



REPORT

ON CONSTITUTIONAL
JURISDICTION IN 2012

342.565.2(478)(047)

R 46



www.hss.de

Report on Constitutional Jurisdiction in 2012 is published by the Constitutional Court of the Republic of Moldova with the financial support of “Hanns Seidel” Foundation, Germany.

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CIP DESCRIPTION OF THE NATIONAL BOOK CHAMBER

Republic of Moldova. Constitutional Court. Republic of Moldova. Constitutional Court. Report on Constitutional Jurisdiction in 2012 / Constitutional Court of the Rep. of Moldova ; resp. for publ.: Rodica Secrieru ; main coord.: Lilia Rusu, Rita Sacagiu. – Chișinău: ARC, 2013 (Tipogr. “Europres”). – 112 p. Published with financial support of “Hanns Seidel” Foundation, Germany. – 500 ex.

ISBN 978-9975-51-490-3

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REPORT

ON CONSTITUTIONAL
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CHIȘINĂU 2013



Republic of Moldova
CONSTITUTIONAL COURT

JUDGMENT

on approval of the Report
on the Exercise of Constitutional
Jurisdiction in 2012

CHIȘINĂU
31 January 2013

IN THE NAME OF THE REPUBLIC OF MOLDOVA,
THE CONSTITUTIONAL COURT COMPOSED OF:

Mr. Alexandru TĂNASE, *President, Judge-Rapporteur*,
Mrs. Valeria ȘTERBETȚ,
Mr. Victor PUȘCAȘ,
Mr. Petru RAILEAN,
Mrs. Elena SAFALERU, *judges*,

with the participation of the Secretary General, Mrs. Rodica Secrieru,

examining in the plenary session the Report on the Exercise of Constitutional Jurisdiction in 2012,

based on the provisions of the Article 26 of the Law on Constitutional Court, Article 61, para. (1) and Article 62, letter (f) of the Constitutional Jurisdiction Code,

under the Article 10 of the Law on Constitutional Court, Article 5, letter (i) and Article 80 of the Constitutional Jurisdiction Code,

DECIDES:

1. To approve the Report on the Exercise of Constitutional Jurisdiction, according to the Annex.
2. The Report is delivered to the competent authorities, which are empowered to appoint judges of the Constitutional Court.
3. The Judgment shall be published in the *Official Journal of the Republic of Moldova*.

President

Alexandru TĂNASE

Chișinău,
31 January 2013, No. 2

Approved
by the Judgment of the Constitutional Court
no.2 of 31 January 2013

REPORT

ON CONSTITUTIONAL
JURISDICTION IN 2012



T I T L E

CONSTITUTIONAL SYSTEM OF
THE REPUBLIC OF MOLDOVA

I

TITLE I

CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA



A | CONSTANTLY EVOLVING SYSTEM

In a genuine democracy constitutional control is a fundamental guarantee of the Constitution supremacy. The Constitutional Court of the Republic of Moldova, as the sole authority of constitutional jurisdiction, solves constitutional issues it faces and which it shall address by making uniform its own practice that determines the settlement of constitutional conflicts reflecting at the same time a reality and necessity of the time.

The Constitutional Court jurisprudence in 2012 largely reflects the solution to the challenges faced by the legislative, executive and judicial powers.

In 2012 the Court's agenda included referrals about the judiciary system, deputy's term, method of election of the President, exercise of right to ownership, right to social security, etc.

That year the Court has reformed its activity system by implementing more elements of the European Court in the examination of referrals of violations of fundamental human and citizen's rights and freedoms.

To optimize the method of complaint to the Court by subjects of such right, new forms of complaints were developed accompanied by explanatory notes for people filling in them. At the same time, the Court also wishes to warn the large public that it does not consider complaints of citizens, because they do not have the right of complaint to the Court.

The Constitutional Court carries out an organizational, surveillance activity, focusing on alerting public authorities, the act of which is subject to control, elimination of norms that contravene the Constitution. In this context, the Constitutional Court stands for a supreme “*arbitrator*” in terms of “*exclusive examination of legal issues.*”

In the light of the above mentioned, the Court sent a number of addresses to the Parliament and the Government of the Republic of Moldova proposing to amend the regulatory framework that would provide clarity, predictability and functionality of regulatory acts in the democratic system of rule of law.

B | COURT PROCEDURE

1 OVERVIEW

The Constitutional Court exercises its powers under the provisions of Article 135 of the Constitution, Article 4 of the Law on the Constitutional Court and Article 4 of the Code of Constitutional Jurisdiction:

- a) exercises, upon complaint, the control of constitutionality of laws, regulations and judgments of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government and of international treaties, which the Republic of Moldova is party to;
- b) interprets the Constitution;
- c) makes remarks on initiatives to revise the Constitution;
- d) confirms the results of republican referenda;
- e) confirms the elections of the Parliament and the President of the Republic of Moldova, validates the terms of deputies and of the President of the Republic of Moldova;
- f) establishes the circumstances justifying the dissolution of the Parliament, dismissal of the President, presidential interim, inability of the President of the Republic of Moldova to exercise his/her powers for over 60 days;
- g) solves exceptions of unconstitutionality of legal documents, referred by the Supreme Court;
- h) decides on matters dealing with the constitutionality of a party.

In order to exercise the constitutional powers, the Court needs to be notified by subjects with the right of complaint that, according to Article 25 of the Law on the Constitutional Court are:

- a) the President of the Republic of Moldova;
- b) the Government;
- c) the Minister of Justice;
- d) the Supreme Court;
- f) the Prosecutor General;
- g) the ombudsman;
- h) a parliamentary faction;
- i) the ombudsman;
- j) the People's Assembly of Gagauzia (Gagauz-Yeri)

The term of complaint examination is 6 months from the date of receipt of materials. If the complaint meets the requirements of form and content set out in Article 39 of the Code of Constitutional Jurisdiction, the President of the Court shall appoint a judge-rapporteur and set the term for the examination of the complaint and submission of its opinion on its admissibility, which cannot be more than 60 days from the date of registration of complaint. If a large amount of inquiries is required to be made, this term may be extended by 30 days.

In the recent practice the Court focuses mainly on the complex and reasoned examination of the complaint admissibility, procedure that comes to facilitate the preparation of case materials and to liquidate cases of interruption of the process because the subject of the complaint is beyond the jurisdiction of the Court.

After preparing the case for review, at least 10 days before the sitting of the Court, the judge-rapporteur shall: inform the judges and participants to the process about the place, date and time of the sitting; issue to judges and parties the copy of the complaint; provide the parties to the process, at their request, the case materials. In cases of settlement of exceptions of unconstitutionality of legal documents referred by the Supreme Court of Justice resulting from concrete criminal or civil cases, the parties are entitled to be informed of all case materials. At the Judgment of the Constitutional Court, the case materials may be sent to other participants to the process, as well as to the President of

the Republic of Moldova, the Chairman of Parliament, the Prime Minister, the President of the Supreme Court of Justice, the Prosecutor General.

The proceeding is deliberative if being attended by at least two thirds of constitutional judges. The Constitutional Court judge cannot participate in the examination of the case and is to be challenged if he/she:

- a) acted as a decision maker in the adoption of the act notified, except for the development and adoption of the Constitution;
- b) made public his/her opinion about the constitutionality of the challenged act.

The plenary session of the Court is headed by the President of the Court. The instructions of the chairman of the session are mandatory for participants to the process and other people present in the room. The chairman of the session eliminates from the process everything unrelated to the examination of the case and exercise of the powers of the Constitutional Court. He/she may interrupt, after summoning, any participant in the process, exclude any question and explanation, which does not refer to the case, the process or the Court's competence; may deny the right to speak of the participant who breaches the order of debates, shows lack of discipline, breaches other rules of procedure of constitutional jurisdiction; may remove any person from the room who breaches the order and disregards his/her directives.

The case examination begins with information provided by the judge-rapporteur on the essence of the case, the basis on which the Court will examine it, the materials and preparation of the case for examination.

The constitutional judges deliberate in the room of the council. The deliberations are secret, so the judges are not allowed to disclose the content of the deliberations.

The Court proceedings are concluded with the adoption of the act whether opinion, judgment or decision.

2 ROLE OF THE SECRETARIAT

The complaints submitted by subjects with the right of complaint are made by the Service of Registry, Record and Archive to the President of the Court, who, by a resolution, decides to pass them for prior review to the Secretariat of the Court.

The General Secretary assigns the complaint to the Section of Legal Expertise and coordinates the entire prior examination of the complaint. In prior review of the complaint, the Section of Legal Expertise draws up an *analytical form*, which is an internal document. The analytical sheet consists of the following items: *subject of the complaint, essence of norms challenged, invoked constitutional provisions, arguments of the author of complaint, conclusions on the subject of complaint, relevant international references, jurisprudence of the Constitutional Court, substantive and procedural conclusions.*

The analytical sheet is submitted together with the complaint to the President of the Court. Receiving the complaint with the analytical sheet, the President of the Court shall appoint a judge-rapporteur examining the complaint.

The Secretariat assists the Court's judges throughout the whole process of management and processing of cases.



TITLE

COMPOSITION OF THE
CONSTITUTIONAL COURT

II

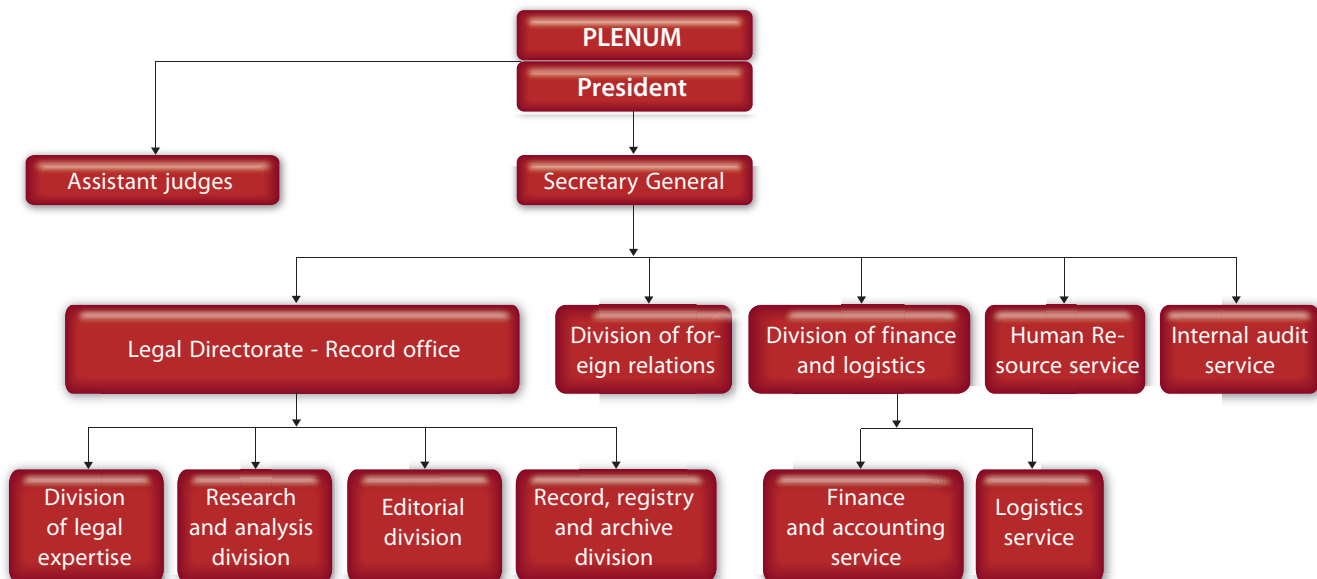
TITLE II

COMPOSITION OF THE CONSTITUTIONAL COURT



A | ORGANIZATIONAL CHART

In order to improve the activity of the Constitutional Court, in 2012 its organizational chart was modified. Thus, by the Plenum decision of 05 June 2012 a new organizational and functional chart of the Court was approved as follows:



B | CONSTITUTIONAL JUDGES

According to Article 136 of the Constitution, the Constitutional Court has six judges appointed for a term of six years.

The constitutional judges may hold the same office during two terms. The system of appointment of judges involves identification of the authority competent to appoint constitutional judges and its decision making act. These actions are taken to ensure the highest possible qualifications of proposed candidates for judicial office and their compliance with the criteria of impartiality and independence. The competent authorities to appoint constitutional judges are the Parliament, the Government and the Superior Council of Magistracy, each of them designates two judges. Should an office be vacant following the expiration or revocation of the term, dismissal or death of the judge, the President of the Court notifies the competent authority within 3 days of that date, asking it to appoint a new judge. The competent authority appoints the judge within 15 days of the request from the President of the Constitutional Court.

To become a judge of the Constitutional Court, the candidate must have higher legal education, high professional competence and a professional experience of at least 15 years of legal activity, legal education or scientific activity, must be citizen of the Republic of Moldova residing in the country, the age limit for appointment as judge of the Constitutional Court is 70 years old. The appointment can be made only with the prior written consent of the candidate. The judge takes his/her office since making the oath.

The office of judge of the Constitutional Court is incompatible with any other payable public or private position, except for teaching and scientific activity.

The constitutional judge is granted immunity. He/she may not be detained, arrested, searched, except for cases of flagrant offense, prosecuted for contravention or criminally prosecuted without prior approval of the Constitutional Court. The judge of Constitutional Court, whose identity was not known at the time of detention, is set free immediately after identification. The decision maker who detained the judge of the Constitutional Court caught in the act shall immediately communicate the fact to the Constitutional Court.

Besides warranties granted to the judge, he/she must fulfil his/her duties impartially and in respect of the Constitution; keep the secrecy of deliberations and votes and must not take a public stand or consult on matters related to the competence of the Constitutional Court; the adoption of acts of the Constitutional Court to express an affirmative or negative vote; to communicate to the President of the Constitutional Court the activity incompatible with the duties he/she perform; not to allow the use his/her office for the purpose of propaganda of any kind; refrain from any action contrary to the status of judge; submit under law a statement of income and property.

The current membership of the Plenum of the Constitutional Court is as follows:

1. President of the Constitutional Court – Alexandru TANASE
2. Judge – Valeria STERBET
3. Judge – Dumitru PULBERE
4. Judge – Victor PUSCAS
5. Judge – Petru RAILEAN
6. Judge – Elena SAFALERU

C | ASSISTANT JUDGES

The President and the judges of the Constitutional Court are assisted in their work by 6 assistant judges.

To run for the assistant judge position, the persons interested shall prove a legal education and a professional experience of at least 10 years of legal activity or higher legal education; be citizen of the Republic of Moldova; be resident of the country.

The assistant judge is assimilated with the judge of the Court of Appeal.

The functional duties of the assistant judge are as follows:

- assists judges in exercising jurisdiction on complaints made by subjects established under law under the Code of Constitutional Jurisdiction;
- proposes to the judge-rapporteur, the plenum and the President of the Court measures necessary for the proper exercise of jurisdiction;
- prepares opinions at the request of the judge-rapporteur, the plenum and the President of the Court;

- studies the possible written objections of the other party on the complaint;
- takes appropriate actions necessary to settle the case according to the instructions of the judge-rapporteur, the plenum and the President of the Court;
- fulfils any other duties ordered by the President or by the Plenum of the Constitutional Court.

D | SECRETARIAT

General Secretary – the head of the Secretariat of the Court prepares, organizes and coordinates the works within the competence of the Secretariat's structures; ensures control over the compliance with the deadline for the examination of complaints, preparation of the draft plan of complaint examination, submission of the plan approved to judges, assistant judges, subunits of the Secretariat and the control over its fulfilment, distribution of the agenda of the Court sittings among judges and subunits of the Secretariat; oversees the communication of acts of the Constitutional Court to public authorities under law; signs the solutions adopted by the Plenum of the Constitutional Court in administrative matters; coordinates the settlement of requests for access to public information under the law; makes recommendations and consults the President on issues related to the exercise of the constitutional jurisdiction and general management of the Court; organizes the working agenda, meetings and sittings of the President of the Court; performs any other duties ordered by the President or by the Plenum of the Constitutional Court.

1. *Legal Directorate-Registry* - a structural subdivision of the Secretariat of the Court ensuring the execution and preparation of the acts necessary for the preparation of the case for review; coordinates and finalizes the acts to be adopted by the Plenum of the Court or to be approved by the President of the Court; monitors the compliance with the deadlines for the preparation of files and examination of complaints. The Directorate consists of:
 - 1.1. Section of Legal Expertise - develops draft judgements, opinions and decisions and maintains the correspondence between the Court, authors of complaints and competent authorities; performs the summons or communication proce-

dures of files; checks from time to time the update of the file of jurisprudence; provides the necessary documentation to the judge-rapporteur on the solutions of national and foreign jurisprudence and doctrine and prepares the draft report; draws up the addresses necessary to obtain the opinions; develops the summaries of judgments, decisions and opinions on judicial records; performs other duties.

- 1.2.** Section of Research and Analysis - analyzes the practice of other constitutional courts, regularly informs about the solutions delivered by the European Court of Human Rights and the Venice Commission recommendations on a certain part of research; provides the necessary documentation to the judge-rapporteur on solutions of national and foreign jurisprudence and doctrine; verifies the international jurisprudence sheets prepared at the request of judges and assistant assigned in the file; generalizes and analyzes statistical information concerning the jurisdictional activity of the Constitutional Court and makes recommendations; prepares the annual report of the Constitutional Court on the exercise of jurisdiction and other publications of the Court; performs other legal duties related to the research and documentation at the request of the judges and the President of the Constitutional Court.
- 1.3.** Editorial Section - prepares the acts adopted by the Court, verifies the accuracy of the legal content, provides a precise and appropriate language of the act adopted, use of accurate terms, ensures complete consistency between the translation and the original text of the document adopted. The Section finalizes linguistically the Court's documents; coordinates and analyzes texts, at the request of the Constitutional Court's judges, assistants or the General Secretary; provides reporting in short land of public sittings of the Court, typing, formation and storage of regulatory acts, their archiving and storage electronically.
- 1.4.** Service of Registry, Records and Archive – submits to the President the complaints received from the Court for the appointment of the judge-rapporteur and assistant and establishment of the period of review, as appropriate; considers requests, letters and petitions of citizens, according to the resolution of

the President of the Court; coordinates the settlement of requests for access to public information under law; ensures the organization and conduct of proceedings, taking appropriate measures for the proper registration and creation of files for the preparation and transmission of subpoenas; receives and registers letters, petitions and official addresses and distributes them according the resolution of the President of the Constitutional Court; prepares statistical information on the jurisdictional activity of the Court; ensures archiving, issuance and integrity of the materials submitted to the archive.

