Since the provisions of Article 32 para. (1) and Article 41 para.(2) of the Constitution do not contain ambiguities and are explicit, following the provisions of art. 31 para. (1), (3) of the Law on the Constitutional Court, art. 39 para (2), art. 40 para. (3) of the Code of Constitutional Jurisdiction, the Court dismissed the complaint, since it did not include legal issues likely to be reviewed on the merits and was not motivated.

1.5. Opinion on the initiatives to revise the Constitution, according to art. 135 para.(1) let. c) of the Constitution

A. Opinion of the Constitutional Court on the amendment to the Constitution of the RM

In 2011 the Constitutional Court issued an opinion on the initiative of revising the Constitution.

1. Opinion of November 25, 2011 on the draft law for the amendment of Articles 70 and 71 of the Constitution of the Republic of Moldova

(Complaint no. 29a/2011, JCC no.6/2011, OG no. 216-221/35 of 30.12.2011)

Circumstances of the case

The case originated in the complaint lodged by 36 members of the Parliament: Tudor Deliu, Valeriu Streleţ, Ghenadie Ciobanu, Elena Frumosu, Simion Furdui, Anatolie Dimitriu, Nicolae Juravschi, Maria Ciobanu, Liliana Palihovici, Ion Butmalai, Angel Agache, Iurie Ţap, Gheorghe Mocanu, Simion Grişciuc, Ion Balan, Valeriu Ghileţchi, Nicolae Olaru, Petru Ştirbate, Andrei Vacarciuc, Ivan Ionaş, Grigore Cobzac, Iurie Chiorescu, Petru Vlah, Chiril Lucinschi, Veaceslav Ioniţă, Vladimir Hotineanu, Maria Nasu, Nae-Simion Pleşca, Alexandru Cimbriciuc, Iurie Apostolachi, Lilian Zaporojan, Corina Fusu, Vladimir Saharneanu, Valeriu Munteanu, Gheorghe Brega, Vladimir Lupan, who requested the opinion of the Court on the draft law for the amendment of some articles of the Constitution of the Republic of Moldova.

The authors of the initiative to revise the Constitution claimed that the existing constitutional framework provided exaggerated protection of the Members of the Parliament, as it did not allow conducting criminal investigation without the prior consent of the Parliament, exempting them from criminal liability for the committed offenses and placing them above the law, which is contrary to the democratic principles of the rule of the law.

Court's Findings

In the opinion of the Court, the proposed amendment to art. 71 of the Constitution may generate an extensive interpretation of the provision, in that it will be also applied to situations not covering the exercise of the parliamentary term. In this context, the Court found timely the more detailed description of the constitutional provision concerning the absence of legal liability for the votes and opinions expressed during the mandate, so that immunity should not apply to acts done outside the parliamentary duties.

At the same time, the Court noted that the proposed amendment to art. 71 was uncertain and could cause difficulties of interpretation and application.

The Court concluded that the draft constitutional law did not go beyond constitutional revision, provided by art. 142 of the Constitution, met the requirements of the sovereignty, independence and unity of the state and those on the permanent neutrality of the state, and did not restrict the rights and the fundamental freedoms of the citizens or their guarantees.

Opinion of the Court

The draft constitutional law on the amendment of art. 70 and art. 71 of the Constitution **does not contravene** the constitutional provisions of art. 142 para.(2) and may be submitted for revision to the Parliament, taking into account the views of the Constitutional Court stated in the narrative part of the Opinion.

Dissenting (competing) opinion

Though agreeing in principle with the practice of the Constitutional Court concerning the opinions on initiatives to revise the Constitution, according to which it is reviewed mainly if the draft law on amendment of the Constitution does not exceed the limits laid down in Article 142 of the Constitution, the Judge Alexandru Tanase considered that in developing the opinion the Court had to review *the relationship between the essence of the amendment proposed by the authors and other constitutional provisions related to it.*

In his opinion, when proposing constitutional amendments aimed at ensuring equality of all citizens before the law, but which involve removing certain guarantees stipulated by the Constitution, the impact it may have in practice should be considered. This involves analyzing the consequences of abolition of parliamentary immunity in the current political context, also considering the level of political culture, the degree of democracy and the state of justice in the country.

In the past decade, the General Prosecutor's Office requested the abolition of the parliamentary immunity only in respect of the Members who represented the parliamentary opposition. Therefore, in the current context of the Republic of Moldova, the parliamentary immunity should not be treated as a privilege offered by the constitution to the Member of the Parliament, but rather a special procedure to protect him/her against abusive or insufficiently grounded acts or deeds of the ruling party.

In the current political context, taking into account the level of political culture, the degree of democracy and the state of justice in the country, the exclusion of parliamentary immunity would be not only a suppression of the Constitutional guarantees provided to the Member of the Parliament for the exercise of a part of national sovereignty, but also a direct threat for the parliamentary opposition and political pluralism in general.

The judge concluded that if Article 71 of the Constitution is amended as suggested by the authors of the initiative, the independence of the parliamentarian's opinion will not be guaranteed in other actions involved by the status of Member of Parliament, but which are not public, otherwise drawing legal liability.

1.6 Confirmation of the Results of Republican Referendums, pursuant to art. 135 para. (1) let. d) of the Constitution

During the reporting period the Constitutional Court did not review such cases.

1.7 Confirmation of the results of elections of the Parliament and the President of the Republic of Moldova, according to article 135 para. (1) let. e) of the Constitution

During 2011 the Constitutional Court handed down seven decisions on the validation of mandates of Member of Parliament of the Republic of Moldova:

1. Decision of February 17, 2011, validating the mandates of the Member of Parliament of the Republic of Moldova for the following persons:

- Morcov Ghenadie, on the list of the Communist Party of the Republic of Moldova;
- Frumosu Elena, Apostolachi Iurie, Grişciuc Simion, Bodiu Victor, Nasu Maria şi Chiorescu Iurie, on the list of the Liberal Democratic Party of Moldova;
- Jantuan Stella, Stratan Valentina, Braşovschi Gheorghe and Sîrbu Oleg, on the list of the Democratic Party of Moldova;
- Saharneanu Vladimir, on the list of the Liberal Party.

(Complaint no. 5e/2011, JCC no.4/2011, OG no. 31/5 of 22.02.2011)

2. Decision of May 10, 2011, validating the mandate of Lilian Zaporojan on the list of the Liberal Democratic Party.

(Complaint no. 12e/2011, JCC no.9/2011, OG no. 78-81/11 of 13.05.2011)

3. Decision of May 20, 2011, validating the mandate of Oleg Tulea, on the list of the Democratic Party.

(Complaint no. 15e/2011, JCC no. 10/2011, OG no. 78-81/11 of 13.05.2011)

4. Decision of September 15, 2011, validating the mandates of Mocan Mihail, Vremea Igor and Ceban Ion, on the list of the Communist Party of RM.

(Complaint no. 27e/2011, JCC no. 16/2011, OG no. 156-159/20 of 23.09.2011)

5. Decision of October 18, 2011, validating the mandate of Iurie Toma, on the list of the Liberal Democratic Party.

(Complaint no. 31e/2011, JCC no.20/2011, OG no. 176-181/27 of 21.10.2011)

6. Decision of December 13, 2011, validating the mandate of the Member of Parliament Mr. Gheorghe Focsa, on the list of the Liberal Democratic Party.

(Complaint no. 36e/2011, JCC no.26/2011, OG no. 222-226/36 of 16.12.2011)

7. Decision of December 30, 2011, validating the mandate of Valeriu Nemerenco on the list of the Liberal Party of Moldova.