2. *Section of External Relationships* - a subdivision of the Secretariat of the Court, preparing materials necessary for the Constitutional Court delegations participating in activities organized at home or abroad, ensures sending of correspondence on external relations; ensures the translation of the jurisdictional acts of the Court; ensures the translation in Romanian of decisions of the European Court of Human Rights, the Court of Justice of the European Union, other constitutional courts, recommendations of the Venice Commission, reports from international organizations, as well as any materials of interest for the work of the Constitutional Court; organizes protocol actions of the Court; cooperates with the institutions empowered to organize ceremonial actions in events involving constitutional judges; ensures reception and accompanying of foreign delegations in the country; promotes the Court's interests in international cooperation with other international bodies, participates in the organization and conduction of international conferences, receipt of foreign official delegations, coordinates the development and execution of international cooperation agreements, plans, provides and coordinates visits in the country and abroad of delegations.
3. *Section of Finance and Logistics* - a subdivision of the Secretariat of the Court, which manages the financial and economic activities of the Court; provides the substantiation and development of the draft budget of the Constitutional Court; performs the regular financial control; ensures the use of financial resources within the approved budget; ensures the administration of the Court's property; makes ordered payments, fulfils all obligations assumed by the Court in relation to third parties; draws up payment instruments and submits them within the legal deadlines for

payment; prepares balance sheet, annual and monthly reports on major financial and economic indicators according to the legal provisions in force; keeps rigorous records of accounting documents on budget execution, classifies, endorses and keeps under law all proofing documents on payments performed; cooperates with the delegated financial controller and internal auditor for timely settlement of financial transactions with increased difficulty. The section includes:

- 3.1.** *Finance and Accounting Service* – prepares and draws up annual budget planning forecasts; keeps strict records of income and expenses; continuously improves budget planning; ensures the movement of funds; makes within the term and the amount specified under law payments to the state budget and the state social insurance budget; prepares annual and quarter public procurement plans; prepares documentation for the initiation of procurement; ensures keeping records, monitoring and coordination of economic operations of the Court.
- 3.2.** *Logistics Service* - prepares, changes and updates the annual public procurement program, based on reasonable requests of using compartments; ensures the implementation of equipotent program in informational field for the Court's services; provides logistical support necessary for the realization of external relationships, relationships with press and protocol activities; provides technical and operational records of goods purchased for the Court; ensures the realization of all administrative benefits necessary for the proper functioning of the Court divisions; ensures regular maintenance and current repairs of all equipment categories; ensures the maintenance of order during the sittings of the Court; coordinates the supply of the Court and property administration of property.
- 4.** *Section of Human Resources* - a subdivision of the Secretariat of the Court, its work regards the positions and staff of the Constitutional Court; ensures the organization and conduct of staffing contests; prepares formalities on the employment, change, suspension and termination of employment relationships, where appropriate; manages employee professional records of the Court; receives, registers and transmits, under law, income and interest statements filed by judges of the Court and the Court staff, and issues proofs of filing.

5. *Internal Audit Service* - a subdivision of the Secretariat of the Court, whose competence is to develop methodological rules of internal audit activities of the Constitutional Court; development of the draft annual internal audit plan; carries out public internal audit activities to assess transparency and compliance of financial management and control systems of the Constitutional Court with the legal, regularity, economy, efficiency and effectiveness norms; prepares the annual report of the public internal audit activity, which includes key findings, conclusions and recommendations resulting from the audit and any irregularities or damages found; fulfils other duties prescribed under law and performs other work ordered by the President of the Constitutional Court.



TITLE
JURISDICTIONAL
ACTIVITY

III

TITLE III

JURISDICTIONAL ACTIVITY



A | COURT'S ASSESSMENT

1 COLLABORATION OF STATE POWERS

1.1. State of the Republic of Moldova. Sovereignty and State Power

The Court held that, under the rule of law, the political power belongs to people. If the first two state defining elements - territory and population - have an objective and material nature, the third essential element - national sovereignty - has a subjective and volitional feature and means that the right of command belongs to people (*Judgment of the Constitutional Court No. 8 of 19 June 2012*¹, § 17).

As stated in Article 2 para. (1) of the Constitution, national sovereignty belongs to people of the Republic of Moldova that exercise it directly and through their representative bodies in the forms established by the Constitution (*Judgment of the Constitutional Court No. 8 of 19 June 2012*, § 18).

In the event of referendum we face a form of direct government by people, in case of the exercise of national sovereignty through representative bodies we can speak about an indirect or representative government of people, which means that people transmit the right of command to some delegated powers, which are legislative, executive and judicial powers (*Judgment of the Constitutional Court No. 8 of 19 June 2012*, § 19).

¹ Judgment of the Constitutional Court No.8 of 19 June 2012 on the interpretation of Articles 68 para. (1), (2) and 69 para. (2) of the Constitution, referral No.8b/2012 (on the exercise of the deputy's term and the concept of representative term).

The Court held that the rule of law implies that the state and social system is based on fundamental norms and principles of law. An essential feature of the rule of law is rigid subordination of all, including state institutions, predictable, pre-established and clear norms of law (*Judgment of the Constitutional Court No. 7 of 24 May 2012², § 31*).

The Court noted that the rule of law is based on the principle of legality arising from the provisions of Article 1 para. (3) of the Constitution, which stipulates that the Republic of Moldova is a democratic state and rule of law and the basis of the organization and functioning of the state institutional mechanism is the principle of state power separation, as expressly provided in Article 6 of the Supreme Law (*Judgment of the Constitutional Court No. 3 of 09 February 2012³, § 31*).

In this context the Court stated that the observance of the principle of legality ensures at the same time the compliance with the other principles as legality is the condition of existence and the means of implementation of all constitutional principles. Or, the practical realization of the principle of state power separation is, in turn, a prerequisite for building and functioning of the rule of law (*Judgment of the Constitutional Court No. 3 of 09 February 2012, § 30*).

1.2. Separation and Cooperation of Powers

The Court held that the functioning of any democratic society involves continuously as an essential prerequisite in achieving the rule of law the need for an institutionalized control system able to “censor” the work of public authorities at all levels, so that the power held does not become a privilege at the discretion of those that exercise it (*Judgment of the Constitutional Court No. 18 of 11 December 2012⁴, § 43*).

² Judgment of the Constitutional Court No.7 of 24 May 2012 on the control of constitutionality of some provisions of the Law No.1234-XIV of 22 September 2000 on the election procedure of the President of the Republic of Moldova, referral No.1a/2012 (on the election of the President of the Republic of Moldova).

³ Judgment of the Constitutional Court No.3 of 09 February 2012 on the control of constitutionality of some provisions of the Law No.163 of 22 July 2011 for the amendment and supplement of certain legal acts, referral No.30a/2011 (in specialized courts).

⁴ Judgment of the Constitutional Court No. 18 of 11 December 2012 on the control of constitutionality of certain provisions of the Administrative Litigation Law No. 793-XIV of 10 February 2000, referral No.20a/2012 (on the right of the judge to suspend acts of public authorities in administrative litigation proceedings).

The content and meaning of the power separation theory presumes a balance of powers and their relative independence, a brake system, a system of balances and counterbalances that would affect mutually authorities, interdicting them to exceed the limits set by the Constitution in the exercise of duties. In this respect, the judiciary power, in the system of state bodies, has a distinct place and has a part of power, which can neither be limited, nor replaced (*Judgment of the Constitutional Court No. 3 of 09 February 2012, § 32*).

Thus, the principle of state power separation in the legislature, executive and judicial powers implicitly establishes the principle of their independence (*Judgment of the Constitutional Court No. 3 of 09 February 2012, § 33*).

1.3. Deputy's Term in the Parliament

1.3.1. Content of the Term

The Court held that the parliamentary term defines a public dignitary obtained by means of election of deputy by electorate, to represent it in the realization of the Parliament's powers (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 21*).

The Court held that in the exercise of their term, the deputies perform several multiple functions: *representation, enactment and monitoring and control* (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 23*).

At the same time, limiting the role of a deputy to work just to attend the voting sitting is too reductive. The work of the MP in enactment is difficult to quantify. It is not enough to be able to measure the absence of MPs from voting, the number of questions that they formulate or proposed draft laws (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 26*).

Given that they are representatives of people appointed by means of elections that is of voters as a whole, within the *representative function* deputies must interpret the public opinion and communicate the views of voters (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 27*).

In the Court's view, the MP's term expresses the relationship of the MP with the whole population, whom he/she serves, not only with voters who voted him/her, although they benefit from the presence of the MP by virtue of his/her obligation to keep

in touch with voters. Thus, the phrase “serves people” in Article 68 para. (1) of the Constitution means that since the election and before the end of the term, each deputy becomes representative of all people and has the mission to serve the common interest of people, and not just of the party, where his/her comes from. In exercising the term, the MP obeys only the Constitution, laws and must have attitudes that conscientiously serve the public good (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 34*).

In defining these interests, the MP’s option is free, though he/she is part of a party he/she represents in the Parliament. In accordance with Article 2 para. (2) of the Constitution, no private individual, a part of people, social group, political party or another public organization may exercise state power on his/her own behalf. In this sense, the fundamental principles of the rule of law must be observed scrupulously to hinder the temptation that one or more political parties might have, becoming majority in the Parliament, to transform its “elected deputies” in “activists of the party” or central or local government structures in central or local “bodies of party” (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 35*).

In conclusion, the Court held that the exercise of the deputy’s term covers the entire deputy’s political activity, both the parliamentary and extra-parliamentary one, as well the adoption of laws in the Parliament’s plenary sittings, participation in the sittings of specialized commissions of the Parliament, other activities directly related to the lawmaking process or government monitoring, participation within parliamentary delegations and meetings with voters (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 36*).

1.3.2. Irrevocability of Term

Thus, since they are not representatives of a part of the population, the MPs cannot be defenders of particular interests, they are absolutely free to exercise their term and are not required to meet the commitments they could undertake before the election or the eventual instructions of voters made throughout the term. The elected deputies do not have the legal obligation to support their party or group decisions in the Parliament. Moreover, if a deputy, by his/her conduct, causes damage to the party or the group to which he/she belongs, it may exclude him/her, but this exclusion does not imply the loss of the parlia-

mentary term. This obviously does not prevent the deputy, once elected, to fulfil his/her commitments and to comply with the voting discipline of the parliamentary group, which he/she belongs to (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 43*).

Consequently, the Court held that by the logic of the free representation, the parliamentary term is irrevocable: voters cannot suspend it prematurely and blank resignations are prohibited. Voters cannot, therefore, express their dissatisfaction with the way an elected deputy fulfilled his/her mission by refusing to grant their votes when he/she requests re-election (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 44*).

The fact that the parliamentary term is representative does not mean that, once the election took place, any link between the MP and voters disappears. The MP is continuously subject to influence of the public opinion, which, in turn, he/she influences. The independence of the term does not presume that the MPs can lose their interest in the overall aspirations of people, because, *per a contrario*, the principle of representation could be a simple fiction. Thus, the Parliament functions under elective control, since voters at the next elections may change their options (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 45*).

The Court noted that the civil term invoked by the authors of the complaint is of private law, with a content resulting from express or presumed agreement of will with imperative feature, correlated only with the will of the term holder. By contrast, the parliamentary term is of public law, which is the result of parliamentary elections (elective basis) with an established content and representative feature of all votes (people) (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 46*).

These features give the deputy a special protection against pressures of voters and of the party with the support of which he/she came in the Parliament. Thus, once elected, the deputy becomes representative of the whole people, and his/her term is determined by the interests of people he/she represents and elected him/her as well, the deputy being free to adopt attitudes, which, according to his/her conscientiously, serve the public good, the irrevocability of the term being a means protecting the freedom and independence of the deputy (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 47*).

In the light of the above, according to the Court, the nullity of the imperative term and the representativeness of the deputy's term, enshrined in Article 68 of the Constitu-

tion, imply the impossibility of revocation by voters (or party) of the term entrusted to the deputy to represent them in the Parliament, even if he/she dodges, under various pretexts, the exercise of the legislative power (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 49*).

1.3.3. Parliamentary Protest

The Court held that, unlike ungrounded absences, *the parliamentary protest is, essentially, a politically motivated absence*, being a method of political fight, an action of a deputy or group of deputies, a response to a particular action of the majority, through which a manifestation is expressed without acts of violence, opposition against some acts or decisions that are considered illegal or contrary to the common interest, in order to obtain concessions (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 61*).

Thus, the Court held that the phrase “revocation of term” is not applicable to the parliamentary protests in the deputy’s political activity that is not directly linked to the legislative creation, unless physical or mental violence is applied (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 62*).

In this context and taking into account the principles of democracy and political pluralism enshrined in Article 1 para. (3) of the Constitution, the Court considered that it would be contrary to the spirit of the Constitution if there would be a possibility of revocation of deputy’s term for the use of some forms of parliamentary protest, an instrument of political fight related to the essence of parliamentarism, since through it the diversity of opinions is expressed, even if these rights can be used in an obstructionist manner to prevent or delay a decision (*Judgment of the Constitutional Court No. 8 19 June 2012, § 64*).

The Court noted that the parliamentary protest tool is used, in particular, by minority parliamentary groups. In the event of sanctions of term revocation, there is a risk that the political freedom of opposition could be obstructed by the parliamentary majority, contrary to democracy standards and political pluralism that require protection of opposition against pressures of majority (see PACE Recommendation 1601 (2008) “Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament” and the Report of the Venice Commission CDL-AD (2010) 025 on the role

of opposition in a democratic parliament) (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 65*).

In any case, the *collective* deprive of a group of deputies of deputy's term is unacceptable, contrary to the significance of the representative term, so that an *individual* decision is to be made for each deputy individually (*Judgment of the Constitutional Court No. 8 of 19 June 2012, § 66*).

The Court held that under the Article 16 para. (4) of the Law on the status of deputy in the Parliament, to be deemed substantiated, the absence of a deputy from a Parliament's sitting as protest against a draft included in the agenda is announced only by the chairman of fraction or by independent deputies (*Judgment of the Constitutional Court No. 10 of 12 July 2012⁵, § 62*).

Therefore, for the purpose of this norm, a deputy of a parliamentary faction, wishing to express his/her protest, to give his/her protest a legal form, must get the agreement of the chairman of the faction, otherwise his/her absence may be considered unreasonable (*Judgment of the Constitutional Court No. 10 of 12 July 2012, § 63*).

The Court held that this provision is contrary to the principles of the representative term and nullity of the imperative term, enshrined in Article 68 of the Constitution (*Judgment of the Constitutional Court No. 10 of 12 July 2012, § 64*).

For the purposes of the constitutional norm of Article 68, although they are elected on parties' lists according to the proportional system, each deputy has an individual term that requires his/her to serve all people and for whom he/she bears individual responsibility (*Judgment Constitutional Court No. 10 of 12 July 2012, § 65*).

Therefore, the obligation of the deputy to obtain the consent of the chairman of the fraction to express his/her parliamentary protest is contrary to the principles of the representative term and nullity of imperative term, enshrined in Article 68 of the Constitution and conclusions stated by the Constitutional Court in the Judgment No. 8 of 19 June 2012 on interpretation of Articles 68 para. (1), (2) and 69 para. (2) of the Constitution (*Judgment of the Constitutional Court No. 10 of 12 July 2012, § 67*).

⁵ Judgment of the Constitutional Court No. 10 of 12 July 2012 on the control of constitutionality of certain provisions on the status of deputy of Parliament, referral No.7a/2012 (on certain provisions related to the status of deputy of Parliament).

1.4. Examination of Legislative Initiatives

- Nullity of draft legal acts, which were not examined during a legislature

The Parliament has a dual role and namely to be the supreme representative body of people and be the sole legislative authority of the country (*Judgment of the Constitutional Court No. 15 of 04 December 2012*⁶, § 40).

The right to legislative initiative marks the beginning of the legislative process, this right, under Article 73 of the Constitution, belongs to the deputies of the Parliament, the President of the Republic of Moldova, the Government, the People's Assembly of the Autonomous Territorial Unit of Gagauzia (*Judgment of the Constitutional Court No. 15 of 04 December 2012*, § 41).

The Court held that the right to legislative initiative consists in the possibility of subjects indicated in Article 73 of the Constitution to submit proposals of *ferenda law*, coupled with the Parliament's obligation to examine, discuss and rule on them by adoption or rejection (*Judgment of the Court Constitutional no.15 of 04 December 2012*, § 43).

The Court also found that any legislative initiative to be materialized in a final adopted act, is to undergo a procedural mechanism, which determines the entire legislative process, where the parliamentary prerogatives come into force. Thus, the parliamentary legislative procedure includes all rules for the preparation of examination, examination and vote of a draft law in the Parliament (*Judgment of the Constitutional Court No. 15 of 04 December 2012*, § 48).

At the same time, the Court held that, although the norms of Articles 64, 66 and 72 para. (3) let. c) of the Supreme Law authorizes the Parliament to govern the organization and functioning, including to determine the procedural steps of enactment, it is to adopt such regulations within the limit allowed by constitutional norms and in accordance with them (*Judgment of the Constitutional Court No. 15 of 04 December 2012*, § 51).

The Court held that, according to the Regulation of the Parliament, the legislative procedure is complex, comprising both endorsing the draft legislative act by standing commissions, the Legal Directorate of the Parliament Secretariat and, as appropriate, the Govern-

⁶ Judgment of the Constitutional Court No. 15 of 04 December 2012 on the control of constitutionality of certain provisions on the exercise of the right to legislative initiative, referral No.18a/2012 (on the nullity of drafts legal acts unexamined throughout a legislature).

ment and interested institutions, as well as the stage of its examination in the Parliament's plenary sitting (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 57*).

Given the prerogative of the Parliament to be *the sole legislative authority, examination of a draft law means its debate in plenary sittings*, during which deputies have the opportunity to rule on the concept of that draft (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 58*).

For these reasons and considering the stages of the legislative procedure, the Court held that Article 47 para. (12) of the Regulation of the Parliament, *declaring null the draft legal acts, which were not examined during a legislature, is consistent with the Constitution* (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 61*).

On the other hand, according to Article 63 para. (4) of the Constitution, the draft laws or the legislative proposals entered on the agenda of the *previous* Parliament *shall continue the procedure in the new Parliament* (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 62*).

This constitutional norm expressly requires a new legislative body to submit for debates the draft legislative acts *that were included in the agenda* (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 63*).

The Court held that the constitutional provision contained in Article 63 para. (4) is related to the draft legislative acts included in the agenda of the Parliament's plenum were approved in the first and, if necessary, the second reading, but were not adopted in the final reading. This is the case of constitutional and organic laws for the adoption of which the law provides for two and, if necessary, three readings (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 64*).

Also, given that the right to parliamentary initiative is one of the way to use the role of representatives of the nation, the norm stated in the Supreme Law provides the transition between legislatures and the undertaking of drafts that are on an advanced stage of examination in the legislative process (*Judgment Constitutional Court No. 15 of 04 December 2012, § 65*).

By obliging the new Parliament to examine previous drafts that reached the stage of debates in the previous Parliament's plenum, the constitutional law made a reconciliation between the legislative process efficiency and use of efforts made by the parliamen-

tary commissions and the Parliament's plenum in the previous phases (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 66*).

Thus, to the extent that the previous Parliament passed through all necessary phases of previous examination for a draft law or a legislative proposal to be included in the agenda, they were included in the agenda, but for various reasons were not examined in the Parliament's plenary sitting, this is the obligations of the new Parliament (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 67*).

In this context, the Court held that the nullity of drafts that were not *adopted*, which also include *the drafts included in the agenda*, approved in the first reading and, where appropriate, in the second reading, but that were not adopted in final reading, *exceeds the provision of Article 63 para. (4) of the Constitution*. However, in such cases, the constituent legislator expressly established that these drafts continue their legislative procedure (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 68*).

In the light of the above, the nullity of drafts that *were not adopted*, although they were *included in the agenda* of the Parliament's plenum, is *contrary* to Article 63 para. (4) of the Constitution, the challenged norm would be *applied only in respect of drafts laws that were not examined, not being included in the agenda of the Parliament's plenum* (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 69*).

At the same time, the Court held that the right to legislative initiative is a practical relevance only if the proposed draft law is introduced in the Parliament's agenda for public debates and voting publicly in plenary sittings (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 80*).

In this context, the Court held to reiterate the role of opposition for the functioning of democracy outlined in the Judgment No. 8 of 19 June 2012 on the interpretation of Articles 68 para. (1), (2) and 69 para. (2) of the Constitution (*Judgment of Constitutional Court 15 of 04 December 2012, § 81*).

In this respect, the Court considered necessary to establish by the Parliament some mechanisms that would ensure the examination of draft legal acts submitted by the parliamentary opposition, and the organization of some sittings dedicated to their discussions similarly to the practices of other states in this field, which is a reason why it decided to mention these issues to the address formulated and submitted to the Parliament (*Judgment of the Constitutional Court No. 15 of 04 December 2012, § 85*).

1.5. Dissolution of the Parliament

- Term

The Court held that under Article 10. (3) of the Law No.1234, the President of the country is not just entitled, but also must dissolve the Parliament in a reasonable term, after one year from the last dissolution. The phrase “reasonable term” in this context is used in order not to impose disproportionate limits to public authority for carrying out some procedures that *a priori*, in some situations, are impossible (*Judgment of the Constitutional Court No. 7 of 24 May 2012*, § 68).

The Court noted that the “reasonable term” means a period of time necessary to complete a procedure (action). The constituent legislator chose either to precise the term for the exercise of the constitutional procedure (e.g., Article 98 of the Constitution) or to leave this right up to the legislator (Article 86 of the Constitution). Given the diversity of aspects of social life and many circumstances, the Constitutional Court considered inappropriate to make clear the term in all cases related to the exercise of the constitutional procedures. The decision-making body must have a certain margin of appreciation and flexibility in determining the term of the constitutional procedures. Therefore, in situations where several solutions are possible, the Constitutional Court recognized that the provisions, which give the public authorities the right to use in regulatory actions the phrase “reasonable term” to perform some actions are placed in the constitutional field (*Judgment of the Constitutional Court No. 7 of 24 May 2012*, § 69).

In this context, the Constitutional Court held that an impact on determining the reasonable term may have exceptional situations as well, such as the danger of war, disasters, natural disasters nationwide, etc., which make such procedures impossible (*Judgment of the Constitutional Court No. 7 of 24 May 2012*, § 70).

The Court emphasized that when there are discrepancies relative to the reasonable term of conduct of proceedings (action), the President of the Republic of Moldova (or other public authority covered by the regulatory act) is required to explain the reasons for the extension of that term. The Constitutional Court, by virtue of its duty of guarantor of the power separation principle and the responsibility of the state to the citizen, will decide in each case whether the central authorities observed the reasonable term of constitutional procedures (*Judgment of the Constitutional Court No. 7 of 24 May 2012*, § 71).

The Court held that the reasonable term for the dissolution of the Parliament shall be determined by the acting President. For purposes of para. (5) Article 78 combined with the para. (3) Article 85 of the Constitution, the procedure of dissolution of the Parliament, preceded by another dissolution can be made by acting President provided that: 1) repeated elections have been conducted and the President of the state was not elected, and 2) one year elapsed after the last dissolution (*Judgment of the Constitutional Court No. 7 of 24 May 2012, § 72*).

Thus, for the purposes of para. (5) Article 8 combined with para. (3) Article 85 of the Constitution, the procedure of dissolution of the Parliament, in case of occurrence of circumstances provided for by the Constitution, may be *initiated* by the acting President and before one year passes after the last dissolution, since this procedure needs time, it requires the approval of the Constitutional Court, etc. The main condition, according to the constitutional provisions, is that the dissolution of the Parliament may occur only one year after the last dissolution (*Judgment of the Constitutional Court No. 7 of 24 May 2012, § 73*).

1.6. Election of the President of the Republic of Moldova

1.6.1. Secret of Ballot

In accordance with Article 78 para. (1) of the Constitution, the President of the Republic is elected by the Parliament by *secret ballot* and Article 8 para. (1) of the Law on the election of the President of the Republic of Moldova stipulates that *voting* for candidates for the President of the Republic of Moldova is carried out *in secret* (*Judgment of the Constitutional Court No. 1 of 12 January 2012*⁷, § 42).

The Court held that secret ballot is not only a fundamental right, but also an obligation. Therefore, the waiver of the right to secret ballot does not exempt the deputies from the obligation to ensure the secrecy of the ballot, or, it cannot be waived. In this context, the election officials are required to take measures to avoid any action, which violates the secrecy of the ballot (*Judgment of the Constitutional Court No. 1 of 12 January 2012, § 51*).

⁷ Judgment of the Constitutional Court No. 1 of 12 January 2012 on the control of constitutionality of the Parliament Decision No.266 of 23 December 2011 on the results of ordinary elections of the President of the Republic of Moldova, referral No.37a/2012 (on the results of ordinary elections of the President of the Republic of Moldova).

The secret ballot is an election method ensuring the confidentiality of voter's option, aiming for him/her to not be intimidated or influenced (*Judgment of the Constitutional Court No. 1 of 12 January 2012, § 37*).

Thus, the Court noted that the constitutional text does not imply the possibility of waiving the secrecy of vote in the event of presidential election. A proof of this is that if in other cases the Constitution uses the phrase "with [...] ballot", without specifying whether it should be open or secret (see Articles 74, 81, 82, 89, 98, 106, 111, 141, 143 of the Constitution), in this case the Constitution uses the indication "is elected" with the precision "by secret ballot" without providing for exceptions or, at least, the possibility for the legislature to regulate conditions for exemption. The wording of Article 78 clearly indicates the will of the constituting legislature to apply this constitutional guarantee in the event of (ordinary, repeated) elections of the President of the Republic of Moldova. This protection extends to the receipt of the ballot until placing it in the sealed ballot box, so that the option expressed could not be identified (*Judgment of the Constitutional Court No. 1 of 12 January 2012, § 46*).

In the circumstances where the secrecy of ballot is expressly stated in the Constitution, the Court considers that it is a *sine qua non* for the development and validation of the presidential elections (*Judgment of the Constitutional Court No. 1 of 12 January 2012, § 47*).

The Court notes that these guarantees will be provided during all elections by secret ballot regardless of the type of ballot (*Judgment of the Constitutional Court No. 1 of 12 January 2012, § 49*).

In this context, given the constitutional norms and its previous practice, the Court reiterated the impossibility of derogation from the secrecy of ballot for the election of the President, because it derives from an imperative constitutional norm (*Judgment of the Constitutional Court No. 1 of 12 January 2012, § 44*).

The Court also held that the secret of ballot is not only a fundamental right, but also an obligation. Therefore, the waiver of the right to secret ballot does not exempt deputies from the obligation to ensure the secrecy of ballot, or, it cannot be waived. In this context, the election officials are required to take measures to avoid any action, which violates the secrecy of ballot (*Judgment of the Constitutional Court No. 1 of 12 January 2012, § 51*).

1.6.2. Term

The Court held that the 30 day term established under law for fixing a new date of ordinary elections of the Presidency of the Republic of Moldova is part of the general term of two months provided for in para. (4) Article 90 of the Constitution for the election of the President (*Judgment of the Constitutional Court No. 7 of 24 May 2012, § 49*).

The conclusions drawn allowed the Constitutional Court to find that postponing the term for the elections of the President within 30 days does not contradict the obligation of MPs to elect the President, resulting from Article 78 of the Constitution combined with Article 15 of the Constitution. Also, the legal rule being adopted within the term stipulated by Article 90 para. (4) of the Constitution, is an expression of the will of the deputies, who hold the representative term of people, which is consistent with the provisions of Article 2 combined with Article 68 of the Constitution (*Judgment of the Constitutional Court No. 7 of 24 May 2012, § 50*).

The Court held that the establishment of the circumstances in which the special sitting for the election of the President may be adjourned, is the discretionary right of the legislator. At the same time, the Court noted that the exhaustive evasion from the regulation of these circumstances (impediments) allow the evasion of deputies from fulfilling their obligations, obstruction and delay of the presidential election procedure for an indefinite period. The Court held that the Parliament must specify the impediments that make impossible the presidential elections. In the current wording the challenged norms are in conflict with the quality requirements of the norm of law, thus violating Article 23 of the Constitution (*Judgment of the Constitutional Court No. 7 of 24 May 2012, § 61*).

1.6.3. Quorum

Reiterating its previous practice, the Court held that the legal norm, which requires participation in the presidential elections of at least 3/5 of the elected deputies, has as reason the exclusion of the possibility of artificial causing of anticipated elections and requires the deputies, who serve people to follow the norms of procedure laid down by Article 78 of the Constitution (*Judgment of the Constitutional Court No. 7 of 24 May 2012, § 55*).

The Court held that the challenged provisions of Article 6 para. (2) of the Law No.1234, which stipulates the participation of at least 61 deputies in the sitting for the

election of the President of the Republic of Moldova are in compliance with the Constitution and the Judgment of the Constitutional Court No.45 of 18 December 2000 on the interpretation of para. (3) and para. (5) Article 78 of the Constitution (*Judgment of the Constitutional Court No. 7 of 24 May 2012, § 56*).

1.7. Powers of the President of the Republic of Moldova

- *Granting citizenship of the Republic of Moldova*

The Provisions of let. c) Article 88 of the Constitution gives the President of the Republic of Moldova one of the main state powers aimed at the person's legal status - citizenship. Thus, according to the constitutional norm, the President "solves the problems of Moldovan citizenship and grants political asylum" (*Judgment of the Constitutional Court No. 11 of 30 October 2012⁸, § 35*).

The Court held that the term "solves" for the purpose of Article 88 let. c) of the Constitution, has a wider meaning, including the whole range of procedures provided for by the law on granting citizenship (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 38*).

Based on this exegetical casual analysis, the Court concluded that the power of the President of the Republic of Moldova stated in let. c) Article 88 of the Constitution requires examination of all issues related to citizenship, starting with application and ending with the solution that can be neither positive, nor negative. The Court held that the President of the Republic of Moldova, according to let. c) Article 88 of the Constitution, is the only authority that can issue definitive solutions for every stage of the proceedings related to the acquisition of citizenship (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 39*).

Accordingly, the Court held that another interpretation of the constitutional norm under law [...] on the procedure regulated in let. a) of Article 28 of the Citizenship Law would be equivalent to the limitation of the powers of the President as stated in let. c) Article 88 of the Constitution (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 40*).

⁸ Judgment of the Constitutional Court No. 11 on the exception of unconstitutionality of Article 28 let. a) of the Law on citizenship of the Republic of Moldova No.1024-XIV of 2 June 2000, referral No.16g/2012 (on granting citizenship of the Republic of Moldova).

The Court held that the rule laid derives not only from the constitutional provisions, but also from the reasonable need for such problems to be solved by a competent and specialized institution. Under the current regulations, the only specialized structure in this area is the Commission for Citizenship and Political Asylum of the President of the Republic of Moldova, which, according to the Decree No.694-II of 28 July 98, “is made to ensure the exercise by the President of the Republic of Moldova of the constitutional powers in citizenship issues” (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 41*).

In this respect, the Court held that, under the legal regulations in force, only the Commission made in accordance with Article 31 of the Citizenship Law, “for prior examination of the problems of citizenship”, is authorized to verify the acts of the applicant under law and submits these proposals to the President who has the decision making right. Any administrative mechanism, which in fact could hinder the President of the Republic of Moldova to solve the applications for citizenship, for the purposes of Article 88 let. c) of the Constitution, would actually mean an inadmissible limitation of his/her powers (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 42*).

Moreover, according to the case materials, solving of issues of citizenship passed in the competence of a company – S.E. CRIS “Registru”, which in reality is vested with the decision-making power, although the application for citizenship is granted to the President of the country, rather than to its head (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 43*).

The Court held that according to the principle of unity of the constitutional matter, the Constitution norms would be applied and interpreted casually in collaboration with other constitutional norms governing similar institutions and principles, taking into account functional aspects of the institution governed by the invoked constitutional norms (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 44*).

Given the above, the Court noted, as for the application of the provisions of let. (c) Article 88 of the Constitution, that the provisions of para. (1) Article 17 of the Constitution empowers the Parliament with the right to regulate by organic law the procedure of acquiring citizenship within the provisions of let. (c) Article 88 of the Constitution (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 45*).

[...] The Constitutional Court stressed that the provision “In case of meeting all the requirements laid down under law in force, the ministry and its bodies prepare a reasoned opinion” contained in Article 28 let. (a) of the Citizenship Law, does not correspond to the provisions of let. (c) Article 88 of the Constitution and Article 23 of the Constitution (*Judgment of the Constitutional Court No. 11 of 30 October 2012, § 52*).

1.8. Courts. Status of Judge

- Right of the Prosecutor General to initiate disciplinary proceedings against judges

The Court confirmed that the exclusive right to do justice in the name of law belongs to the judge, as the sole bearer of the judiciary power and who, as required by para. (1) Article 116 of the Constitution, is independent, impartial and irremovable under law. However, the judiciary power is one of three branches of state, which is independent, separate from the legislative and executive powers, has its own responsibilities exercised by courts under the principles and norms contained in the Constitution, laws and other normative acts (*Judgment of the Constitutional Court No. 3 of 09 February 2012, § 33*).

The constituent legislator has established independence of the judge to protect his/her from the influence of public authorities. Whatever the issues in which the judge independence may be addressed is, it is not regulated as a purpose itself and much less as a privilege, but serving the administration of justice is a guarantee to citizens that must be certified that judges are independent in terms of the legislative and executive powers and that, regardless of their particular status, they obey only the law (*Judgment of the Constitutional Court No. 9 28 June 2012⁹, § 30*).

In its jurisprudence on the compliance with the constitutional principle of judge independence (*Judgment of the Constitutional Court No. 10 of 4 March 1997, No. 28 of 14 December 2010, No. 12 of 7 June 2011*) the Court stressed that judge indepen-

⁹ Judgment of the Constitutional Court No. 9 of 2 June 2012 on the control of constitutionality of the phrase “any member” in paragraph (1) Article 10 of the Law No.950-XIII of 19 July 1996 relating to the disciplinary board and disciplinary liability of judges, referral No.6a/2012 (on the right of the Prosecutor General to institute disciplinary proceedings against judges).

dence is a prerequisite for the rule of law and a fundamental guarantee of a fair trial, which means that nobody can interfere in decisions and way of thinking of a judge, except through established legal procedures. In a democratic society a judge cannot be sheltered by absolute immunity, but at the same time, engaging of his/her responsibility should be subject to a caution determined by the need to ensure independence and freedom of judges against all pressures induced (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 31*).

The Court held that the right given to the Prosecutor General, member of law of the Superior Council of Magistracy, to institute disciplinary proceedings against judges do not prejudice their status and independence (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 33*).

In disciplinary cases, the judge independence is ensured by procedural guarantees, firstly, by the fact that only the Superior Council of Magistracy, authority of judicial self-administration (through its members) is the institution responsible for initiating disciplinary action functioning as court for judges' disciplinary offences. The disciplinary offenses and sanctions are provided by law, and the Superior Council decisions may be appealed at the Court of Appeal (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 34*).