(Complaint no. 38e/2011, JCC no.29/2011, OG no. 1-6/2 of 06.01.2012)

1.8 Confirmation of circumstances justifying the dissolution of the Parliament, dismissal of the President or acting President of the Republic of Moldova, and of the incapacity of the President of the Republic of Moldova to exercise powers for more than 60 days, according to art. 135 para. (1) let. f) of the Constitution

During the reporting period the Court did not examine such cases.

1.9 Settlement of objections of unconstitutionality of judicial acts, as signaled by the Supreme Court of Justice, according to art. 135 para. (1) let. g) of the Constitution

A. Judgments of the Constitutional Court on objections of unconstitutionality

In 2011 the Constitutional Court handed down two decisions that recognized the constitutionality of the legal provisions challenged by the procedure of objections of unconstitutionality:

1. *Complaint no. 44g/2010, JCC no.6/2011, OG no. 46-52/8 of 01.04.2011*
2. *Complaint no. 16a/2011, JCC no.24/2011, OG no. 206-215/33 of 02.12.2011*

1. Judgment of March 22, 2011 on exceptional case of non-constitutionality of art. 62 para. (1) d) of the Law on the public office and the status of civil servant no. 158-XVI of July 4, 2008

(Complaint no. 44g/2010, JCC no.6/2011, OG no. 46-52/8 of 01.04.2011)

Circumstances of the case

The Decision of the Court of Appeal Chisinau of March 24, 2010 dismissed the action of Mr. Rotundu Petru on the cancellation of the order of dismissal issued by the Ministry of Education under Article 62 para. (1) let. d) of the Law on the public office and the status of civil servant no. 158-XVI of July 4, 2008, in connection with the attaining of the retirement age.

The plaintiff alleged misapplication of the Law no.158-XVI, in force since January 1, 2009, arguing that the legal situation stipulated in Article 62 para. (1) let. d) of the law in his case had been consumed before the entry into force of the law, which had effect only for the future.

During the review of the complaint against the decision of the Court of Appeal pursuant to the provisions of Article art.12[1] of the Civil Procedure Code, the Civil and Administrative Review Collegium of the Supreme Court of Justice ordered, by a reasoned judgment, the raising of the objection of unconstitutionality of the provisions of Article 62 para. (1) let. d) of the Law on the public office and the status of civil servant no. 158-XVI of July 4, 2008.

The Supreme Court of Justice held in its referral that the provisions of art. 62 para. (1) let. d) of the Law limited the right to work of the public servants who reached the retirement age and thus contravened the constitutional provisions of art. 43 para. (1) and art. 16 para. (2) concerning the right of everyone to work, to free choice of employment, protection against unemployment and, respectively, equal rights of the citizens before the law and public authorities without any discrimination, art 4. para. (1), according to which the rights and freedoms should be interpreted and applied in accordance with the Universal Declaration of Human Rights, the covenants and treaties to which Moldova is a party , art.54 on the prohibition to pass laws that would suppress or diminish the human rights and fundamental freedoms.

Court's Findings

The Court found that the freedom of choice of employment did not mean that a person may choose to exercise any profession or office, regardless of professional training, moral and physical qualities. The choice of employment, profession and position implied some relevant qualifications and skills.

The exercise of a public position is only one way of achieving the right to work, hence the setting of an age limit for civil servants does not affect the right to work, as this can be achieved in other areas where the age is not a professional essential and decisive criterion. It is normal and necessary for the positions, which are important in terms of the general interest of the society to be regulated by law, including by establishing some conditions and restrictions.

The provisions relating to the exercise of certain activities or positions until a certain age limit are found in several laws regulating the work of civil servants with a special status: The Law on the Center for Combating Economic Crimes and Corruption no.1104-XV of June 6, 2002, Law on the Civil Protection and Emergencies Service No. 93-XVI of April 5, 2007, the Audiovisual Code of the Republic of Moldova (Law no. 260-XVI of July 27, 2006), the Law on the Notary no.1453-XV of November 8, 2002, Law on the Prosecution no.294-XVI of December 25, 2008, etc. Or, a special law comprises legal rules applicable only to some categories of social relationships or subjects which are strictly determined by derogation from the general rule.

Earlier, when reviewing similar matters, the Constitutional Court ruled that *"...the establishment of an age limit for the exercise of certain activities may be regarded a priori as a violation of the constitutional right to work."* (JCC no. 30 of 23.12.2010).

The Court held that the legislation on the status of civil servants in most European countries contains provisions similar provisions to those contained in Article 62 para. (1) let. d) of the Law No. 158-XVI (Article 98 of the Law no.188/1999 on the status of civil servant in Romania, Article 106 para.(1) of the Law on civil servants in Bulgaria, article 120 para. (1) of the Law on the status of civil servant of Estonia, art. 7 para. (4) of the Law on the status of civil servants in Latvia, art. 17 let. b) of the Law XXII/1992 on the Status of public officials of Hungary, art. 87 of the Civil Service Law of Poland, art. 21 para. 2 of the State Civil Service Law of the Russian Federation, etc.).

The Court found that, according to constitutional provisions contained in para. (3) art. 54, the right to work and to free choice of employment and the right of employment in public office, stipulated by art. 43 para. (1) and art. 39 para. (2) of the Constitution, respectively, are not rights which may not be subject to restrictions.

The discriminatory criteria, in violation of equality among citizens, listed in the constitutional provisions and international standards set out in the decision do not include the age criterion.

According to the European Social Charter (revised), adopted in Strasbourg on May 3, 1996 and ratified by the Moldovan Parliament by Law no.484-XV of 09.28.2001, a difference of treatment on objective and reasonable grounds is not considered discrimination.

Decision of the Court

The Constitutional Court declared the provisions of art.62 para.(l) let.d) of the Law on the public office and the status of civil servant no. 158-XVI of July 4, 2008 *constitutional*.

2. Judgment of November 15, 2011 on objections of unconstitutionality of the articles 38 para. (3), (6), (7) and 38^{12} para. (2) of the Law No. 550-XIII of July 21, 1995 on financial institutions, as subsequently amended

(Complaint no. 16a/2011, JCC no.24/2011, OG no. 206-215/33 of 02.12.2011)

Circumstances of the case

On June 19, 2009 the National Bank of Moldova withdrew the license for the conducting of financial activities from BC "Investprivatbank" SA, in connection with bank's insolvency. On July 17, 2009 a number of companies, representing 55% of the stake in BC "Investprivatbank" SA, sued the National Bank of Moldova (appointed intervenients BC „Banca de Economii" SA and the Government of the Republic of Moldova), requesting the annulment of the administrative proceedings and repair of material damage.

In this context, the author of the complaint claimed that, in particular, the withdrawal of a bank license by the National Bank, but not by a court, was a violation of property rights and of the right to access to justice, incompatible with Articles 1, 6, 16, 20, 46, 53, 54 and 127 of the Constitution, Article 6, 13 and 14 of the European Convention on Human Rights and Fundamental Freedoms and Article 1 of the Additional Protocol.

Court's Findings

The Court noted that according to the provisions of the Constitution and the European Convention, the property right is not an absolute right and the legislative body may establish rules on the use of property, so that such use meets the public interest and is proportionate to the interest pursued. In this context, the Court held that the regulation of bankruptcy procedure was not a deprivation of property, but an action aimed at ensuring the exploration of its value for the general interest.

The Court noted that in certain sensitive areas or areas of major importance for the society, such as stability of the banking system, the State enjoys a broad discretion margin. This discretion includes the right of the state to set regulations distinct from other similar areas of regulation. In this context, the Court concluded that the assigning of the National Bank's power to withdraw the license and initiate the liquidation of the bank in default aimed at avoiding panic and the potential exodus of depositors from the financial system, protecting depositors' interests, ensuring secrecy of the deposits and reducing the negative impacts on the entire financial system.

The Court found that the national legislation did not grant exclusive right to the judiciary concerning the liquidation or insolvency of legal entities. The legislation in force allowed the dissolution and conducting of the liquidation outside judicial proceedings as well. In this context, the Court held that, during the insolvency proceedings, the term "authority" does not necessarily imply the intervention of a judicial authority. The term authority has a broad meaning and includes a person or body empowered by national law to initiate insolvency proceedings or to take decisions during such proceedings.

The Court concluded that the administrative nature of the liquidation of a bank does not infringe the guarantees of the property rights because the decisions issued within such proceeding may be appealed in court.

In respect of the shareholders' right to sue on behalf of the company, the court held that according to the factual circumstances of the case BC "Investprivatbank" SA is a legal entity distinct from its shareholders. Holding the distinct identity, BC "Investprivatbank" SA concluded private transactions with its customers. Consequently, the bank bears responsibility for its obligations and not its shareholders, regardless of whether or not the shareholders are part of bank's management bodies.

In this context, the Court held that a company's shareholders, including majority shareholders, cannot claim to be victims of alleged violations of the company's rights. The company can claim any violations only on its behalf, through its bodies established under its constituent documents. The shareholders' right to access to justice, on behalf of the legal personality of the company, will be justified only in exceptional circumstances, when it is found clearly impossible for the company to seek justice through its statutory bodies. Therefore, in the case of liquidation proceedings, the companies subject to such proceedings have access to justice through their liquidators.

The Court also noted that the exceptional case of non-constitutionality of a legal provision, providing for a total quota of **25% of the shares** in order to be able to sue, was raised by the Supreme Court of Justice at the request of a groups of shareholders of BC „Investprivatbank" SA holding a total of over **55% of the shares.** For this reason, the Court concluded that this rule had no relevance to the dispute tried before the Supreme Court.

The Court held that the right to request judicial cancellation of an act may be subject to formal requirements when pursuing a legitimate aim and are necessary in a democratic society and proportionate to the pursued aim. In this regard, the Court held that the liquidation of a bank under one of default events provided by the law, aimed at providing prompt and safe compensation for its creditors, as well as avoiding the possible repercussions of its insolvency on the country's entire banking system.

In this context, the court held that the challenged provisions were not disproportionate to the legitimate aims of protecting the rights of creditors and ensuring proper management of the bank under liquidation.

Decision of the Court

For the reasons stated above, the Constitutional Court *dismissed the objection of unconstitutionality* raised by the Supreme Court of Justice *and recognized as constitutional* the articles 38 para.(3), (7) and 38^{12} para.(2) of the Law no. 550-XIII of July 21, 1995 on the financial institutions. At the same time, the Court ***suspended*** the constitutionality control process of Article 38 paragraph (6) of the same Law

B. Returned Complaints

On *February 24, 2011* **the Constitutional Court** ***returned the complaint on*** **objection of unconstitutionality of the provisions of art.38 para.(3), (6), (7) and art.38^{12} of the Law on financial institutions no. 550-XIII of July 21, 1995 as amended by the Law no.27 of June 15, 2009.**

(Complaint No. 48g/2010)

Circumstances of the case

Referral by the Supreme Court of Justice on objection of unconstitutionality of some provisions of the Law on the financial institutional referred to withdrawal by the National Bank of Moldova of the license for the conducting of financial activity from BC "Investprivatbank" SA, in connection with bank insolvency.

In this context, the author of the referral claimed, in particular, that the withdrawal of a bank license by the National Bank of Moldova, but not by a court, was a violation of property rights and of the right to access to justice.

Court's Findings

Having analyzed the referral, the Constitutional Court found that the legal provisions challenged by the procedure of objection of unconstitutionality by the Supreme Court of Justice had been amended and supplemented by the Law no. 241 of 24.09.2010, in force since 17.12.2010.

Thus, art. 38 para. (3) has a new wording, art. 38 para. (6) refers to the provisions of para.(3) of art. 38, obviously in the new version, art. 38 para (7) and art.38^{12} had also been amended.

The Court noted that, since the constitutionality control of the provisions of art. 38 para. (3), (6), (7) and art. 38^{12} para. (2) as amended by the Law no. 27 of 15.08.2009, and the Constitutional Court was entitled to rule only on the laws in force, the author had to define the object of the referral, stating the article, the paragraph or the section to be applied in the settlement of the dispute and which were in force, stating the arguments of unconstitutionality of each challenged provision in relation to the constitutional provision.

Under art. 40 para. (3) of the Code of Constitutional Jurisdiction, the referral was not accepted for review on the merits and was returned to the author to be brought in line with the provisions of art. 39 of the Code of Constitutional Jurisdiction.

C. Suspended reviews

1. Decision of July 14, 2011 on the referral by the Supreme Court of Justice on objection of unconstitutionality of section 12 of the Regulation on the provision and payment for the housing services, installation of meters in apartments and conditions for disconnection/reconnection to the heating and water supply systems, approved by Government Decision No. 191 of February 19, 2002, as amended by the Government Decision no.1343 of December 1, 2008

(Complaint no. 6g/2011, JCC no.1/2011, OG no. 122-127/17 of 29.07.2011)

Circumstances of the case

The case originated in the objection of unconstitutionality raised the Supreme Court of Justice at the proposal of the Court of Appeal.

Court's Findings

During the plenary session of the Constitutional Court the representative of the Supreme Court of Justice stated that the provision *„the amount of electricity used for the operation of elevators shall be distributed monthly by the electric power supplier to each owner, tenant or other legal beneficiary of the dwelling proportional to the share of the area in the total area (in square meters) of housing (rooms) based on the data submitted by the manager of the house" contained in section 12 of the Regulation* contained in section 12 of the Regulation, contravened Article 16, 46, 47 and 54 of the Constitution.

According to the Law on Privatization of the Housing Fund no. 1324-XII of March 10, 1993, the owners of privatized dwellings shall participate in the joint coverage of maintenance costs of the places of common use, of the land near the building, current and capital repair of the building and interior engineering systems. The share of expenditure is determined by the occupied area of the housing and the number of people living on it, which is recorded in contracts for the maintenance and service of dwellings and land adjacent to the houses (Article 21).

The Law on condominium in housing sector no. 913-XIV of March 30, 2000 stipulates that the by each owner (tenant, lessee) for the maintenance and repair of the common property of condominium shall be proportional to his/her share and shall be established according to the Rules of the breakdown of the funds for the operation and repair of the housing (Article 14 para.(4)).

The Court held that the author of the referral did not challenge the provisions of the laws, based on which this Regulation had been developed.

Court Decision

Based on presumption of constitutionality of the legal provisions, for the implementation of which the Government approved the regulation in question and since the matter raised under the objection of unconstitutionality by the Supreme Court of Justice refers to control of the lawfulness, which is the competence of the ordinary courts in accordance with Article 60 c) of the Code of Constitutional Jurisdiction, the Constitutional Court ordered the **cessation of the proceeding.**

1.10. Settlement of issues dealing with the constitutionality of parties, according to art. 135 para. (1) letter h) of the Constitution

In 2011 no complaints on matters dealing with the constitutionality of a party were filed with the Court.

TITLE III: ENFORCEMENT OF JUDGMENTS, OPINIONS AND ADDRESSES

A. GENERAL CHARACTERISTICS AND STATISTICS ON THE ENFORCEMENT OF THE ACTS ISSUED BY THE CONSTITUTIONAL COURT

The Acts of the Constitutional Court are official and enforceable throughout the country, binding for all public authorities and for all individuals and legal entities. The normative documents or parts thereof declared unconstitutional become void and are not applied after the adoption of the corresponding decision by the Constitutional Court.