The judge independence in disciplinary proceedings is also ensured through legal mechanisms for the examination of disciplinary offenses by an independent body - disciplinary board – observing the judge's rights to participate in the examination of his/her case, to be assisted by a lawyer, to make requests, to give explanations, to appeal the decision of the disciplinary board of the Supreme Council of Magistracy and of the Superior Council of Magistracy in administrative court. To exclude any interference with the judicial activity and ensure the judge's independence, in *validation* of the decisions of the disciplinary board and *examination of appeals* against these decisions, the member of the Superior Council of Magistracy, upon whose proposal or initiative a disciplinary proceedings was instituted, has no right to participate in deliberations [...] (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 35*).

The norm mentioned above unequivocally states that any member of the Superior Council of Magistracy, including the Prosecutor General, has only the right to institute

disciplinary proceedings against a judge, but not to examine the disciplinary action he/she instituted. The examination of the disciplinary action is the exclusive competence of the disciplinary board, whose responsibility it is to issue reasoned decision, stating the evidence and disciplinary action (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 36*).

The provision governing the status of the Prosecutor General as author of institution of disciplinary action does not affect in any way the constitutional powers of the Superior Council of Magistracy, observing the judicial independence prerequisites adopted in the matter of disciplinary liability of judges (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 38*).

In developing this allegation, the Court noted that only the existence of some decision-making powers in charge of a public authority, other than the constitutional or legally designated one, may result in violation of the power separation principle (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 42*).

The Competence of the Superior Council of Magistracy and the disciplinary board provided in the constitutional and legal norms on the disciplinary proceedings brought against judges cannot lead to the breach of the power separation principle (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 43*).

The Court concluded that empowering of the Prosecutor General, as a member of the Superior Council of Magistracy, with the right to institute disciplinary action against judges cannot be considered an interference in the work of the judiciary power, which could raise the issue of compliance with Article 6 of the Constitution (*Judgment of the Constitutional Court No. 9 of 28 June 2012, § 44*).

2 PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

2.1 Universality and Equality

- Gender-based Discrimination of Military People

In its previous jurisprudence, the Court has consistently held that any difference in treatment does not automatically imply a violation of Article 16 of the Constitution. To establish a violation of Article 16 of the Constitution the fact that people in similar or comparable situations benefit from preferential treatment and that this distinction is

discriminatory should be stated [...] (*Judgment of the Constitutional Court No. 12 of 01 November 2012*¹⁰, § 52).

Thus, a distinction is discriminatory if it is based on objective and reasonable justification, that is, if it does not pursue a lawful aim or if there is no a reasonable relationship of proportionality between the means used and the aim pursued (*Judgment of the Constitutional Court No. 12 of 01 November 2012*, § 54).

The state has a certain margin of appreciation to justify a different treatment in similar situations. The scope of the margin of appreciation varies depending on the circumstances and context, but the Constitutional Court shall be responsible for assessing the compliance with the Constitution requirements (*Judgment of the Constitutional Court No. 12 of 01 November 2012*, § 55).

The Court noted, inter alia, that the progress towards gender equality has become a major goal in the member states of the Council of Europe and, through the relevant texts of the Council of Europe and the jurisdiction of the European Court, only very powerful reasons could cause appreciation of a difference of treatment as being compatible with the European Convention (see decisions of ECtHR *Burghartz v. Switzerland* of 22 February 1994, § 27, and *Schuler-Zgraggen v. Switzerland* of 24 June 1993, etc.) (*Judgment of the Constitutional Court No. 12 of 01 November 2012*, § 56).

The Court reiterated that Article 16 of the Constitution comes into action when the situation, which the disadvantage refers to, involves one of the conditions for exercise of a right guaranteed or whether the criticized measures aim at exercising a right guaranteed. For Article 16 to be operable, it is sufficient that the situation regulated by the rules challenged to come within the scope of one or several provisions of the Constitution, which guarantees the basic rights (*Judgment of the Constitutional Court No. 12 of 01 November 2012*, § 64).

The Court concluded that the traditional gender-based division of roles in society cannot be used to justify the exclusion of men, including those who work in the army, from exercising the right to the child care leave. The Grand Chamber of the European Court held that gender-based stereotypes - such as the fact that women are the ones that

¹⁰ Judgment of the Constitutional Court No.12 of 01 November 2012 on the control of constitutionality of some provisions of Article 32 of para. (4) let. j) of the Law No.162-XVI of 22 July 2005 on the status of military people, referral No.12a/2012 (on the right of the military man to the child care leave).

shall care more for children and men shall work much to earn money - cannot be regarded as sufficient justification for differential treatment in terms of the child care leave, not more than similar race-, origin-, colour- or gender-based stereotypes (*Judgment of the Constitutional Court No. 12 of 01 November 2012, § 83*).

The Court held that in a significant number of member states of the Council of Europe military people of both genders are entitled to child care leave [...] (*Judgment of the Constitutional Court No. 12 of 01 November 2012, § 86*).

The Court noted that Article 1 of the ILO Convention No. 111 on the discrimination in labour force and professional occupation provides that distinctions, exclusions or preferences based on qualifications required for a particular job are not considered discrimination. The Court did not find that the exclusion of the right to child care leave in this case is based on the qualification required to serve in the army. Moreover, military women are entitled to child care leave and such exclusion would affect only military men (*Judgment of the Constitutional Court No. 12 of 01 November 2012, § 87*).

At the same time, the Court found that, given the army's special requirements, excluding the right to child care leave can be justified in terms of a military man or woman who, due to factors such as hierarchical position, scarcity of technical skills or their participation in field military operations, cannot be easily replaced for his/her duties. However, in the Republic of Moldova, the right to child care leave is based solely on the gender of military people. Excluding military men from exercising the right to child care leave, this provision imposes a restriction, which applies automatically to all military men, regardless of their position in the army, the availability of a substitute or their personal situation (*Judgment of the Court Constitutional no.12 of 01 November 2012, § 88*).

The Court held that such a general and automatic gender-based restriction imposed by a group of persons goes beyond the scope of acceptable margin of appreciation of the state, however large it may be, and that it is incompatible with Article 16 of the Constitution, combined with Articles 48 and 49 of the Constitution (*Judgment of the Constitutional Court No. 12 of 01 November 2012, § 89*).

The Court concluded that the exclusion of military men from exercising the right to child care leave, while military women have this right, cannot be regarded as being

based on objective and reasonable justification. Therefore, this difference in treatment is a gender-based discrimination (*Judgment of the Constitutional Court No.12 din 01 November 2012*, § 92).

2.2. Free Access to Justice

2.2.1. Prior Dispute Settlement Procedure

The Court held that Article 20 of the Constitution guarantees everyone the right to effective remedy from the part of competent courts against acts violating their lawful rights, freedoms and interests. No law may restrict the access to justice (*Judgment of the Constitutional Court No. 14 of 15 November 2012*¹¹, § 48).

By generality of its wording, Article 20 allows any person - citizen of the Republic of Moldova, foreigner or stateless person - the access to justice. Also, it allows access to justice to protect any rights or freedoms and any lawful interest, whether arising from the Constitution or other laws (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 49).

The Court noted that the principle of free access to justice is to be regarded not only as a fundamental guarantee for the effective exercise of the human rights and freedoms, but also as an imperative norm required to make sense of the concept of “rule of law”. However, according to Article 1 para. (3) of the Constitution, the Republic of Moldova is a democratic state, rule of law, in which human dignity, rights and freedoms, the free development of human personality, justice and political pluralism are supreme values and are guaranteed (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 50).

Thus, the Fundamental Law strengthens the provisions of Article 20 by a number of other rights and institutional principles. An essential principle of the principle of free access to justice is the principle of existence of some independent and impartial courts (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 53).

This principle is materialized by the provisions of Article 114 of the Constitution under which justice is carried out in the name of law only by courts that under Article 115

¹¹ Judgment of the Constitutional Court No.14 of 15 November 2012 on the control of constitutionality of some provisions of the Civil Procedure Code of the Republic of Moldova No.225-XV of 30 May 2003, referral No.21a/2012 (on compliance with prior dispute settlement procedure).

are the Supreme Court, courts of appeal and other courts. Similarly, Article 116 para. (1) of the Constitution provides that judges of courts are independent, impartial, and irremovable under law (*Judgment of the Constitutional Court No. 14 of 15 November 2012, § 54*).

Also, the access to justice cannot be fully carried out without guaranteeing the right of defence (*Article 26 of the Constitution*), which is a prerequisite for the realization of justice (*Judgment of the Constitutional Court No. 14 of 15 November 2012, § 55*).

Though the limits permitted by Article 4 of the Constitution to apply and interpret the constitutional provisions on rights and freedoms in accordance with international instruments to which the Republic of Moldova is a party, the Court held that in terms of point 1 of Article 6 of the European Convention and through the jurisdiction of the European Court the right of access to justice cannot be an absolute right, but one that may involve limitations, including procedural ones, as long as they are reasonable and proportionate to the aim pursued (*Judgment of the Constitutional Court No. 14 of 15 November 2012, § 58*).

The Court stated that the European Court in its jurisprudence held that, beyond the limits which circumscribe the content of this right, there is place for implicit restrictions (*Judgment of the Constitutional Court No. 14 of 15 November 2012, § 59*).

The right of access to a court imposes, by its very nature, to be regulated by the state, regulation which may be variable in time and space, depending on the needs and resources of the community and individuals (*Ashingdane v. the United Kingdom*) (*Judgment of the Constitutional Court No. 14 of 15 November 2012, § 60*).

In its jurisdiction the European Court stated that, in drafting such regulations, the member states enjoy a certain margin of appreciation. However, the limitations must not restrict the right to access to the extent that *its very substance is affected* (*Judgment of the Constitutional Court No. 14, 2012, § 61*).

In the context of the above mentioned, the Court held that the access to justice, as an inherent aspect of the right to a fair trial cannot be viewed without the guarantees provided in Article 6 p. 1 of the European Convention, which may be waived only to the extent where *its substance is not affected* (*Judgment of the Constitutional Court No. 14 of 15 November 2012, § 62*).

[...] Under Article 115 para. (4) of the Constitution, the organization of courts, their competence and *proceedings* are established by organic law. Thus, establishing the rules of

process in courts is an exclusive prerogative of the legislature, which can be established in consideration of particular circumstances, special rules of procedure. In this regard, the principle of free access to justice implies the unrestricted opportunity of those interested to use it in the forms and ways prescribed under law (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 70).

In this context, the Court held that the European Court in its jurisprudence noted that the access to justice may be limited, especially by establishing conditions of admissibility, where the state enjoys a certain margin of appreciation. These limitations must pursue a lawful aim, ensuring proportionality between the interests of the person and the lawful aim pursued (*Guerin v. France*, 29 July 1998, § 37). However, the limitations should not reduce to zero the essence of this right. The procedural rules aim to ensure a proper administration of justice and, in particular, to ensure the security of legal relationships and those involved in the proceedings should expect these rules to be applied (*Miragall Escolano and others v. Spain*, 25 January 2000, § 33) (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 71).

Thus, the Court found that by instituting the proceedings prior to litigation the restriction of the access to justice was not pursued, which, obviously, the person concerned benefits from under law, but only the establishment of a climate of order indispensable to exercise the constitutional right stated by Article 20 of the Constitution, preventing abuses and ensuring the protection of the rights and interests of other parties (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 75).

The Court noted that prior complaint procedure cannot be regarded as a jurisdiction in terms of the provisions or Articles 114-116 of the Constitution, rather than of Article 6 p. 1 of the European Convention. However, after the compliance with the prior procedure and failure of dispute settlement, it can be deduced by the party before the court. Also, according to Article 115 para. (3) of the Constitution, the establishment of extraordinary courts is prohibited (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 84).

The Court held that “such precondition” is not likely to violate the provisions of Article 20 of the Constitution, which guarantees free access to justice, and does not affect the substance of the right guaranteed (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 98).

2.2.2. Immediate Enforcement of Judgments of the Broadcasting Coordinating Council

The Court held that the decisions delivered on sanctions as a public warning, withdrawal of the right to broadcast advertisements for a certain period and a fine may be appealed in court, such person having at hand the means necessary to protect the lawful rights and interests (*Judgment of the Constitutional Court No. 17 of 06 December 2012*¹², § 82).

In this regard, the Court noted that the guarantee of the right to effective satisfaction from the part of judicial courts comprises the citizen's right to bring an action in the competent court and its obligation to provide a legal equitable and justified solution (*Judgment of the Court Constitutional no.17 of 06 December 2012*, § 83).

Thus, according to the Administrative Litigation Law, given that under the Broadcasting Code, radiobroadcasters and service distributors have the right to appeal in court for the exercise of the judicial control of legality, the Broadcasting Coordinating Council decisions on the application of sanctions: public warning, withdrawal of the right to broadcast advertisements for a certain period; fine, they may require the administrative court, while bringing action, the suspension of the execution of the appealed administrative act. The court may decide to suspend the administrative act in the office as well, in duly justified cases and to prevent an imminent damage (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 85).

Therefore, the national legislation provides radiobroadcasters and distributors of services the access to justice through the possibility to appeal in administrative court the administrative acts of the Broadcasting Coordinating Council on the application of a sanction that does not affect further work to have its legality controlled within judicial proceedings, in compliance with all principles characteristic to a fair trial and ensuring double degree of jurisdiction (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 87).

The Court concluded that para. (8) Article 38 of the Broadcasting Code in respect of the enforcement of the Broadcasting Coordinating Council decisions on the applica-

¹² Judgment of the Constitutional Court No.17 of 06 December 2012 on the control of constitutionality of some provisions of the Broadcasting Code of the Republic of Moldova No.260-XVI of 27 July 2006, referral No.25a/2012 (on the right of CCA to apply sanctions to radiobroadcasters).

tion of sanctions in the form of public warning, withdrawal of the right to broadcast advertisements for a certain period, fine, with the possibility to subsequently appeal them in court does not damage the rights to free access to justice, a fair trial, including the protection and an effective remedy being in accordance with the provisions of Article 20, 53, 54 of the Constitution and the provisions of the relevant international acts (*Judgment of the Constitutional Court No. 17 of 06 December 2012, § 88*).

2.3. Intimate, Family and Private Life

2.3.1. Medical Privacy

The Court noted that although the right to respect and protect intimate, family and private life is not absolute, any interference must be prescribed under law to comply with the generally accepted principles of international law, be proportionate to the situation that caused it and not to affect the existence of this right, as provided in Article 54 para. (2) and para. (3) of the Constitution (*Judgment of the Constitutional Court No. 13 of 06 November 2012¹³, § 38*).

In case of military registration, recruitment in the military service with full or reduced term, contract-based military recruitment, calling up for military service of conscripts and reservists to clarify military and medical situations, citizens shall pass medical examination as required by the Regulation on medical and military expertise in the Armed Forces of the Republic of Moldova, approved by the Government Decision No.897 of 23 July 2003 (Article 8 of the Law No. 1245-XV). The medical and military expertise is performed by military and medical commissions on the basis of the Medical Scale for the determination of military service eligibility, provided in Annex 2 to the Regulation, and additional requirements in health condition and physical development. The Medical Scale is structured, providing in the heading No.2 the diseases and physical defects (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 42*).

¹³ Judgment of the Constitutional Court No. 13 of 06 November 2012 on the control of constitutionality of certain provisions of Annex 2 to the Regulation on military and medical expertise in the Armed Forces of the Republic of Moldova, approved by the Government Decision No.897 of 23 July 2003, and Annex 8 to the Regulation on the recruitment of citizens in the military service with full or reduced term approved by the Government Decision No.864 of 17 August 2005, referral No.17a/2012 (on the inclusion of the article of the Medical scale in the certificate of young people ineligible for military service).

According to the Regulation on citizens recruitment in the military service with full or reduced term (p. 17), young people ineligible for military service, with the exclusion from military records, are handed the standard certificate (Annex 8), indicating the relevant item of the Medical Scale for medical diagnosis, which serves as *ground* for exclusion from military records. Thus, the medical diagnosis is replaced by the relevant item under the Medical Scale (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 43*).

The item of the medical certificate is a diagnostic coding set by the authorized medical commission, which is required to ensure its confidentiality. Referring to special categories of personal data, the information from the certificate cannot be disclosed to third parties, being issued to the candidate subject to medical examination (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 44*).

Therefore, given that Medical Scale is published in the Official Monitor, the names of diseases and physical defects are publicly available and therefore the practice of replacing the diagnosis with the code of disease or the relevant item does not ensure medical privacy (*Judgment of the Constitutional Court No.13 of 06 November 2012, § 45*).

In this context, the Court found that, under Article 1 para. (2) of the Law No. 263-XVI of 27 October 2005 on patient rights and responsibilities, confidential information about diagnosis, health condition, private life, obtained following examination, treatment, preventive care, rehabilitation and biomedical research (clinical investigation) are *medical secret*. This information shall not be disclosed to third parties, unless required under law. Or, according to Article 12 of this law, the confidentiality of this information must be ensured by the curing doctor and specialists involved in providing health services or in biomedical investigation (clinical investigation) and other persons, whom this information have become known because of the exercise of professional duties and service (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 46*).

Given that the right of option on confidentiality of data on health condition belongs to the patient, the medical secrecy obligation extends to the content of conclusion of the Medical and Military Commission that must be exposed in the standard certificate by indicating the relevant item of the Medical Scale based on the order of the Minister of Defence of the Republic of Moldova, specifying the number and date of issuance (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 47*).

In the same vein, the Court held that the national legislation provides for the obligation of submission of documents of military records in case of execution of identity acts, civil status documents, individual employment contract and in other cases is required by public authorities, public institutions and economic entities, fact that leads to the disclosure of medical diagnosis to third parties (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 48*).

Based on the above, the Court concluded that the specific indication in the sample of the certificate of the item of the Medical Scale with reference to the order of the Minister of Defence of the Republic of Moldova, specifying the number and date of its delivery, ground for removal from military records is an ungrounded limitation of the right to privacy by its accessibility to third parties, thus violating Article 28 of the Constitution of the Republic of Moldova. The Court considers this to be a disproportionate interference in the right to private life guaranteed by Article 28 of the Constitution in conjunction with Article 54 of the Constitution (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 50*).