The decisions and opinions of the Constitutional Court are sent to the parties, public authorities and decision makers whose acts were examined by the Constitutional Court, the decisions and opinions are also sent to the President of the RM, the Parliament, the Government, the Supreme Court of Justice, the General prosecutor and the Minister of Justice.

The acts issued by the Constitutional Court are binding for the public authorities: the Government within 3 months from the date of publication of the decision of the Constitutional Court, shall submit the draft law on amending and supplementing or repealing a regulatory act or parts of it declared unconstitutional to the Parliament. Such draft law shall be examined by the Parliament as a priority, the President of the Republic of Moldova or the Government, within two months from the date of publication of the decision of the Constitutional Court, shall amend or repeal that act or parts thereof declared unconstitutional and, where appropriate, issue or adopt a new act.

If during the review of the case the Constitutional Court finds gaps in the legislation that are due to the failure to enforce some provisions of the Constitution, the Court shall point these gaps to the relevant authorities in an address, requesting the exclusion of these gaps. The address shall be reviewed by the authority concerned, which within 3 months shall inform the Constitutional Court about the results of such review.

In 2011, 9 such addresses were sent.

No.	Address	The area requiring regulation	Period for the execution	Enforced/ not enforced
1.	Address to the Judgment of *February 8, 2011* on interpretation of art. 90 para. (4) of the Constitution of the Republic of Moldova	The legislation does not regulate the mechanism of transmission and reception of the powers of the President, the mechanism for establishing the interim office of the President if the position becomes vacant or in case of early termination of the office of President, or the particularities of the procedures for the election of the President in case of establishment of the interim office and successive interim office.	By 08.05.2011	not enforced

2.	Address to the Judgment of *April 5, 2011* on constitutionality review of the provisions of art.8 let. g) and art. para. (4) of the Law No.269-XIII of November 9, 1994 on exit and entry in the Republic of Moldova, art. 64 of the Enforcement Code of the Republic of Moldova No. 443-XV of December 24, 2004 as amended by the Law no. 143 of July 2, 2010	The Court held that the failure of the domestic law to regulate legal relations arising from the insolvency of individuals was a gap. Inclusion of some clear provisions on the insolvency of individuals in specific cases would help achieve the constitutional provisions on the rule of law and would fall within the reasonable measures for harmonization of the national framework with the international law and alignment to the international community in many respects.	By 06.07.2011	not enforced
3.	Address to the Judgment of *May 31, 2011,* by which the Court *recognized as constitutional* the provisions of para. (1) art. 111 of the Labor Code: „In the Republic of Moldova, the non-working holidays, *with keeping of the average wage (for the employees paid based on the agreement or time unit),* are..."as amended by the Law no 168 "to amend and supplement the Labor Code of the Republic of Moldova.	The Court suggested the need to conduct a grammatical revision of the provision of para. (1) art. 111 of the Labor Code, which contains ambiguities both in the previous and in the current version. In the initial version, the legal provision generated a restrictive interpretation, being reported by users on employees paid by piecework or per unit of time, while in the current wording it may lead to the idea that the average salary for non-working holidays shall be paid only to these categories of employees.	By 31.08.2011	not enforced

4.	Address to the Judgment of *July 7, 2011,* by which the Court recognized as *constitutional* the Decision of the Parliament no. 83 of April 21, 2011 „on appointment of the President of the Court of Accounts".	The Court pointed out some inconsistencies in the law relating to conditions of nomination for certain public positions. The legal acts operate with the notions: "Higher education", "Bachelor" or "degree". The aspirants for the position of judge, prosecutor, notary, ombudsman, lawyer, secretary of the local council and other positions must have a university degree in the relevant area, the laws contain no reference to the requirement of holding master degree, which, according to the rigors of the Bologna process, is a compulsory step. For other positions these laws do not specify the required education cycle: bachelor or master.	By 07.10.2011	not enforced
5.	Address to the Judgment of *September 13, 2011,* by which the Court declared as *unconstitutional* the text „After three years the graduates cannot participate in such contests based on the average general mark received in the graduation examinations" in paragraph (3) of article 18 of the Law on the National Institute of Justice.	The Parliament shall develop a legal mechanism for establishing the ratio between the vacancies for the graduates of the National Institute of Justice and those for other categories of persons admitted to the contest, and develop clear rules for determining the option for the proposal of vacancies in each category of contest - ordinary, by derogation or by transfer.	By 13.12.2011	not enforced
6.	Address to the Judgment of *October 4, 2011,* by which the Court declared as *unconstitutional* the Decision of the Parliament no. 122 of July 5, 2011 on the dismissal of the President of the Supreme Court of Justice.	The Court noted that special organic laws did not regulate: the interim Presidency or vice presidency of the Supreme Court; the status of interim President or Vice President of courts, including of the Supreme Court, grounds and procedure for disciplinary accountability of person acting in the office in the interim position, the deadline for organizing and running the contest for the vacant position of president or vice president of the court after or before the expiry of the mandate.	By 04.01.2012	not enforced

7.	Address to Judgment of *December 8, 2011,* by which the Court suspended the proceedings on constitutionality review of the provisions of section 3 of the Annex no. 5 to the Government Decision no.667 of July 8, 2005 on measures to implement the Law no.283-XV of July 4, 2003 on the activity of private detectives and guards.	The Court found that the Parliament had not established by law the list of objectives the security of which could not be assured by private security organizations. The challenged provisions of the Government Decision no. 667 must be amended and the conditions for provision of such services by private security of organizations must be regulated. In developing new regulations, the Government should take into account the provisions of art. 9 para. (3) of the Constitution.	By 08.03.2012	
8.	Address to the Judgment of *December 8, 2011,* by which the Constitutional Court recognized as *constitutional* the provisions of art. 25 para. (1), 26 and 27 section 1) and 7) of the Law no. 64-XII of May 31, 1990 on the Government, regulating the establishment and the activity of the Government Presidium.	The Court noted that the legislation contains ambiguous provisions on the powers of the Government Presidium in terms of establishment of the agenda of government meetings, the powers of coordinating the internal activity of the Government and review of the proposals related to stimulation or disciplinary sanctioning of the Government member. The Court noted the contradiction in legal rules on delegation by the absent member of the Government of his/her representative to the meetings of the Presidium and the Government. According to art. 26 of Law on the Government, in the absence of the member of the Presidium, such member shall delegate another member of the Government to participate in full in Presidium meeting, given that, in accordance with Article 21 of the Law the Minister, and by default the Deputy Prime Minister is assisted by one or more deputy ministers, who replace him/her in case of the inability to exercise powers.	Before 08.03.2012	

9.	Address to the Judgment of *December 22, 2011,* by which the Court declared *unconstitutional* the Law no. 184 of August 27, 2011 on amendments and addenda to some legal acts.	The Court pointed out to the Parliament the need to amend and complete the Rules of the Parliament in line with the revision of the Constitution by the Law no. 115-XV of July 5, 2000 and for a clear regulation of the procedures for employing Government's responsibility before the Parliament and legislative delegation.	Before 22.03.2012	

Judgments of the Court declaring some legal provisions unconstitutional

No.	The provision declared as unconstitutional	Number of the judgment	Period for the execution	Executed/not executed
1.	By its Judgment of *February 18, 2011* the Court declared as *unconstitutional:* The Law no. 193 of July 15, 2010 „on amendments and addenda to some legal acts" (OJ no. 135-137/484 of 03.08.2010); section 1 letter e) of the Annex to the Law no. 451-XV of July 30, 2001 „on regulation of entrepreneurship activity through licensing" as amended by the Law no. 176 of July 15, 2010 (OJ no. 141-144/499 of 10.08.2010).	Complaint no. 26a/2010, JCC no.5/2011, OG no. 34-36/7 of 04.03.2011	18.05.2011	Enforced by: • The Law no. 48 of 26.03.2011, OG no.53/114 of 04.04.2011; • The Law no. 42 of 17.03.2011, OG no.46-52/107 of 01.04.2011;
2.	By its Judgment of *June 7, 2011* the Court declared *unconstitutional* the provision of art. 22 para.(1) let.p) of the Law no. 544-XIII of July 20, 1995 „On the Status of Judges" as amended by the Law no. 152 of July 8, 2010 „on amendments and addenda to some legal acts".	Complaint no. 47a/2010, JCC no.12/2011, OG no. 102/14 of 18.06.2011	Before 07.09.2011	Not enforced
3.	Judgment of *December 20, 2011* declaring the provisions establishing the length of the general retirement contribution of 35 years for women and the provisions amending the conditions of retirement and other social guarantees of the judges as *unconstitutional*.	Complaints no. 34a/2010, no.36a/2010, no.19a/2011, no.23a/2011, JCC no.27, OG no.1-6/1 of 06.01.2012	Before 20.03.2012	Not enforced

B. Conclusions on the enforcement of the acts issued by the Constitutional Court

The tables above show that in 2011 only one Judgment of the Constitutional Court was enforced.

According to the law, the regulatory acts or parts thereof, declared unconstitutional shall become ***void*** and ***shall not be applied*** after the adoption of the relevant decision of the Constitutional Court. Hence, a remark shall be added to such regulatory act. The regulatory act is perceived with difficulties, generating conclusions and uncertainties in the interpretation and correct application of the legal provision. Example:

- Provision of the paragraph **(3) of art. 18** of the Law no. 152-XVI of June 8, 2006 on the National Institute of Justice "(3) The graduates who have not passed successfully the contest for available vacancies for the position of judge or prosecutor shall take part in the contest during three years after graduation from the Institute. After the expiry of this period, the graduates cannot participate in such contests based on the general average mark gained at the graduation exams."

Note: The text "After the expiry of this period, the graduates cannot participate in such contests based on the general average mark gained at the graduation exams" contained in para. (3) art. 18 is declared unconstitutional by the Judgment of the Constitutional Court no. 15 of 13.09.2011, in force since 13.09.2011.

- **Art. 1.** - Mr. Ion MURUIANU is dismissed from the position of the President of the Supreme Court of Justice following the failure to fulfill the work duties provided for by art. 1 para.(2) of the Law on the Supreme Court of Justice.

Note: The Decision of the Parliament is declared unconstitutional according to the Judgment of the Constitutional Court no. 18 of 04.10.2011, in force since 04.10.2011

- **Art. 22 para.1 let p)** of the Law on the Status of Judges provided for: p) delivery of a ruling which is later recognized by the European Court of Human Rights as violating the human rights and fundamental freedoms.

Note: Art.22 para.(1) let.p) is declared unconstitutional according to Judgment of the Constitutional Court no. 12 of 07.06.2011, in force since 07.06.2011

These provisions have not been repealed by the Parliament by an act, ignoring thus the provisions of art. 28^1 of the Law on the C and art. 75 of the Code of Constitutional Jurisdiction.

The Constitutional Court is the sole authority of constitutional jurisdiction in the Republic of Moldova, which guarantees the supremacy of the Constitution and implementation of the principle of separation of powers, this requiring a great respect for the authority and determining the enforcement of the acts issued by the Court within the terms established by law.

According to art. 28^2 of the Law on the Constitutional Court, the failure to enforce, the inappropriate enforcement or setting of impediments for the enforcement of the acts issued by the Constitutional Court shall be sanctioned according to the legislation in force.

Addresses not enforced during the period between 1995 - 2010

No.	Address	The area requiring regulation	Period for the enforcement	Enforced/not enforced
Unenforced addresses adopted in 2010				
1.	Address to the Judgment no. 17 of *12.07.2010* on constitutionality review of the Decree on the declaration of the day of 28.06.1940 as the Day of Soviet Occupation	Having analyzed the status of the decrees of the President of RM, the Court found an uncertain situation concerning the mechanism of issuing decrees and the areas which can be subject to their regulation. The Court suggested that the status of the decrees should be regulated by law.	Before 12.10.2010	Not enforced
2.	Address to the Judgment no. 22 of *23.09.2010* on the confirmation of the Republican Constitutional Referendum of 05.09.2010	The Court believes that the law on the referendum should contain express provisions on: 1. equal opportunities for the supporters and opponents of the proposal subject to voting; 2. free building of voters' will, prohibition of the use of public funds for the purposes of the campaign, sanctioning cases of violation of the obligation of neutrality by public authorities; 3. respect for the fundamental rights, particularly for the freedom of expression and freedom of press, freedom of movement inside the country, and freedom assembly and association for political purposes 4. the effects of the referendum must be specified explicitly in the Constitution (constitutional referendum) or by law (for all types). The procedure of decisional referendum needs further specification.	By 23.12.2010	Not enforced

3.	Address to the Judgment no. 29 of 21.12. on constitutionality review of the Law no. 95 of 21.05.2010 on amendments and addenda to some legal acts.	The Court found that, for the enforcement of addresses of 24.09.2002 and 16.04.2010, the Parliament presented a new version of Article 4 letter. a) of the Law on Administrative Contentious and in an annex to the law specified the officials exempted from addressing the administrative court. The Court found that the amendments contained some inaccuracies. In its previous addresses the Court stated that the provisions of art. 4 let. a) of the Law on Administrative Contentious *required additional interpretation for the express delimitation of the state officials, exponents of a particular political or public interest.* In developing the list in the Annex, no distinction between the state officials, exponents of a *particular political interest,* and officials exponents of a *particular public interest was made.* The found gaps lead to misinterpretation of the law and violation of art. 20 of the Constitution.	By 21.03.2011	Not enforced
4.	Address to the Judgment no. 20 of 23.12.2010 on constitutionality review of art. 16 para.(1) let g) of the Law no. 1453-XV of 08.11.2002 „On Notary"	The Court found inconsistencies between the provisions of the Law on Notary concerning the period of exercise of the notary activity.	23.03.2011	Not enforced

Unenforced addresses adopted in 2007				
5.	Address to the Judgment of 26.03.2007 on objection of unconstitutionality of the Law no. 186-XVI of 29.06.2006	By the Law no. 244-XVI of 21.07.2006 the Parliament has completed the Civil Procedure Code with art. 121 para. (1): „If, during the trial of the case, it is found that the legal provision to be applied or already applied is in contradiction with the Constitution and the constitutionality control of a regulatory act is under the competence of the Constitutional Court, *the court may refer to* the Constitutional Court requesting the control of the constitutionality of such provision in accordance with the Code of Constitutional Jurisdiction". The Criminal Procedure Code, art. 7 para. (3) says: „In case of stating by the court, during the trial of the case, that the legal norm to be applied contravenes to the provisions of the Constitution and is interpreted in a legal act that may be subject to constitutionality control, the trial of the case will be suspended, *the Supreme Court of Justice will be notified and will further notify the Constitutional Court.* . The Constitutional Court pointed out to the Parliament the inconsistencies concerning the procedure of objection of unconstitutionality committed by the Civil Procedure Code in relation to the Constitution.	By 26.06.2007	Not enforced
6.	Address of 05.04.2007 on the failure to enforce the Address of 04.07.2006	The Court pointed out the need for the Parliament to pass a law that would regulate the measures for free information, psychological counseling and legal assistance to victims of crimes and provision by the state of financial compensation in case of some crimes.	By 05.07.2007	Not enforced