Thus, the provisions of the standard certificate given in Annex No. 8 to the Regulation on citizens' recruitment in military service with full or reduced term, approved by the Government Decision No.864 of 17 august 2005, according to the explicit specification of the item of the Medical Scale, with reference to the order of the Minister of Defence of the Republic of Moldova and specification of the number and date of issue thereof, are in conflict with Articles 28 and 54 of the Constitution (*Judgment of the Constitutional Court No. 13 of 06 November 2012, § 51*).

2.3.2. Provision of Child Care Leave

The Court noted that, compared with military women, military men are not legally entitled to a child care leave aged under three years [...] (*Judgment of the Constitutional Court No. 12 of 01 November 2012, § 67*).

Without ignoring the differences that may exist between father and mother in their relationship with the child, the Court held that, in terms of child care during the child care leave men and women are in "similar situations" (*Judgment of the Constitutional Court No. 12 of 01 November 2012, § 69*).

The Court held that on several occasions, the European Court has recognized that military rights guaranteed by Articles 5, 9, 10 and 11 of the European Convention, in some cases, may be subject to greater restrictions than those authorized for civilians (see the ECtHR Judgment *Engel and Others v. the Netherlands*, cited above, § 73). The European Court held that, by carrying out military career, the members of the armed forces willingly obey a system of military discipline and some limitations of rights and freedoms implied by this system (ECtHR decisions *Kalac v. Turkey* of 1 July 1997, § 28, and *Larissis and others v. Greece* of 24 February 1998, § § 50-51 on proselytism in army). Similarly, when the European Court analyzed situations under Article 10 of the European Convention, it emphasized the need to take into account the specificities of military life and the “rights” and “responsibilities” specific to military people, members of armed forces are subject to a reserve obligation until the exercise of their functions (decisions of the ECtHR *Hadjianastassiou v. Greece* of 16 December 1992, § § 39 and 46, *Pasko v. Russia* of 22 October 2009, § 86, which involves the disclosure of military secrets by a member of armed forces) [...] (*Judgment of the Constitutional Court No. 12 of 01 November 2012*, § 73).

In the same vein, the European Court noted that the European Convention does not stop at the doors of barracks and that military people, like all other persons under the jurisdiction of a contracting state, have the right to enjoy the protection of the European Convention. The national authorities cannot invoke the special status of the armed forces to justify deprivation of military people of their rights. To be justified, a restriction on the Convention guaranteed rights must be necessary in a democratic society (see, decisions *Grigoriades v. Greece* of 25 November 1997, § § 45-48, and *Vereinigung demokratischer Soldaten Österreichs and Gubi v. Austria* of 19 December 1994, § § 36-40) (*Judgment of the Constitutional Court No. 12 of 01 November 2012*, § 74).

As for the restrictions on private and family life of military people, especially when restrictions affect “a more intimate aspect of the private life”, there must also be “particularly serious reasons” for these interferences to meet the requirements of Article 8 § 2 of the European Convention. In particular, there must be a reasonable relationship of proportionality between the restrictions imposed and the lawful aim to protect national security. These restrictions are acceptable provided there is a real threat to the operational

effectiveness of the armed forces and allegations of the existence of this risk must be “supported by examples” (*Smith and Grady*, § 89, and *Lustig-Prean and Beckett*, § 82, mentioned above) (*Judgment of the Constitutional Court No.12 din 01 November 2012*, § 75).

The Court recognized that, given the importance of the army to protect national security, restrictions on the right to child care leave could be justified, provided they are not discriminatory. The Court may achieve the lawful aim of protection of the national security otherwise than by limiting the right to child care leave for military men and the deprivation of military men of the same rights (*Judgment of the Constitutional Court No. 12 of 01 November 2012*, § 85).

At the same time, the Court found that, given the army’s special requirements, the deprivation of the right to child care leave can be justified in terms of a military man or woman who, due to some factors such as hierarchical position, scarcity of technical skills participation in field military operations, cannot be easily replaced for his/her duties. However, in the Republic of Moldova, the right to child care leave is based solely on the gender of military people. Excluding military men from exercising the right to child care leave, this provision imposes a restriction, which applies automatically to all military men, regardless of their position in the army, the availability of substitute or their personal situation (*Judgment of the Court constitutional no.12 of 01 November 2012*, § 88).

2.4. Right to Education

- Enrolment Quotas

According to Article 35 para. (5) of the Constitution, the right to education can be exercised both by state as well as by private educational institutions (*Judgment of the Constitutional Court No. 6 of 03 May 2012*¹⁴, § 34).

The Court held that the margin of appreciation of the state and its right to intervene in the process of education is higher than in other areas and can be done by various regulatory tools (licensing, accreditation, etc.) (*Judgment of the Constitutional Court No. 6 of 03 May 2012*, § 36).

¹⁴ Judgment of the Constitutional Court No.6 din 03 May 2012 on the control of constitutionality of the paragraph 3 of Article 3 of the Law No.142-XVI of 7 July 2005 on the approval of the Classifier of areas of professional education and specialties for the education of staff in higher education institutions, cycle I, referral No.35a/2011 (on enrollment quotas of private and state higher education institutions on a contract basis).

Higher education is an investment in the future of the individual, which must produce measurable and tangible results: a guarantee of a job and opportunities for professional development. Therefore the state regulated enrolment quotas are justified to ensure that the entire education system serves the interests of society (*Judgment of the Constitutional Court No. 6 of 03 May 2012, § 37*).

The enrolment quotas for the state are also an important tool for regulating the distribution of limited resources available to it. Since the training of certain specialists is more expensive, taking into account the nature of available resources, the state has the right to encourage in some periods the admission to certain specialties (*Judgment of the Constitutional Court No. 6 of 03 May 2012, § 38*).

The Court held that the provisions concerning the enrolment quotas does not violate the right to education in its substance, but just imposes certain limits based on numerical criteria related to labour market demand, to meet the needs of society with highly qualified professionals, who then can be easily employed, depending on the professional skills obtained (*Judgment of the Constitutional Court No. 6 of 03 May 2012, § 39*).

The Court reiterated that the university autonomy consists in the right of institution to be guided, to exercise academic freedom without any ideological, political, religious interference, to assume a set of competencies, obligations and responsibilities in accordance with the national strategic options and guidelines of higher education development, with advanced science and technology, of the regional and universal civilization. The university autonomy materializes in organizational and functional autonomy, in administrative and financial autonomy (*Judgment of the Constitutional Court No. 6 of 03 May 2012, § 40*).

Thus, the Court held that the establishment by the Government of enrolment quotas in higher education institutions, cycle I, does not prejudice the principle of university autonomy (*Judgment of the Constitutional Court No. 6 of 03 May 2012, § 42*).

2.5. Right to Work

2.5.1. Enrolment Quotas

Being member of the International Labour Organization, the Republic of Moldova develops guidance and training programs closely related to the use of labour force, particularly through specialized state services. These programs allow individuals to develop

and apply skills in their own interests and in accordance with their aspirations, taking into account the needs of society. Thus, the person can choose a profession or craft, or any job, having relevant qualifications and proven by an official document issued by a competent authority under law (*Judgment of the Constitutional Court No. 6 of 03 May 2012*, § 48).

One way to exercise the right to work in a specific area is higher education. In this context the Court held that the establishment of enrolment quotas (according to the “*numerus clausus*” principle) is a regulatory lever of preparation of staff needed to society to avoid surplus of specialists in certain areas and, as a consequence, increased unemployment, phenomena that actually affects the exercise of the right to work (*Judgment of the Constitutional Court No. 6 of 03 May 2012*, § 49).

In this regard, the enrolment quotas are a justified measure, through which the labour market offer and demand can be synchronized. The state is not only entitled, but also obliged to ensure that young professionals have real chances to find a job after graduation (*Judgment of the Constitutional Court No. 6 of 03 May 2012*, § 50).

Putting in line the offer and the demand of the labour market, the state creates conditions for exercising the right to employment and combating unemployment (*Judgment of the Constitutional Court No. 6 of 03 May 2012*, § 51).

2.5.2. Wage Deductions

The Court held that, in accordance with Article 26 of the Law on the status of deputy in the Parliament, the deputy is entitled to monthly salary in the way, under the condition and in the amount stipulated in the Law No. 355-XVI of 23 December 2005 on the budget remuneration system for the effective exercise of the term (*Judgment of the Constitutional Court No. 10 of 12 July 2012*, § 51).

In this context, the Court stressed that there is no norm in the Constitution that would prohibit deductions from wages if they are absent without any reason from the Parliament sittings or meetings of its specialized commissions (*Judgment of the Constitutional Court No. 10 of 12 July 2012*, § 55).

The Court held that deprivation of deputies of wages for unreasonable absence from the Parliament’s plenary sittings and meetings of specialized commissions is not a sanc-

tion as part of the exercise of deputy's term politically, but is a component of labour relations (*Judgment of the Constitutional Court No. 10 of 12 July 2012*, § 56).

In this context, the Court held that the politically motivated absence of deputy should not allow the majority to deprive him/her of his/her term, but this does not mean that this gap cannot generate differentiated payment of salaries of deputies depending on the time actually spent on lawmaking activities. The same logic falls in the challenged rule specified in Article 129 para. (3) of the Regulation of the Parliament, under which the Permanent Bureau will set out the way of records of the presence of deputies at the Parliament's sittings and the standing commissions, which they belong to (*Judgment of the Constitutional Court No. 10 of 12 July 2012*, § 59).

Therefore, the Court held that the Parliament has a wide margin of appreciation in terms of legislative solutions of deputies remuneration, and the challenged provisions of Article 131 of the Regulation of the Parliament are matters of opportunity (*Judgment of the Constitutional Court No. 10 of 12 July 2012*, § 60).

2.6. Right to Private Property and its Protection

2.6.1. Suspension / Withdrawal of License of Radiobroadcasters

The Court held that the interests related to the operation of a license constitutes property interests protected by Article 46 of the Constitution and Article 1 of the Protocol No. 1 to the Convention (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 37).

In the light of these findings, the Court held that the "lawful expectation" of radio-broadcasters, being related to ownership interests, such as broadcast by television or radio networks under license, is sufficiently strong to constitute a material interest and therefore a "good" within the meaning of Article 46 of the Constitution and the first sentence of Article 1 of the Protocol No. 1 to the Convention (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 39).

In this context, the Court held that broadcasters license revocation is a case of "Private Property" (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 41).

On the other hand, the Court held that in the event of license suspension, the material interest of the radiobroadcaster to operate a radio or television network is not

achieved, provided such suspension does not take too much time and the radiobroadcaster is able to broadcast television or radio programs after this period. In the Court's view, this is a measure regulating the use of property that fall within the scope of para. 2 of Article 1 of the Protocol No. 1 to the Convention (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 42).

The Court, in this particular situation, held that the enforcement of sanctions in the form of license suspension or revocation is not justified in terms of a major interest of the society (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 60).

For the reasons stated above, the Court held that Article 38 para. (8) of the Broadcasting Code in terms of sanctions as licence suspension or withdrawal does not ensure a fair balance between the interests of the community and those of radiobroadcasters, imposing on them an individual and excessive burden. Therefore, these provisions are inconsistent with the protection of property guaranteed under Article 1 of the Protocol No. 1 to the European Convention and, implicitly, Article 46 of the Constitution (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 61).

In the light of the above, the Court concluded that the provisions of para. (8) of Article 38 of the Broadcasting Code relating to the *immediate execution up to going to court*, the Broadcasting Coordinating Council decisions on licence suspension and withdrawal contravene not only the basic principles on entrepreneurial activity, but also the constitutional guarantees of ownership of incorporators of broadcasters and their protection, as enshrined in Article 46 of the Constitution, being “an interference in the right to enjoy property” given the immediate effect of these decisions and, therefore, prevention of the holder to continue their business and that the license holder, based on the ECtHR jurisprudence has a “reasonable and lawful expectation related to the validity in time of the license and the possibility to continue to obtain benefits of an activity carried out under such license”, for which reasons the Court held unconstitutional the provisions challenged in this part (*Judgment of the Constitutional Court No. 17 of 06 December 2012*, § 62).

2.6.2. Suspension of Bailiff License

In this context, the Court reiterated that, in its jurisprudence, the European Court held that the license issued for a liberal activity may be considered a “good” in terms of

Article 1 of the Protocol No. 1 to the European Convention when its use *attracted customers*. Thus, *the European Court recognized the economic value of customers resulting from an activity (Judgment of the Constitutional Court No.19 din 18 December 2012¹⁵, § 74).*

Applying the *mutatis mutandis* reasoning of the European Court, [...] the Court held that the right implied by bailiff license holding to form their *own customers* in exercising their powers stipulated under law may be treated as right of ownership enshrined in Article 46 of the Constitution and Article 1 of the Protocol No. 1 to the European Convention (*Judgment of the Constitutional Court No. 19 of 18 December 2012, § 80*).

The Court held that, although under law bailiff activity is not a business, bailiff license holding implies a “lawful and reasonable expectation” about its nature of duration and *the possibility of achieving lasting benefits from the activity that is its subject continuously (Judgment of the Constitutional Court No. 19 of 18 December 2012, § 81).*

Therefore, the suspension of the bailiff license results in the loss of this part of holder’s customers who was interested in his/her ability to provide the whole range of services offered by a bailiff in the execution of judgments and therefore a loss of income. In this context, the suspension of the bailiff activity may affect his/her image and confidence of customers in his/her professional capacities. Consequently, there is an interference in the right of bailiff to the respect of their goods (*Judgment of the Constitutional Court No. 19 of 18 December 2012, § 86*).

Simultaneously, the Court held that under the law, stipulated by Article 18 para. (1) let. c¹) suspension of activity for “serious violation of law” before the application of disciplinary sanction, does not allow accurate determination of situations where suspension of bailiff activity may occur (*Judgment of the Constitutional Court No. 19 of 18 December 2012, § 101*).

The Court also emphasized that the legislature does not specify the violations that are to be considered “serious” in legal terms (*Judgment of the Constitutional Court No. 19 of 18 December 2012, § 102*).

Similarly, the Court noted that in the way the challenged provisions are drafted, it is unclear whether the minister of justice may order the license suspension for serious

¹⁵ Judgment of the Constitutional Court No.19 of 18 December 2012 on the control of constitutionality of some provisions of Article 18 of the Law No.113 of 17 June 2010 on bailiffs, referral No.34a/2012 (*on the right of the Minister of Justice to suspend the license of bailiffs until the application of disciplinary sanction*).

violation of law and then notifies the Disciplinary Board under Article 22 para. (1) of the Law 113, or the suspension is ordered after the institution of disciplinary proceedings by the Disciplinary Board (*Judgment of the Constitutional Court No. 19 of 18 December 2012*, § 107).

Furthermore, it is established in what term the minister of justice must notify the Disciplinary Board (*Judgment of the Constitutional Court No. 19 of 18 December 2012*, § 108).

Therefore, the norms subject of the control of constitutionality breach the requirement of foreseeability as it was defined in the jurisdiction of the European Court (*Judgment of the Constitutional Court No. 19 of 18 December 2012*, § 113).

Thus, the Court found that, in terms of accessibility, clarity and predictability of the law, the norms criticized by the author of the complaint determines the appearance of some situations of uncertainty, which is a violation of Article 23 para. (2) of the Constitution, in conjunction with Article 46 of the Constitution (*Judgment of the Constitutional Court No. 19 of 18 December 2012*, § 115).

In this context, the Court held that the bailiff license suspension for serious violations of law, which has the immediate effect of prevention of activity, is disproportionately severe compared to the aim pursued, as applied by the Minister of Justice in the absence of a comprehensive review of the professional body authorized under law to exercise the relevant power, which is *a collegial body that ensures the presence of professionals in the field*, making possible eventual *arbitrary actions* by the minister of justice, *political factor* responsible for *promoting policies*, rather than for details of some techniques of enforcement procedures (*Judgment of the Constitutional Court No. 19 of 18 December 2012*, § 133).

The Court held that, given the uncertainty and imprecision of the phrase “serious violation of law”, despite the margin of appreciation enjoyed by the state in the regulation of the bailiff activity, since the examination of disciplinary violations committed by the bailiff is subject to the competence of a Disciplinary Board exercising under law the relevant power, and the enforcement acts issued by the bailiff may be appealed in court, the suspension of bailiff activity by the minister of justice for serious violation of law without prior examination of the violation based on public work done by he/she and to whom the state delegated it, does not ensure a fair balance between the aim pursued and the individual burden, the way the provision is exposed makes possible an abusive

application, which is not necessary in a democratic society, being contrary to Articles 46 and 54 of the Constitution (*Judgment of the Constitutional Court No. 19 of 18 December 2012*, § 134).

2.7. Right to Social Assistance and Protection

- *Payment of Social Insurance Premiums for Sickness*

The Court held that the particulation of social rights is that they depend mainly on the economic situation of the state. The level at which they are provided reflects not only the economic and social development, but also the relationship between state and citizen, based on mutual responsibility and recognition of the principle of solidarity. The degree to which responsibility and solidarity principles find reflection in the legal order of the state determines also the social feature of the state. The share of the principle of solidarity depends on the level of ethical appreciation of coexistence in society, culture of society, but also of the perception by the individual of the sense of justice and sense of unity with others and the share of their fate in a particular time and place (*Judgment of the Constitutional Court No. 5 of 10 April 2012*¹⁶, § 26).

The benefits provided under the social protection system are allocated from the state budget and the responsibility for these benefits lies entirely with the state. Since the responsibility for the payment of benefits belongs to the state, it should be able to set specific conditions for such benefits. In this respect, the state cannot afford the irresponsibility of becoming debtor unable to fulfil its commitments. These circumstances, however, may not undermine the very existence of specific social rights and therefore prevent their exercise. Within these limits, the legislature enjoys a wide enough margin of appreciation in determining the rules for the implementation of individual social rights, including the possibility to change them. At the same time, the social security system for health maintenance should not serve to cover the state budget deficit. The Court held that Article 47 para. (2) of the Constitution guarantees citizens the right to

¹⁶Judgment of the Constitutional Court No.5 of 10 April 2012 on the control of constitutionality of the provisions of Articles 4 para. (2) let. a) and b), 9 para. (1) and 13 para. (1) let.c) of the Law No.289-XV of 22 July 2004 on allowances for temporary disability and other social insurance benefits, referral No.39a/2011 (*on the allowance for temporary disability*).

insurance in the event of sickness. Meanwhile para. (1) of the same article provides that the state must ensure that every person has a decent living standard that would ensure health and welfare of him/her and his/her family, including food, clothing, housing and medical care and necessary social services (*Judgment of the Constitutional Court No. 5 of 10 April 2012, § 27, § 29*).