Address of the Constitutional Court issued in 2003				
7.	Address on Decision of 03.03.2003 on dismissal of the complaint on organization of republican legislative Referendum	The Court found gaps in the legislation on the adoption of Parliament's decisions. The Court noted that neither the Rules of the Parliament nor the Law on legal acts *regulated the judicial mechanism of dismissing a regulatory act, which imposes difficulties in the exercise of the rights and fundamental freedoms.*	By 03.06.2003	Not enforced
Address of the Constitutional Court issued in 2002				
8.	Address concerning the Judgment no. 5 of *24.09.2002* on cessation of the process of constitutionality control of some provisions of the Treaty between RM and Ukraine on the state border and the Additional protocol to the Treaty	The Court held that art. 135 of the Constitution should specify the categories of treaties that may be subject to constitutionality control and when the country becomes part of such treaties (ratification, signature, accession, approval, etc.).	By 24.12.2002	Not enforced

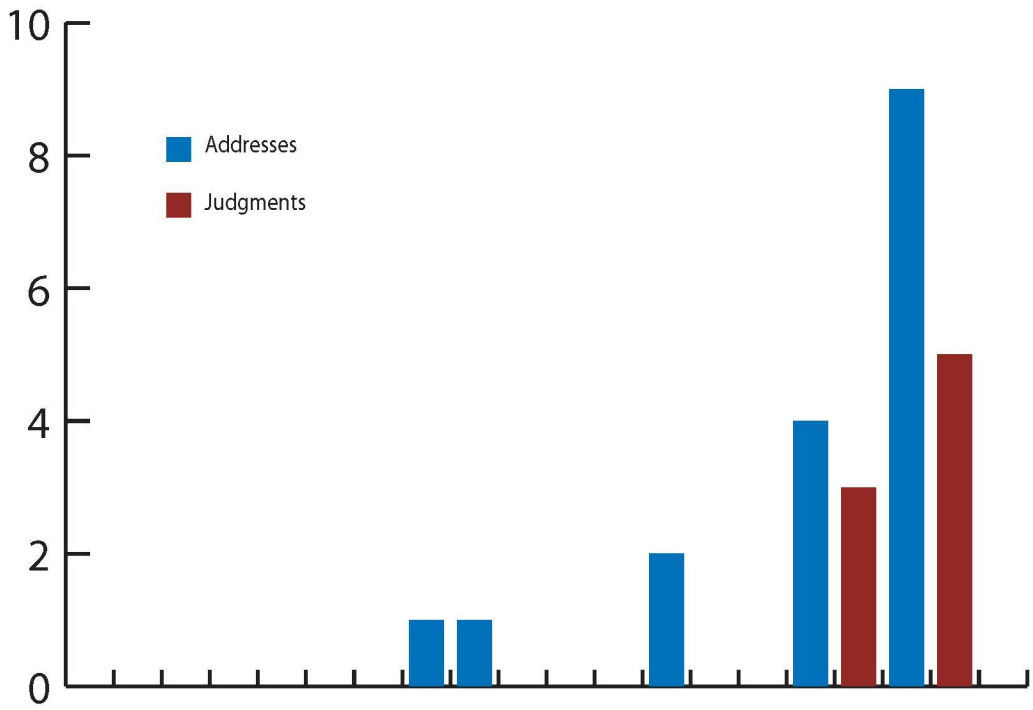
Judgments not enforced during the period between 1995 - 2010

No.	The provision declared as unconstitutional	Number of the judgment	Period for the enforcement	Enforced/not enforced
Unenforced judgments adopted in 2010				
1.	By the Judgment no. 11 of *27.04.2010* the Court declared as *unconstitutional* the provisions of the Decision of the parliament no. 30-XVIII of 04.03.2010 „on the dismissal of the President of the Supreme Court of Justice".	Complaint no. 5a/2010, JCC no.11/2010, OG no. 68-69/10 of 07.05.2010	By 27.07.2010	Not enforced
2.	By the Judgment no. 17 of *12.07.2010* the Court declared *unconstitutional* the provisions of the Decree on the declaration of the day of 28.06.1940 as the Day of Soviet Occupation	Complaint no. 17a/2010, JCC no.17/2010, OG no. 126-128/17 of 23.07.2011	By 12.10.2010	Not enforced

3.	By the Judgment no. 28 of *14.12.2010* the Court declared *unconstitutional* art. 22 para. (1) let.b) of the Law no. 544-XIII of 20.07.1995 „On the Status of judges".	Complaint No. 14a/2010 JCC no. 28/ 2010, OG no. 254-256/30 of 24.12.2010	By 14.03.2011	Not enforced

For *unexplainable reasons*, the state authorities (Government and Parliament of RM), which are responsible for the exclusion of reported gaps and alignment of the laws with the Constitution, have not enforced the addresses and the specified judgments of the Constitutional Court.

Unenforced Addresses and Judgments (Graphical Display)



TITLE IV: PUBLICITY AND TRANSPARENCY

The Judgments and the addresses of the Constitutional Court are published in the Official Gazette of the Republic of Moldova within 10 days from their adoption.

The general information, such as the structure and organization, the role and the duties, the jurisdictional activity, the press service, international relations, useful links related to the Constitutional Court may be found on the web page http://www.constcourt.md. Another source of information is the annual publication, comprising a summary of the acts issued by the Court - "Collection of Judgments of the Constitutional Court".

Traditionally, the journalists and the representatives of the civil society have had free access to all plenary sessions of the Court. The plenary sessions have been widely covered by the press agencies and TV channels. The official releases of the Court's Press Service on the plenary sessions have been provided to all mass media outlets and placed on the electronic page of the Court.

The Judges of the Constitutional Court provided interviews, made press statements on the issues reviewed in the plenary sessions, published articles on specific activity of the Court.

Articles and interviews provided by the Judges of the Constitutional Court in 2011		
Date	**Author**	**Title of article**
February 25, 2011	Mr. Victor Puscas, Judge at the CC	*„О конституции и политической логике в решениях Конституционного Суда"*, („On the Constitution and the Political Logic in the Decisions of the Constitutional Court") Молдавские Ведомости (Moldavskie Vedomosti)
July 1, 2011	Mr. Victor Puscas, Judge at the CC	*„Пляски вокруг Конституции"* („Dancing around the Constitution"), Молдавские ведомости (Moldavskie Vedomosti)
July 7, 2011	Mr. Victor Puscas, Judge at the CC	*„Конституционный контроль обеспечивает защиту оппозиции перед властью"*, (The constitutional control ensures the protection of the opposition before the ruling parties") Кишиневский обозреватель (Kishininyovsky Obozrevateli)
August 18, 2011	Mr. Victor Puscas, Judge at the CC	*„Ireversibilitatea independenței"* („Irreversibility of the Independence"), Ziarul de Gardă

September 26, 2011	Mr. D. Pulbere, President of CC	*„Parlamentul Moldovei trebuie dizolvat"* („The Parliament of Moldova must be dissolved"), interview provided to the agency „Novosti Moldova"
September 27, 2011	Mr. Victor Puscas, Judge at the CC	*«Вечные кандидаты, или что признал конституционным Конституционный Суд»*, („The eternal candidates or what did the Constitutional Court recognized as constitutional") Молдавские Ведомости (Moldavskie Vedomosti)
November 10, 2011	Mr. Al. Tănase, President of CC	Lupta pentru drepturi şi libertăţi este una *permanentă*" („The fight for rights and freedoms is permanent"), source: www.timpul.md
December 23, 2011	Mr. Al. Tănase, President of CC	*„Undertaking of Government's Responsibility of rather an instrument aimed at checking the political support rather than to quickly approve laws", source:* info-prim.md

TITLE V: INTERNATIONAL RELATIONS

I. COOPERATION

In 2011 the Constitutional Court continued strengthening its status of a full member of three international organizations: the Council of Europe's European Commission for Democracy through Law (Venice Commission), Association of Constitutional Courts Partially Using the French Language (ACCPUF) and the Conference of European Constitutional Courts (CECC).

In the context of enlargement of cooperation with similar institutions at international and global level, on August 17, 2011 the Constitutional Court, by an appeal addressed to the Venice Commission, expressed its intention to join the World Conference on Constitutional Justice. On September 24, 2011 after the entry into force of the Statute of the Conference and accession of other 32 courts to it, the Constitutional Court has become a full member of the World Conference on Constitutional Justice. Currently the organization has 49 members.

As in previous years, the Constitutional Court submitted to the Venice Commission the summaries of the most important decisions to be published in the Bulletin of constitutional jurisprudence and sought the opinion of experts from the Venice Forum on certain issues.

Thus, on April 19, 2011 the Court requested the Venice Commission to rule on the complaint concerning the interpretation of Article 78 of the Constitution of the Republic of Moldova on the procedure for the election of the President of the Republic. During the 87-th plenary meeting of June 17-18, 2011, the Venice Commission issued the Opinion *amicus curiae* no.627/2011, based on the comments of four experts, members of the Commission.

II. PARTICIPATION

An important action for the Constitutional Court was the National Conference *„Information of the public - aspects of media cooperation with the law enforcement bodies in the context of the constitutional law".* The conference was dedicated to the 16th anniversary of the Constitutional Court and was organized on February 23, 2011, at the Republican Palace, with the support of the German "Hanns Seidel" Foundation.

The topics covered in the discussions, divided into three sessions, were related to the coverage of the activity of the law enforcement bodies in the media, the role of media in covering the reform of the law enforcement bodies and ensuring of an independent, impartial and transparent justice, opportunities for effective cooperation between law enforcement bodies and the media, identification of ways and means to expand public access to information on the activity of the law enforcement bodies.

To celebrate a decade after signing of the Protocol of cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Romania and the common commitment to strengthen the relations of friendship and mutual support between the two institutions, between November 21 and 24, a delegation of the Constitutional Court of Romania paid an official visit to Chisinau.

During the visit, the Romanian delegation headed by its President Augustin Zegrean conducted working meetings with the judiciary body of the Constitutional Court of the Republic of Moldova and with the representatives of the public authorities: Acting President of the Republic of Moldova, Mr. Marian Lupu, Prime Minister, Mr. Vladimir Filat, President of the Supreme Court or Justice, Mr. Ion Muruianu, Minister of Justice, Mr. Oleg Efrim, and the Chair of the Superior Council of Magistracy, Mr. Nicolae Timofti. The main topics focused on finding constitutional solutions for the election of the President and the functions of the constitutional law body in this respect, the role of the constitutional courts in strengthening the rule of law and democratization of state institutions. During this meeting the two parties expressed their willingness to strengthen the institutional cooperation, planning to hold mutual visits of judges and staff of both courts.

The judges of the Court participated in various seminars, conferences and important international events.

Participation in conferences, seminars, visits of the Constitutional Court judges in 2011				
Date	**Name**	**Type of meeting**	**Place of meeting**	**Topic /subject of discussion**
January 16 -18	Mr. D. Pulbere, President CC	II Congress of the World Conference on Constitutional Justice	Brazil, Rio de Janeiro	"Separation of powers and independence of constitutional courts and equivalent courts"
January 28	Mrs. V. Sterbet, CC Judge	Inauguration of the new judicial year at the European Court of Human Rights, thematic seminar	France, Strasbourg	"The limits of evolutionary interpretation of the European Convention of Human Rights"
February 14- 15	CC delegation headed by Mr. D. Pulbere, President CC	Working visit	Federal Republic of Germany	Specialized discussions
February 21	Mr. Stefano De Leo, Ambassador of Italy	Courtesy visit	RM Chişinău	Discussion on organizing visits to Rome of the CC judges of RM for documentation and exchange of experience
February 23	Organized by the Constitutional Court	Conference dedicated to 16-th anniversary of the Constitutional Court	RM Chişinău	"Public information - aspects of media cooperation with law enforcement bodies in the context of constitutional law"

March 3	Sollfrank Klaus, Director of "Hanns Seidel"	Working visit	RM Chişinău	Necessary projects
March 9	Egidijus Kuris, former president of the Constitutional Court of Lithuania, teacher	Roundtable	RM Chişinău	"Courts and Constitutional reforms: the cases of Lithuania and Moldova"
April 11	Mr. D. Pulbere, CC President, Mrs. V. Sterbet, CC Judge	meeting with President of the German Foundation "Hanns Seidel"	RM Chişinău	Editing a "Commentary on the Constitution"
May 18 - 19	Mr. Al. Tanase, CC Judge	OSCE Meeting	Poland, Warsaw	"The role of political parties in the political process"
May 19	Mr. Al. Tanase, CC Judge	Meeting with the judge Andrzej Rzepliriski, President of the Constitutional Tribunal of Poland under the OSCE meeting	Poland, Warsaw	Opportunities for cooperation between the two institutions for mutual support
May 23	Mr. P. Railean, CC Judge	XV Congress of the Conference of European Constitutional Courts	Romania, Bucharest	"Constitutional Justice: functions and relations with other public authorities"
June 25 - 26	Mr. V. Puscas CC judge, Mr P. Railean, CC Judge	International conference dedicated to the fifteenth anniversary of the Constitutional Court of Georgia	Georgia, Batumi	"The past and the future of constitutional control in new democracies"
June 26	Assistant judges of the CC	Working visit	Germany and France	Strengthening of cooperation with the Max-Planck Institute for Foreign Public Law in Heidelberg, Federal Constitutional Court based in Karlsruhe European Court of Human Rights in Strasbourg.

June 30	Mrs. V. Sterbet, CC Judge	Joint Council meeting constitutional justice	Turkey, Ankara	Cooperation of Constitutional courts with the Venice Forum, European Conference of Constitutional Courts, ACCPUF, World Conference of Constitutional Justice, publishing of constitutional jurisprudence bulletins
July 1 - 2	Mr. Al. Tanase, CC Judge	International Congress	Germany, Regensburg	"European and Comparative Constitutional Law"
July 12	Mr. D. Pulbere, CC President, Mr. Al. Tanase, CC Judge	meeting with representatives of "DPK Consulting"	RM Chişinău	Collaborative initiative
September 5	Mrs. V. Sterbet, CC Judge	International Conference	Ukraine, Odessa	"Current problems of criminal law and criminal procedure"
September 7	Mr. D Pulbere, President CC	meeting with Mr. Heiner Bielefeldt, UN special rapporteur on freedom of religion or belief	RM Chişinău	Discussions in the field of human rights
September 14	Mr. D. Pulbere, President CC	International Conference	Ukraine, Kiev	"Protecting human rights through Constitutional bodies: methods and problems of direct access"
September 21	Mr. D. Pulbere, President CC	International Conference	RM Chişinău	"Convention on the Rights of Persons with Disabilities - reality and prospects for people with special needs"
September 30	Mr. Al. Tanase, CC President	International Conference dedicated to the 15th anniversary of the Constitutional Court of Latvia	Latvia, Riga	"The role of the Constitutional Court in protecting constitutional values"
October 5 -9	Mr. Puscas, CC Judge	The XVI International Conference	Yerevan	"The legal consequences of Constitutional Court decisions to strengthen national constitutionalism"