As for the specific constitutional regulations, the Court concluded that thus the Constitution has reserved to the legislature not only the implementation of the above mentioned constitutional right and establishment of conditions in this respect, but at the same time, delimited the constitutional context for the person to benefit from this right though the terms “decent living standard”, “that would ensure his/her health and welfare of his/her family, including food, clothing, housing and medical care and necessary social services”. Given that the Supreme Law does not reveal in more details the contents of these terms, it is clear that their delimitation, as well as the establishment of additional details is left for the legislative regulation (*Judgment of the Constitutional Court No. 5 of 10 April 2012, § 30*).

In the Court’s view, the repeal of granting social insurance benefits for the first day of temporary disability caused by the disease is in conflict with Article 47 of the Constitution, particularly with the right to proper physical security for the period of disability. The Article 4 para. (2) a) of the law, as subsequently amended, withdraws the employees’ right to claim social insurance benefits for the first day of disability caused by common illnesses or injuries unrelated to work. Thus the state on account of an indeterminate number of people that abuse (according to the parties), applies a “blank” sanction against other employees suffering from temporary disability due to common illnesses or injuries unrelated to work. The result is situation in which the prevailing majority of employees remain without funds for the first day of disability, while at the same time the obligation to pay social insurance premiums is maintained. The Court considered it unacceptable for the state to require employees the performance of an obligation (in that case, the payment of social insurance premiums), but at the same time to ignore the protection of their interests when they are affected by events beyond their will, causing disability and are insured by the payment of social insurance premiums (*Judgment of the Constitutional Court No. 5 of 10 April 2012, § 31*).

The Court held that the disease is an insured event and the existence of the disease should be duly proved (by a medical examination). In this context, the Court held that to exclude abuses, the state has mechanisms for supervision of the procedure for issuing medical certificates and compliance with the regime of sick leave by insured people, rather than put on the shoulders of most honest employees the consequences of the lack or inefficiency of such mechanisms (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 32).

The Court held that the repeal of the social insurance benefits in case of illness for the first day of temporary disability impairs the right of employees to proper material insurance for the period of disability, Article 4 para. (2) let. a) of the law being in conflict with Article 47 of the Constitution (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 33).

The Court held that the right to social insurance, guaranteed by Article 47 of the Constitution requires the *insured person* to benefit from temporary disability allowance for the period during which the insured risk affects him/her to the extent that the protection established by the constitutional norm invoked is not applied to the *employer*. In addition, this rule does not limit the state's right to regulate the participation of employers to pay social insurance benefits (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 35).

The Court considered that the challenged provisions do not introduce anything unconstitutional in respect of the additional contribution of the employer for temporary disability of their employee (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 36).

The Court reiterated that the Supreme Law does not guarantee a fixed amount of benefits, so that the legislature enjoys in social rights of a rather wide margin of appreciation in determination of the rules for the implementation of individual social rights, including the possibility to change them (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 46).

On the other hand, the Court accepted the arguments of the authorities that the reduction of the percentage amount of the allowance for temporary disability aims to ensure equity between employees who are temporarily unable to work and employees who work as wage contributors from the salary funds to the payment of the income tax and other social security contributions, while the temporary disability benefits are not taxable (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 47).

In this context, the Court held that persons covered by the challenged norms were not entirely deprived of litigious social benefits, but will suffer from a reduction in their amount although not as a result of changing their personal situation, but as a result of some legislative amendments. Therefore, the norms stated above do not suppress these rights (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 48).

The Court noted that, although there is no doubt that in social rights the Constitution obliges the state to take positive steps to protect these rights, the content of the state's obligation is to provide the beneficiaries of such rights with a minimum standard of social protection, rather than a proper living standard in line with their aspirations, as is often misinterpreted (*Judgment of the Constitutional Court No. 5 of 10 April 2012*, § 50).

In the Court's view, despite some limitations in social protection in case of temporary disability, this limitation does not reach such intensity that is in conflict with the constitutional system, nor affect the very substance of the rights concerned (*Judgment of the Court Constitutional No.5 10 April 2012*, § 51).

2.8. Right of person aggrieved by a public authority

- Preliminary procedure in administrative litigation

Article 1 para. (2) of the Administrative Litigation Law provides that any person who considers his/her right recognized under law as being violated by a public authority through an administrative act or by failure to solve in legal term a claim, may request the competent administrative court to annul the act, recognition of the claimed right and compensation of the damage caused (*Judgment of the Constitutional Court No. 18 of 11 December 2012*, § 45).

The Court noted that the provisions contained in Article 1 para. (2) of the Administrative Litigation Law derives from Article 53 para. (1) of the Constitution, which provides that: "The person whose right was violated by a public authority through an administrative act or failure to settle in legal term an application, is entitled to obtain the recognition of the claimed right, annulment and compensation of damage" (*Judgment of the Constitutional Court No. 18 of 11 December 2012*, § 46).

The Court noted that in administrative litigation the prior procedure is a graceful procedure, which does not imply the involvement of a jurisdictional body, but of the

same authority that issued the administrative act or the superior authority (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 89).

In case of disagreement with the act issued following this procedure, it may be subject to a judicial review determining all procedural guarantees for the individual (assurance of the adversariality principle, equality, available in rights) and effective legal remedies against the challenged administrative act (*Judgment of the Court constitutional No. 14 15 November 2012*, § 90).

The Court noted that the right to request the annulment of an act judicially may be subject to some conditions as if they pursue *a lawful aim*, are necessary in a democratic society and are *proportionate to the aim* pursued. In this case, the lawful aim pursued by the legislature was to grant the possibility of the issuer of the act or the senior authority to verify and decide on the act challenged (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 96).

Also, given the above, namely the *provision of a full judicial review* of administrative acts guarantees the application of Article 53 para. (1) and Article 20 of the Constitution (*Judgment of the Constitutional Court No. 14 of 15 November 2012*, § 97).

B | CONCLUSIONS OF THE COURT

I | CONSTITUTIONAL PROVISIONS

The Court recognized *constitutional*:

- *the Parliament's Decision No. 38 of 7 March 2012 on the date of election of the President of the Republic of Moldova, the Parliament's Decision No. 39 of 7 March 2012 on special commission for the elections of the President of the Republic of Moldova and the Parliament's Decision No. 46 of 16 March 2012 on the confirmation of election of the President of the Republic of Moldova;*
- *the elections of the President of the Republic of Moldova on 16 March 2012, validating the election of Mr. Nicolae Timofti in this office (Judgment of the Constitutional Court No. 4 of 19 March 2012);*
- *the provisions of Articles 4 para. (2) let. b), 9 para. (1) and 13 para. (1) let. c) of the Law No.289-XV of 22 July 2004 on allowances for temporary disability and other social*

- insurance benefits* in the wording of the Law No. 3 of 15 January 2012 and of the Law No. 56 of 9 June 2011 (*Judgment of the Constitutional Court No. 5 of 10 April 2012*);
- the paragraph 3 of Article 3 of the Law No. 142-XVI of 7 July 2005 on the approval of the Classifier of areas of professional education and specialties for the education of staff in higher education institutions, cycle I (*Judgment of the Constitutional Court No. 6 of 03 May 2012*);
 - the provisions of Article 5 paragraph (6), Article 6 paragraphs (2), (3) and (4) and Article 10 paragraph (3) of the Law no.1234-XIV of 22 September 2000 on the procedure of election of the President of the Republic of Moldova (*Judgment of the Constitutional Court No. 7 of 24 May 2012*);
 - the phrase “any member” of paragraph (1) of Article 10 of the Law No.950-XIII of 19 July 1996 “On the Disciplinary Board and Disciplinary Liability of Judges”, as amended and supplemented, in the part in which the Prosecutor General, member of law of the Superior Council of Magistracy, is given the right to institute disciplinary proceedings against judges (*Judgment of the Constitutional Court No. 9 of 28 June 2012*);
 - the paragraphs (3) and (4) of Article 16 of the Law No. 39-XIII of 7 April 1994 on the status of deputy of Parliament, amended by the Law No. 26 of 1 March 2012 amending and supplementing certain legal acts, except for the phrases “president of faction or by” and “unrelated” in paragraph (4);
 - the last sentence of paragraphs (2) and (3) of Article 129 of the Regulation of the Parliament adopted by the Law No.797-XIII of 2 April 1996, as amended by the Law No. 26 of 1 March 2012 amending and supplementing certain legal acts (*Judgment of the Constitutional Court No. 10 of 12 July 2012*);
 - the heading No.2, specifying the diseases and physical defects, of the Medical Scale in the Annex No. 2 of the Regulation on medical and military expertise in the Armed Forces of the Republic of Moldova, approved by the Government Decision No.897 of 23 July 2003 (*Judgment of the Constitutional Court No. 13 of 06 November 2012*);
 - the provisions of Articles 166 para. (2) let. h), 167 para. (1) let. d), 170 para. (1) let. a), 267 let. a), 347 para. (3), 348 para. (2) let. e) of the Code of Civil Procedure of the Republic of Moldova No. 225-XV of 30 May 2003 (*Judgment of the Constitutional Court No. 14 of 15 November 2012*);

- Article 47 para. (12) of *the Regulation of the Parliament*, in the wording of Article I of the Law No.115 of 18 May 2012 for the completion of Article 47 of the Regulation of the Parliament adopted the Law No.797-XIII of 2 April 1996, except for the phrase “and adopted” (*Judgment of the Constitutional Court No. 15 of 04 December 2012*);
- the provisions of para. (8) of Article 38 of *the Broadcasting Code of the Republic of Moldova No. 260-XVI of 27 July 2006* in the wording of the Amending Law No. 84 of 13 April 2012, in terms of becoming binding of the decision of the Broadcasting Coordinating Council on *the application of sanctions of public warning, withdrawal of the right to broadcast advertisements for a certain period, fine* from the date of adoption and bringing to the attention of radiobroadcasters and distributors of services covered by the recommended letter (*Judgment of the Constitutional Court No. 17 of 06 December 2012*).

II UNCONSTITUTIONAL PROVISIONS

The Court declared *unconstitutional*:

- *the Parliament’s Decision No. 266 of 23 December 2011* on the results of ordinary elections of the President of the Republic of Moldova and *the Parliament’s Decision No.287 of 28 December 2011* on the date of the repeat elections of the President of the Republic of Moldova (*Judgment of the Constitutional Court No. 1 of 12 January 2012*);
- the provisions of Articles III of *the Law no.163-XV of 22 July 2011* amending and supplementing certain legal acts (*Judgment of the Constitutional Court No. 3 of 09 February 2012*);
- the provisions of Article 4 para. (2) let. a) of *the Law No.289-XV of 22 July 2004 on allowances for temporary disability and other social insurance benefits*, as amended by the Law No. 56 of 9 June 2011 (*Judgment of the Constitutional Court No. 5 of 10 April 2012*);
- the phrase “as well as in case of other obstacles that make it impossible to conduct the elections of the President of the Republic of Moldova” in Article 9 paragraph (7) of *the Law no.1234-XIV of 22 September 2000 on the election procedure of the President of the Republic of Moldova* (*Judgment of the Constitutional Court No. 7 of 24 May 2012*);
- the phrases “chairman of factions or by” and “unrelated” in paragraph (4) of Article 16 of *the Law No. 39-XIII of 7 April 1994 on the status of Parliament deputy*, amended

- by the Law No. 26 of 1 March 2012 amending and supplementing some legal acts (*Judgment of the Constitutional Court No. 10 of 12 July 2012*);
- the phrase “In case of meeting all requirements set by the law in force, the ministry and its agencies draft a reasoned opinion” contained in Article 28 let. (a) of the Law on the citizenship of *the Republic of Moldova No.1024-XIV of 2 June 2000*, as amended and supplemented, in the examination of the *exception of unconstitutionality* stated by the Supreme Court of Justice (*Judgment of the Constitutional Court No. 11 of 30 October 2012*);
 - the word “women” of the phrase “military woman” in Article 32 para. (4) let. d) and let. j) of *the Law No. 162-XVI of 22 July 2005 on the status of military people* (*Judgment of the Constitutional Court No. 12 of 01 November 2012*);
 - the word “woman” of the phrase “military woman “ in paragraphs 67 let. j), 88 para. 5 let. b), 108 let. a), 116 let. e) and 131 of the *Regulation on military service in the Armed Forces*, approved by the Government Decision No.941 of 17 august 2006 (*Judgment of the Constitutional Court No. 12 of 01 November 2012*);
 - the phrase “Basis: Article ___ of the Medical Scale (the order of the Minister of Defence of the Republic of Moldova No. ___ of _____)” from the model of the certificate provided in *the Annex No. 8 to the Regulation on recruitment of citizens in the military service with full or reduced term* approved by the Government Decision No.864 of 17 August 2005 (*Judgment of the Constitutional Court No. 13 of 06 November 2012*);
 - the phrase “and adopted” contained in Article 47 para. (12) of the *Regulation of the Parliament*, in the wording of the Article I of the Law No.115 of 18 May 2012 for the completion of Article 47 of the Regulation of the Parliament adopted the Law No.797-XIII of 2 April 1996, except for the phrase “and adopted” (*Judgment of the Constitutional Court No. 15 of 04 December 2012*);
 - the provision of Article II of *the Law no.115 of 18 May 2012 for the completion of Article 47 of the Regulation of the Parliament* adopted the Law No.797-XIII of 2 April 1996 (*Judgment of the Constitutional Court No. 15 of 04 December 2012*);
 - the provisions of para. (8) of Article 38 of the *Broadcasting Code of the Republic of Moldova No. 260-XVI of Moldova of 27 July 2006* in the wording of Law No. 84 of 13 April 2012, in terms of becoming binding of the decision of the Broadcasting Coordinating Council on the application of sanctions *of suspension of the licence of*

broadcasting for a certain period or withdrawal of the license of broadcasting from the date of adoption and bringing to the attention of radiobroadcasters and distributors of services covered by the recommended letter (Judgment of the Constitutional Court No. 17 of 06 December 2012).

- the provisions of Article 21 para. (3) of *the Administrative Litigation Law No. 793-XIV of 10 February 2000*, as amended and supplemented (*Judgment of the Constitutional Court No. 18 of 11 December 2012*);
- the provisions of Article 18 (1) let. c¹) and para. (5¹) of *the Law No. 113 of 17 June 2010 on bailiffs* (*Judgment of the Constitutional Court No. 19 of 18 December 2012*).

III INTERPRETATION OF THE CONSTITUTION PROVISIONS

The Court held that, pursuant to paragraph (1) of Article 68 of the Constitution, the exercise of the term covers the entire deputy political activity, both parliamentary and extra-parliamentary as well as the adoption of laws in Parliament plenary meetings, participation in the sittings of the specialty commissions of the Parliament, other activities directly related to lawmaking or governance monitoring, participation in parliamentary delegations and meetings with voters.

The Court concluded that in terms of the provisions “in the exercise of the term the deputies serve people”, “any imperative term is void” of paragraphs (1) and (2) of Article 68 of the Constitution:

- the representative term means the right delegated by the population of the Republic of Moldova as holder of the national sovereignty, deputies of the Parliament for the exercise of the legislative power as part of the state power, under and in accordance with constitutional and legal provisions;
- the Parliament deputies hold their office directly, freely and effectively, according to their own convictions, in the interests of the whole population.

For the purposes of paragraph (2) of Article 69 of the Constitution, the termination of the deputy term by “revocation of the term” can occur as expressly provided in the Constitution, the laws governing the organization and functioning of the Parliament and which defines the status of the deputy (*Judgment of the Constitutional Court No. 8 of 19 June 2012*).

IV VALIDATION OF DEPUTY'S TERMS

The plenary session did not establish any circumstances impeding the validation of the deputy's term in the Parliament given by the Central Election Commission to Mr. Anatoly Arhire, year of birth 1956, living in Ungheni town, engineer, alternative candidate of the Liberal Party's list.

In accordance with Articles 140 para. (2) of the Constitution, 26 of the Law on the Constitutional Court, 4 para. (1) let. e) and 62 let. d) of the Code of Constitutional Jurisdiction, Mr. Anatolie Arhire *was declared elected* as deputy in the Parliament of the Republic of Moldova, the Liberal Party's list, with validation of term (*Judgment of the Constitutional Court No. 16 of 04 December 2012*).

V SUSPENDED PROCESSES

The Court *suspended the processes*:

- for the interpretation of Article 122 para. (2) of the Constitution of the Republic of Moldova (*DCC No. 1 of 15 March 2012, complaint No.34b/2011*);
- on the control of constitutionality of the phrases "Emergencies Department, Intelligence and Security Service, State Protection and Guard Service" in p. 1) and "people certified of the staff of prisons" in p. 2) of Article 37 of the Code of Criminal Procedure (*DCC No. 2 of 23 October 2012, complaint No.9a/2012*);
- the complaints on the exception of unconstitutionality of the provisions of Article II of the Law No. 42 of 17 March 2011 amending the Annex to the Law no.451-XV of 30 July 2001 on regulation through licensing of entrepreneurial activity (*DCC No. 3 of 01 November 2012, complaints No.13g/2012, No.14g/2012 and No.15g/2012*);
- on the control of constitutionality of the provisions of Article 15 para. (2), except for the last sentence, Article 17, except for para. (4), Article 18 para. (2) let. g) and Article 18 para. (4). c) of the Law No. 64 of 23 April 2010 on freedom of expression, the author of the complaint being informed that he/she is entitled to submit a new complaint on the control of constitutionality of the last sentence of Article 15 para. (2) and the provisions of Art .17 par. (4) of this law (*DCC 4 of 04 December 2012, complaint No.22a/2012*).