October 14	Mr. Al. Tanase, CC President	The launching ceremony of the International Institute for Human Rights and the International Conference	Romania, Bucharest	"European culture of human rights. Property rights "
October 27-30	Mr. Al. Tanase, CC President	The festive event dedicated to the 20th anniversary of the Constitutional Court of the Russian Federation	Russia, Moscow and St. Petersburg	"The doctrine and practice of constitutional control"
November 29 - 30	Mr. V. Puscas, CC Judge	Training Seminar	France, Strasbourg	Recent jurisprudence of constitutional courts in social security

During 2011, the representatives of the Constitutional Court had meetings with officials, representatives of diplomatic missions to Moldova, international organizations and other well-known personalities: HE Stefano De Leo, Italian Ambassador in the RM, HE Mrs. Ingrid Tersman, Swedish Ambassador in RM; Mr. Gunnar Wiegand, Head of Directorate for Russia, Eastern Partnership, Central Asia, Regional Cooperation and the OSCE, accompanied by Mr Dirk Lorenz, Political Officer of the EU Delegation in our country, Professor Egidijus Kuris, former president of the Constitutional Court of Lithuania, and Ms. Ausra Raulickyke, adviser of the European Union Public Policy Advisory Mission to Moldova, delegation of the German Foundation "Hanns Seidel", namely with: Mr. Hans Zehetmair, President of the Foundation, Mr. Christian Hegemer, director of the Institute for International Cooperation of the Foundation, Klaus Sollfrank, head of the Foundation in Bucharest, Mr. Sergei Zagornyi, chief representative in Kiev, and Mrs. Violeta Sandru, project assistant in Chisinau, Mr. Tiernan Mennen, representative of "DPK Consulting" funded under USAID Program, delegation of the UN Office of High Commissioner for Human Rights, headed by Ms. Navi Pillay, High Commissioner of the UN; co-rapporteurs of the Monitoring Committee on Obligations and Commitments by Member States of the Council of Europe, APCE; Delegation of the Congress of Local and Regional Governments in Europe, under their monitoring visit to Moldova; representatives of the Parliament of Youth of the Republic of Moldova.

Exercitarea jurisdicției constituționale în perioada 1995–2011

Nr d/o	ACTIONS	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	To-tal
1	Complaints lodged	36	28	64	71	139	90	72	51	40	27	32	30	27	26	30	48	36	811
2	Delivered judgments, including those related to the functional competence of the Court	10/0	20/0	40/8	42/6	72/5	45/ 10	50/ 24	51/ 36	30/ 18	30/ 17	25/ 11	23/ 13	34/ 13	24/15	6/8	19/13	26/10	521/ 197
3	Complaints settled on the merits	12	20	33	37	73	39	29	19	12	14	15	14	18	11	10	24	21	380
4	Judgments on interpretation of the Constitution, no. Of interpreted articles	1/1	6/6	4/6	6/6	7/10	5/13	1/1	0/0	0/0	1/1	-	-	-	-	1	1/1	4	33/ 45
5	Opinions on proposals of amendments to the Constitution	2	–	1	1	6	4	3	4	–	1	1	1	–	2	–	3	1	30
6	Opinions delivered accord. Art. 135 para. 1 let. E anf f)	–	–	–	–	–	1	1	–	–	–	1	–	–	–	4	2	–	9
7.	Decisions on the confirmation of republican referendums	–	–	–	–	1	–	–	–	–	–	–	–	–	–	–	1	–	2
8	Regulatory acts declared partially or fully unconstitutional	5	5	24	17	53	21	13	15	2	4	10	5	1	3	–	8	6	186

9	Regulatory acts, partially or fully recognized as-constitutional	2	11	13	23	18	17	9	9	11	9	3	20	25	11	6	4	15	191
10	Dissenting opinions	1	3	4	4	5	6	1	11	5	4	2	6	6	4	6	6	3	74
11	Addresses	–	–	1	–	1	–	1	3	6	2	2	1	1	1	–	7	6	26
12	Revised decisions	1	1	–	2	1	1	1	2	–	–	–		–	–	1	1	–	11
13	Complaints dismissed b decision of the Court or by Letter	7	2/4 =6	1/2 =3	13/2 =15	35/6 =41	18/ 19 =37	17/ 18 = 35	4/17 = 21	8/8 = 16	7/6 = 13	2/11 = 13	5/6 = 11	2/7 = 9	3/8= 11	12/ 1=13	9/6= 15	2/1=3	266
14	Suspended proceedings, including by decision of the Court	2	3/2 =5	10/2 =12	5/4 =9	15/4 =19	6/2 =8	13/- = 13	6/1 = 7	6/2 = 8	4/1 = 5	1/1 = 2	2	3	2	3	2	2/2=4	102
15	Letters of return (under art. 39 CCJ)																	3	
16	Editorial decisions																	2	
17	Decisions to the address of the judge (open letter to the MP….)																	1	

Exercise of Duties in 2011, according to provisions of art. 135 of the Constitution of RM												
Constitutionality review of laws, decisions of the Parliament, decrees of the President of RM (art. 35 para.1 let.a)				Constitutionality control of decisions and standing orders of the Government (art. 35 para. 1 let a)			Interpretation of constitution (art. 35 para. 1 let b)		Opinion on initiative to revise the constitution (art. 35 para. 1 let c)	Confirmation of results of elections (art. 35 para. 1 let e)	Settlement of objections on unconstitutionality of regulatory acts ((art. 35 para. 1 let g)	
Recognized as constitutional	Declared unconstitutional	Partly declared unconstitutional	Dismissed complaints	Suspended proce edings	Returned complaints	Admitted complaints	Rejected complaints	Opinion on initiative to revise the constitution	Validation of mandates MP	Recognized as constitutional	Pending complaints	Sesizări restituite

1. Complaint no. 25a/2010; complaint no. 30a/2010	1. Complaint no. 47a/2010;	1. complaint no. 26a/2010	1. complaint no. 14a/2011		1. complaint no. 4a/2011	1. complaint no.3b/2011	complaint no.41b/2011	complaint no.24c/2011	Complaint no. 5e/2011	Complaint no. 44g/2010		
2. Complaint no. 35a/2010	2. Complaint no. 18a/2011	2. Complaint no. 21a/2011	2. Complaint no. 22a/2011	1. Complaint no. 20a/2011		2. Complaint no. 9b/2011			Complaint no. 12e/2011	Complaint no. 16g/2011		
3. Complaint no. 42a/2010	3. Complaint no. 28a/2011	3. Complaint no. 34a/2010 Complaint no. 36a/2010 Complaint no. 19a/2010 Complaint no. 23a/2010	3. Complaint no. 25a/2011	2. Complaint no. 33a/2011		3. Complaint no. 17b/2011			Complaint no. 15e/2011			
4. Complaint no. 1a/2011			4. Complaint no. 29a/2011			4. Complaint no. 32b/2011			Complaint no. 27e/2011			
5. Complaint no. 2a/2011			Returned complaints:						Complaint no. 31e/2011			
6. Complaint no. 13a/2011			1. Complaint no. 8a/2011						Complaint no. 36e/2011		1. Complaint no. 48g/2011	1. Complaint no. 48g/2011
7. Complaint no. 10a/2011			2. Complaint no. 7a/2011						Complaint no. 38e/2011		Suspended:	Suspended:
8. Complaint no. 11a/2011			3. Complaint no. 30a/2011								Complaint no. 6g/2011	Complaint no. 6g/2011
9. Complaint no. 26a/2011												