VI | REFUSED COMPLAINTS

The following complaints were not accepted for examination:

- the complaint of the ombudsman Aurelia Grigoriu on the control of constitutionality of the phrase “any member” in para. (1) Article 10 of the Law No.950-XIII of 19 July 1996 on Disciplinary Board and Disciplinary Liability of Judges (*DCC of 03 April 2012, complaint No.3a/2012*);
- complaint of a group of Parliament deputies on the constitutional control of the provision “the insured [deputy] ... is entitled to a pension of 42% of the amount of all monthly payments insured of the acting deputy in the position (s) held in the Parliament” in para. (1) Article 43 of the Law No.156-XIV of 14 October 1998 on state social insurance pensions (*DCC of 10 July 2012, complaint No.10a/2012*);
- complaint of the Minister of Justice on the interpretation of Article 41 para. (4) of the Constitution (*letter No.PCC-01/2b of 23 July 2012, complaint No.2b/2012*);
- complaint on the control of constitutionality of the Parliament’s Decision No. 191 of 12 July 2012 on the historical and political and legal appreciation of the totalitarian communist regime in the Moldavian Soviet Socialist Republic (*DCC of 04 October 2012, complaint No.30a/2012*);
- complaint on the control of constitutionality of para. (7) Article 38 of the Financial Institutions Law No. 550-XIII of 21 July 1995 (*DCC of 10 September 2012, complaint No.24a/2012*).

C | ADDRESSES

Address No.PCC-01/39a of 10 April 2012, Judgment of the Constitutional Court No. 5 of 10 April 2012. The Court found that the repeal of granting social benefits for the first day of temporary disability caused by common illnesses or injuries unrelated to work impairs the right of employees to proper material security, Article 4 para. (2) let. a) of the law being in conflict with Article 47 of the Constitution. In this context, the Court noted that being declared unconstitutional, this legal provision is declared *legal vacuum on the source of funding of the first calendar day of temporary disability*, because under the current rules recognized constitutional by the Court, the second, third and fourth day of

temporary disability are paid to the employee on the employer's account and only since the fifth day of temporary disability allowance is paid from the budget of state social insurance (Article 4 para. (2) let. b) and c) of the Law No.289-XV).

Address No.PCC-01/6a of 28 June 2012, the Judgment of the Constitutional Court No. 9 of 28 June 2012. The Court found some gaps in the Law on the Disciplinary Board and Disciplinary Liability of Judges related to the *procedure of institution* of disciplinary procedures against judges by members of the Superior Council of Magistracy, specified in par. (1) Article 10 of the law. The law does not state whether the members of the Superior Council of Magistracy are entitled to take action or whether the institution of disciplinary proceedings may take place only upon the complaint of any of the parties to litigation. The law does not stipulate whether in case of a judiciary or manifestation by judge in the exercise of his/her duties, an attitude unworthy to participants in the process, disciplinary proceedings may be instituted against the judge on the initiative of the parties in the trial before the adoption of a final decision in the pending case in court. The laws do not contain the requirements, which the provisions on the initiation of disciplinary procedures shall comply with.

Address No.PCC-01/7a of 12 July 2012. Judgment of the Constitutional Court No. 10 of 12 July 2012. The Court reminded that the Judgment No. 8 of 19 June 2012 found a legal gap on the parliamentary protest procedures, requiring comprehensive legal regulation of the parliamentary protest procedures, conditions and grounds when the parliamentary protest may be declared, so that there is no doubt or confusion between the protest and the ungrounded absent from the Parliament's sittings. In this context, the Court noted that the parliamentary protest must be publicly notified by the deputy concerned or by the chairman of the parliament faction announcing the situation, which determined them and the requirements for suspension. Equally, the Court found that limiting parliamentary protest only to the drafts included in the agenda is contrary to the interpretation stated by the Constitutional Court in the Judgment No. 8 of 19 June 2012 under which the parliamentary protests can be conducted within the political activity of the deputy that has no direct relationship to the legislative creation.

Address No.JCC-03/16c of 30 October 2012, Judgment of the Constitutional Court No. 11 of 30 October 2012. The Constitutional Court found that the legal provisions on

the procedure of settlement of application for citizenship contain several inconsistencies and ambiguities. Thus, the Citizenship Law does not cover exactly the competence of authorities required to respond to applications for citizenship. This vagueness concerns in particular the procedure for refusal to pass to the presidential institution the applications for citizenship that are submitted to it. The Court also found a lack of clarity in the application of the provision of “legal and habitual residence” on the territory of the Republic of Moldova, determination of the date of commencement of the time of naturalization, and in terms of compliance of this provision with Article 6 of the European Convention on Nationality, under which citizenship by naturalization is granted to people who “live lawfully” in the state. In the context of the case considered, the Court held that the Law on Asylum of 18 December 2008, which provides 4 forms of protection of foreigners, is not correlated with the Law on Citizenship, which recognizes the possibility of preferential acquisition of citizenship by naturalization only for a form of protection - refugee, noting that only declaring unconstitutional a challenged norm is not likely to solve these inconsistencies in legislation. The Parliament and the Government of the Republic of Moldova need to amend the regulatory framework that would provide clarity, predictability and functionality of the settlement procedure of the applications for citizenship.

Address No.PCC-01/12a of 01 November 2012, Judgment of the Constitutional Court No. 12 of 01 November 2012. The Court found that being declared unconstitutional the word “women” of the phrase “military women”, the legal rules affected need to be subject to editorial revision to comply with the norms of the literary language. At the same time, the Court observed that a legal vacuum was created on granting military people child care leave, the comprehensive legal regulation of terms and conditions is required under which this right can be exercised. The Court held that such a general and automatic gender-based restriction imposed to a group of persons goes beyond the scope of an acceptable state’s margin of appreciation, no matter how large it is, and does not comply with the constitutional norms.

Address No.PCC-01/18a of 04 December 2012, Judgment of the Constitutional Court No. 15 of 04 December 2012. The Court noted that the lawmaker used improperly the terms in Article 47 para. (12) of the Regulation of the Parliament. Therefore, to

guarantee the enforcement of the constitutional rule, it is required that the Regulation of the Parliament contains clear provisions, observing the rules of the legislative technique related to the situations in which the legislative initiatives and the drafts that have not gone through all stages of the legislative procedure would be declared void and will be undertaken in the new parliament, taking into account the arguments given in the Judgment No. 15 of 4 December 2012. Also norms are to be set up that will clearly provide for the way in which draft legal acts that were adopted in the previous term will continue the procedure in the new Parliament in the first and, as appropriate, in the second reading. In this context, the Court reiterated the opposition's role for the functioning of democracy. The Court emphasized the need for the establishment by the Parliament of some mechanisms that would ensure the examination of draft laws presented by the parliamentary opposition, and the organization of special sittings of the Parliament plenum clearly dedicated to their discussion, similarly to practices of other states in the area referred to in the decision.

Address No.PCC-01/34a of 18 December 2012, Judgment of the Constitutional Court No. 19 of 18 December 2012. The Court noted that the provision “serious violation of law” is included in Article 21 para. (2) let. b1) of the law on bailiffs. Analyzing all the reasons set out in this article, which may constitute disciplinary deviations, the Court held that, given the generality of the subparagraph b1), these reasons could be attributed to “serious violation of law”. The Court noted that the law does not include criteria according to which the Disciplinary Board considers serious violations of law. Or it follows from Article 21 para. (2) let.b1) of the law that the violation of law means any act contrary to law taken by the bailiff or any omission of him/her to apply the law when it is required. At the same time, the Court noted that, for consideration, no violation of law committed by the bailiff shall be deducted for the Disciplinary Board (including a violation that may fall under the criminal, contravention norm or violation of law in preparing documents in enforcement proceedings, acts that can be challenged in court). The Court considered appropriate the expressly and precisely determination by the legislature of situations that can be qualified as “serious violation of law” and that are to be deducted for the examination for the Disciplinary Board.

D | DISSENTING OPINIONS

The following judges provided their dissenting opinions:

- *Alexandru Tanase*, in the Judgment No. 7 of 24 May 2012 on the control of constitutionality of some provisions of the Law No.1234-XIV of 22 September 2000 on the election of the President of the Republic of Moldova (*complaint No.1a/2012*);
- *Victor Puscas*, in the Judgment No. 3 of 09 February 2012 on the control of constitutionality of some provisions of the Law No. 163 of 22 July 2011 amending and supplementing certain legal acts (*complaint No.30a/2011*); and
- Judgment No. 6 of 03 May 2012 on the control of constitutionality of the paragraph 3 of Article 3 of the Law No. 142-XVI of 7 July 2005 on the approval of the Classifier of areas of professional education and specialties for the education of staff in higher education institutions, cycle I (*complaint No.35a/2011*);
- *Elena Safaleru*, in the Judgment No. 1 of 12 January 2012 on the control of constitutionality of Parliament's Decision No. 266 of 23 December 2011 on the results of regular elections of the President of the Republic of Moldova (notification No.37a/2011), and
- Judgment No.11 of 30 January 2012 on the exception of unconstitutionality of Article 28 let. (a) of the Law on Citizenship of the Republic of Moldova No.1024-XIV of 2 June 2000, as amended and supplemented (*complaint No.16g/2012*).

E | STATISTICS

During 2012 41 complaints were filed to the Court, other 5 complaints were undertaken from 2011. Thus, during 2012 the Court considered a total of 46 complaints (*see also the charts No.1, No.3 and No.5*).

Of the total of 46 pending complaints, in 2012 34 complaints were examined, and namely: 19 complaints with the adoption of 18 Judgments (*2 files being related*); 6 complaints by adopting 4 Judgments of suspension (*3 files being related*); 4 complaints were refused by Judgments and 5 complaints were returned to the authors by letters. Thus, for 2013 12 complaints were transferred (*see also the chart 2*).

The ranking of authors of complaints filed with the Court (*see also the charts No. 4, No. 7 and No. 8*):

- parliament deputies and factions - 30 complaints (*2 complaints were undertaken from 2011, 28 complaints were filed in 2012, of which 9 complaints were transferred for 2013*). Of the total number of complaints filed in 2012 by parliament deputies and factions, *23 complaints* came from the parliamentary opposition and *5 complaints* from the governing coalition;
- Minister of Justice - 2 complaints (*1 complaint was undertaken from 2011 and 1 complaint was filed in 2012*);
- ombudsman - 7 complaints (*2 complaints were undertaken from 2011, 5 complaints were filed in 2012, of which 1 complaint was transferred in 2013*);
- Supreme Court of Justice - 5 complaints (*1 complaint transferred for 2013*);
- Central Electoral Commission - 1 complaint;
- Prosecutor General - 1 complaint (*transferred for 2013*);

Of the 19 Judgments delivered by the Court: 1 Judgment was for the interpretation of some provisions of the Constitution; 14 Judgment on the control of constitutionality of laws, regulations and decisions of Parliament, one of the Judgments contained provisions for confirmation of the results of election of the President of the Republic of Moldova; 1 Judgment on the control of constitutionality of a Government decision; 1 Judgment on the settlement of unconstitutionality exception; 1 Judgment on the validation of deputy term; 1 Judgment approving the Report for 2011 (*see also charts No. 9 and 10*).

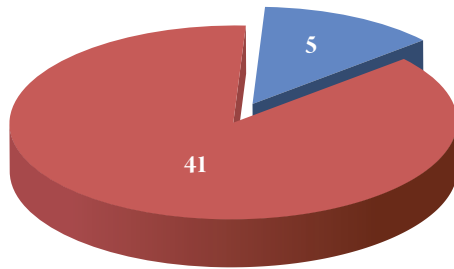
Following the settlement of pending complaints in 2012, in *16 Judgments* the Court ruled on the constitutionality or unconstitutionality of some legal provisions, as follows (*see also the chart No.11*):

- in *10 Judgments* at least one of the challenged legal provisions was recognized constitutional;
- in *12 Judgments* at least one of the challenged legal provisions was declared unconstitutional.

Of the *16 Judgments* in *6 Judgments*, the Court recognized at the same time constitutional some legal provisions and declared other legislation unconstitutional.

Chart No.1

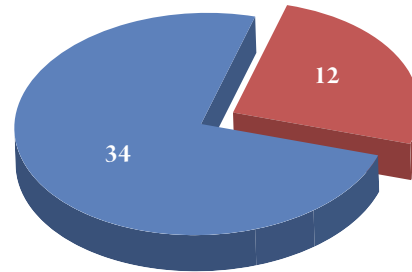
Task of the Constitutional Court in 2012



- complaints undertaken from 2011
- complaints submitted in 2012

Chart No.2

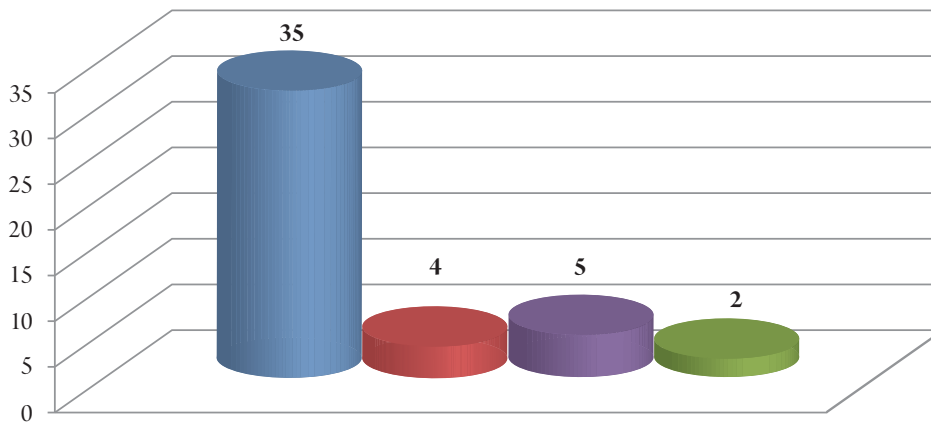
Complaints settled by the Constitutional Court in 2012 and transferred in 2013



- complaints settled in 2012
- transferred in 2013

Chart No.3

Object of pending complaints of the Constitutional Court in 2012



- On the control of constitutionality of some regulatory acts
- On interpretation of Constitution
- On the settlement of unconstitutionality exceptions
- On the conformation of results of elections of the President of the Republic of Moldova and validation of deputy terms

Chart No.4

Subjects referring to the Constitutional Court in 2012

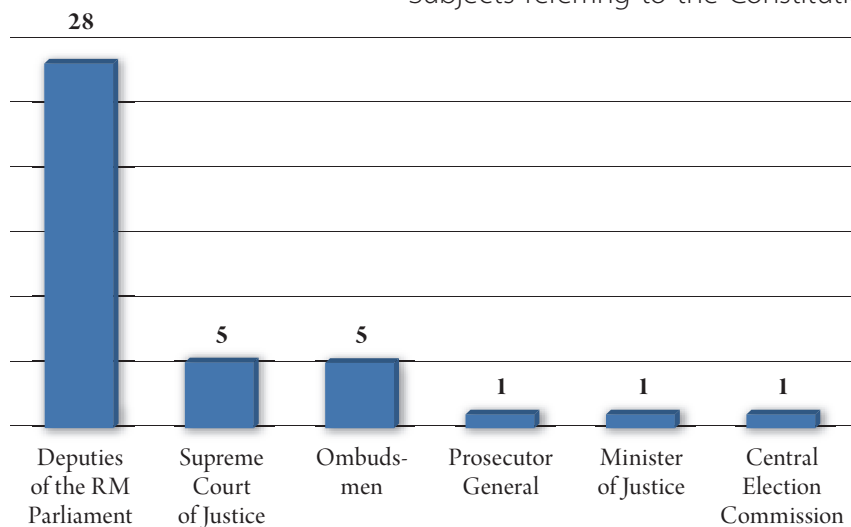


Chart No.5

Complaints submitted to the Constitutional Court in 2012 including those undertaken from 2011 and transferred in 2013 (by object)

■ Complaints undertaken from 2011 ■ Complaints submitted in 2012 ■ Complaints transferred for 2013

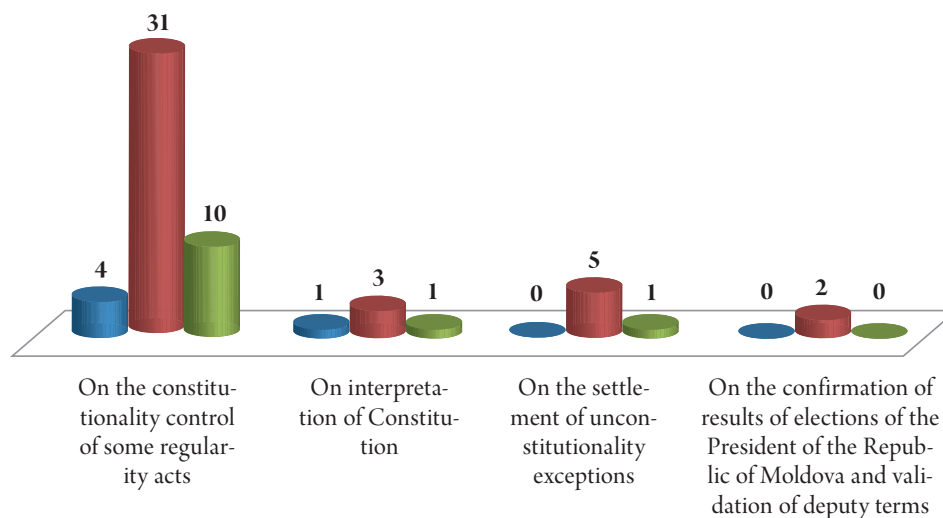
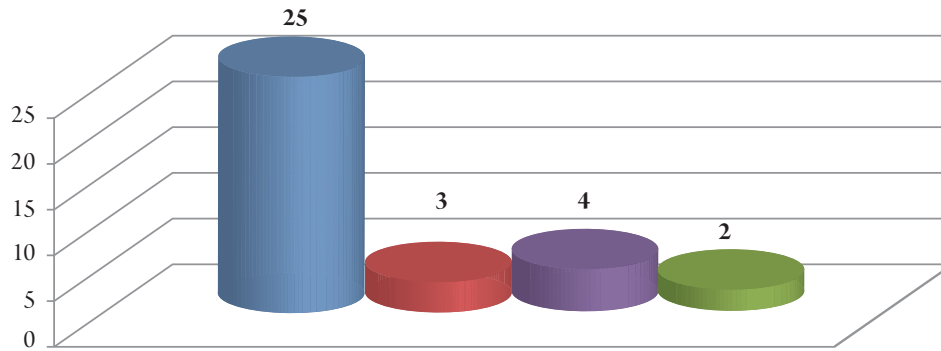


Chart No.6

Complaints settled by the Constitutional Court in 2012 (by object)



- On the control of constitutionality of some regulatory acts
- On interpretation of Constitution
- On the settlement of unconstitutionality exceptions
- On the conformation of results of elections of the President of the Republic of Moldova and validation of deputy terms

Chart No.7

Complaints settled by the Constitutional Court in 2012, including those undertook from 2011 and transferred for 2013 (by subject)

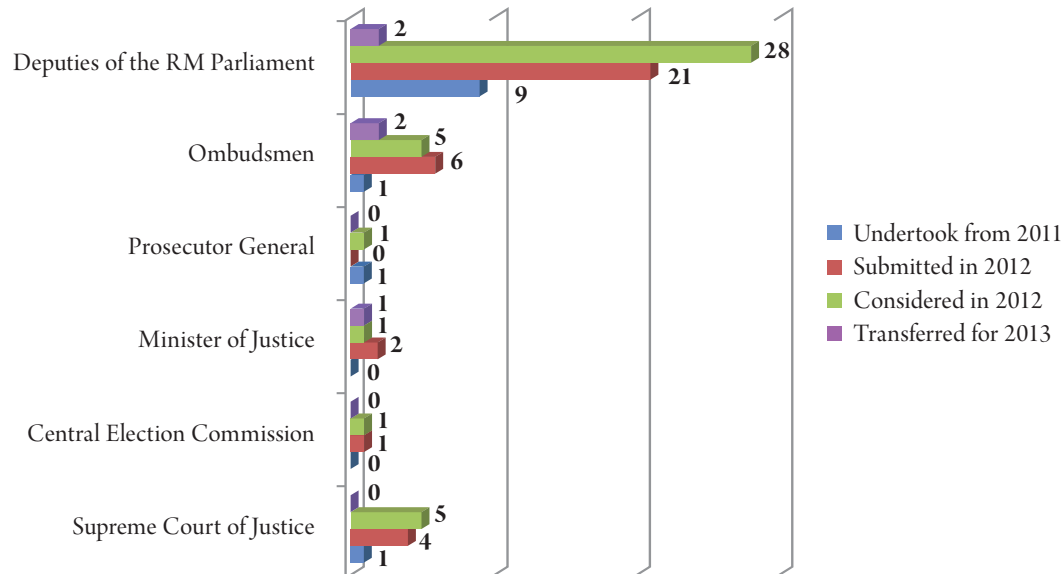


Chart No.8

Complaints submitted by the Parliament deputies and fractions

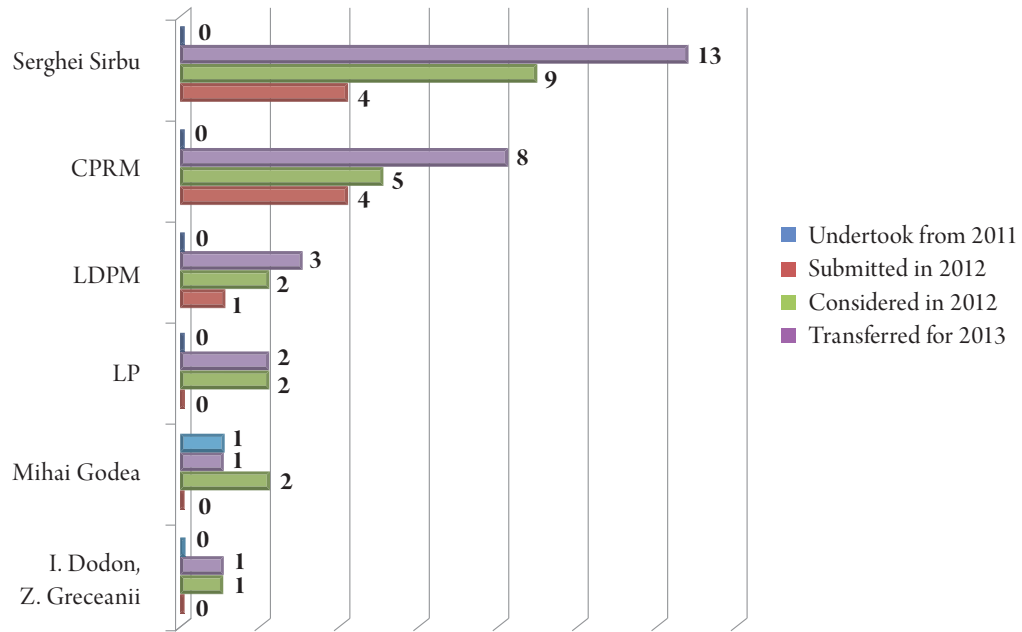


Chart No.9

Acts rendered by the Constitutional Court based on pending complaints

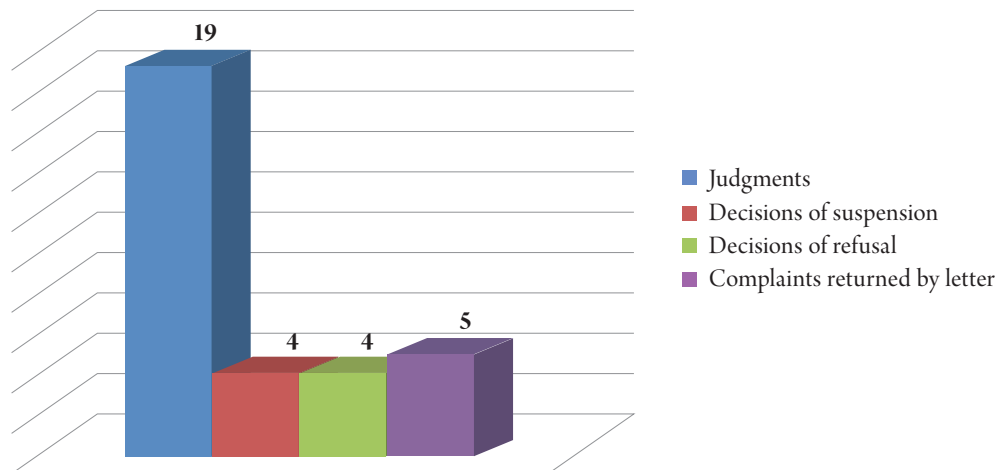


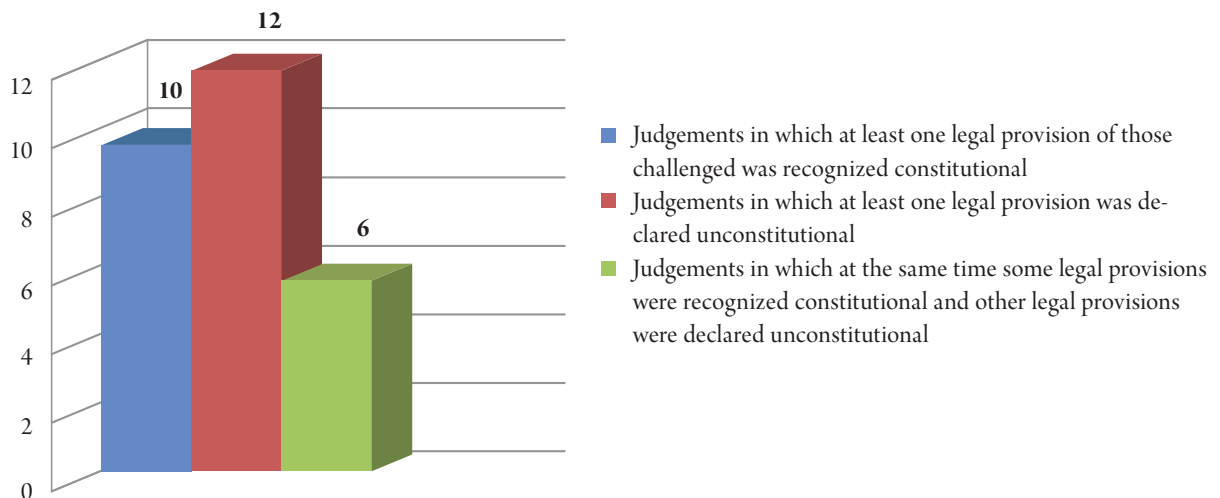
Chart No.10

Judgements of the Constitutional Court of 2012 (by object)



Chart No.11

Judgements by which the Constitutional Court controlled the constitutionality of some legal provisions





TITLE
ENFORCEMENT OF THE OF
CONSTITUTIONAL COURT ACTS

IV

TITLE IV

ENFORCEMENT OF THE OF CONSTITUTIONAL COURT ACTS



The Constitutional Court acts are official documents enforceable throughout the country for all public authorities and all legal and natural persons. The regulatory acts or some parts thereof declared unconstitutional are void and are not applicable since the adoption of such decision of the Constitutional Court.

The Constitutional Court Judgments and notices are sent to parties, public authorities and decision makers whose documents were reviewed by the Constitutional Court, the decisions and notices are also sent to the President of the Republic of Moldova, Parliament, Government, Supreme Court, Prosecutor General and Minister of Justice.

The public authorities are required to enforce the acts of the Constitutional Court: the Government, within 3 months from the date of publication of the Judgment of the Constitutional Court, submits to the Parliament the draft law amending and supplementing or repealing the enactment of the regulatory act or some parts of it declared unconstitutional. That draft law will be considered by the Parliament as a priority; the President of the Republic of Moldova or the Government, within 2 months from the date of publication of the Constitutional Court Judgment, amends and supplements or repeals the act or some parts of it declared unconstitutional and, where appropriate, issues or adopts a new act.

If during the examination of case, the Constitutional Court finds some gaps in the law, it notifies the bodies concerned by means of an address on the liquidation of such

gaps. The address is to be considered by the authority concerned that within at most 3 months shall inform the Constitutional Court about the results of examination.

The Constitutional Court is the sole authority of constitutional jurisdiction in the Republic of Moldova, which guarantees the supremacy of the Constitution and implements the principle of state power separation and requires a particular respect for this authority and determine the enforcement of documents issued by the Court within the deadlines established by law.

Based on the above mentioned, it shall be noted that of the 12 *Judgments* rendered in 2012 in which at least one legal provision of those challenged was declared unconstitutional until the date of adoption of this Report, the deadline for the execution of 6 *Judgments* was over. Of these 6 *Judgments*, 2 *Judgments* were enforced in deadline (*Judgment of the Constitutional Court No. 1 of 12 January 2012, Judgment of the Constitutional Court No. 3 of 09 February 2012 and Judgment of the Constitutional Court No. 5 of 10 April 2012*), 1 *Judgment* was enforced beyond the deadline set by law (*Judgment of the Constitutional Court No. 5 of 10 April 2012*) and the other 3 *Judgments* remained unenforced (*Judgment of the Constitutional Court No. 7 of 24 May 2012, Judgment of the Constitutional Court No. 10 of 12 July 2012 and Judgment of the Constitutional Court No. 11 of 30 October 2012*).

Examining the statistics in 2012 there was no significant progress in the enforcement of Court *Judgments* compared with 2011.

Thus, of the 5 *Judgments* rendered in 2011 in which at least one of the challenged legal provision was declared unconstitutional, 2 *Judgments* were enforcement in the deadline (*Judgment of the Constitutional Court No. 5 of 18 February 2011, Judgment of the Constitutional Court No. 28 from 22 December 2011*), 2 *Judgments* were enforced beyond the deadline set under law (*Judgment of the Constitutional Court No. 12 of 07 June 2011, Judgment of the Constitutional Court No. 15 of 13 September 2011*), and 1 *Judgment* remained unenforced (*Judgment of the Constitutional Court No. 27 of 20 December 2011*).

Similarly, in 2012 7 *addresses* were sent to the Parliament and the Constitutional Court *was not informed* about the enforcement of any of them.

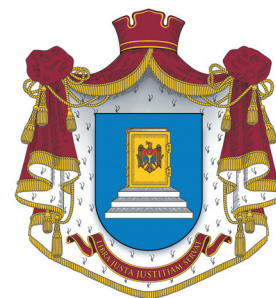


T I T L E

EXTERNAL RELATIONSHIPS

V

EXTERNAL RELATIONSHIPS



A | COLLABORATIONS

In 2012, in the context of external relationships of the Constitutional Court, several significant events took place.

The Constitutional Court of the Republic of Moldova continued to strengthen and expand its cooperation with similar European and world institutions as a full member of 4 international bodies: the European Commission for Democracy through the Law of the Council of Europe (Committee of Venice), the Association of Constitutional Courts partially using French language (ACCPUF), the Conference of European Constitutional Courts (CECC) and the World Conference on Constitutional Justice.

Like in previous years, the Constitutional Court submitted to the Venice Commission for publication in the Bulletin of constitutional jurisprudence the summaries of the most important decisions and asked the opinion of expert members of the Commission on certain issues. Thus, on 15 November 2012 the Court asked the Venice Commission opinion on the complaints on the prohibition of the use by political parties of symbols of the communist totalitarian regime and limitation of judges' immunity in cases of crimes of passive corruption and influence peddling. The *amicus curiae* opinions are to be adopted at the 94th Plenary Session of the Commission, on 8-9 March 2013.

The development of bilateral and international relations is one of the institution's priorities. The Constitutional Court of the Republic of Moldova received from 21 to 24 November 2012 a delegation of the Constitutional Tribunal of Poland. The delegation was headed by the President Andrzej Rzeplinski accompanied by the judges Mirosław Garnet and Wojciech Hermeliński and the director of president's cabinet, Adam Jankie-

wicz. This was the first visit to Moldova of representatives of the Polish Constitutional Tribunal as part of the bilateral cooperation.

The visit included a series of high level meetings and participation in events aimed at strengthening the relationships between Moldova and Poland. The members of the delegation met with Prime Minister Vlad Filat, Prime Deputy Speaker of Parliament, Vlad Plahotniuc, the President of the Supreme Court of Justice, Michael Poalelungi, the General Secretary of the Office of the President of the Republic of Moldova, Ion Padurararu, and the President of the Association of Judges, Ion Druta.

At the high-level meetings the actions taken by Moldova in achieving European integration, especially in the legal, political and economic fields, as well as Poland's experience on the way to European integration were discussed. However, the officials reviewed the bilateral relations highly appreciating the quality and consistency of the political dialogue between Moldova and Poland, including full support of our country provided by Poland in the European integration process. The delegation reiterated Polish readiness to further support Moldova in achieving its objectives.

In this context, on 22 September 2012 at Batumi, the Memorandum of Cooperation between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Georgia was signed, which is the fifth bilateral agreement signed by the Court with constitutional jurisdiction authorities of other countries. The other four agreements were signed with the Constitutional Court of Romania, Ukraine, Russia and Azerbaijan.

In order to continue and develop the relationships and joint actions with the Court's partners, on 18 September 2012 the Cooperation Agreement was signed with the Institute for International Cooperation of the German München-based Foundation "Hanns Seidel" aimed at promoting and sustaining democracy in Moldova and support in the constitutional reforms. At the same time the paper "*Constitution of the Republic of Moldova. Commentary*" was launch, being published with the financial support of the Foundation; it was the result of the joint work of the two institutions.

During 2012 meetings and working meetings of the President of the Constitutional Court and constitutional judges with the delegation of the Joint Commission for European Integration of the Romanian and Moldovan Parliaments, led by the Chairman of the omission for External Policy, Mr. Titus Corlatean, were held with the delegates of

the National Council of Italian Bar Associations (*Consiglio Nazionale Forense*), being in Chisinau at the signing of the Collaboration Agreement between the Lawyers' Union of Moldova and the Italian Consiglio Nazionale Forense, with the co-rapporteurs of the Monitoring Committee of obligations and commitments assumed by member states of the Council of Europe, PACE.

B | PARTICIPATIONS

Participation in work conferences, seminars, visits of the Constitutional Court judges in 2012				
Date	Person	Type of meeting	Venue	Title
27 January	Mrs. V.Sterbet, CC judge	Inauguration of the new judicial year of the European Court of Human Rights, solemn meeting and thematic seminar	Strasbourg France	<i>"Assurance of a greater involvement of national jurisdiction in the Convention system"</i>
31 January	CC judges	Donation of the collection of 128 volumes, covering the Judgments of the German Federal Constitutional Court by the German Foundation for International Legal Cooperation (IRZ Foundation)	Chisinau, RM	Strengthening of collaboration with the IRZ Foundation
23-24 March	Mr. V.Zaporojan, CC assistant judge, Mrs. R.Secrieru, General Secretary, Mr. R.Plamadeala, specialist in the Section of External Relationships	The 14th International Congress dedicated to the compared and European constitutional law	Regensburg, Germany	<i>"Constitutional courts and politics"</i>

13-14 April	Mrs. R.Secieru, General Secretary of the CC, Mrs. M.Beschieru, chief of the Section of External Relationships	The 5th Conference of General Secretaries of the Constitutional Courts and equivalent institutions	Erevan, Armenia	<i>"1. Procedural deadlines. 2. Reactions to the criticism of the Court's decisions"</i>
20 April	Mrs. V.Sterbet, CC judge, and Mrs. R.Secieru, General Secretary	Roundtable organized by the local office of the American Bar Association "Rule of Law Initiative" (ABA ROLL Moldova)	Chisinau, RM	<i>"Unification of judicial practice. Strengthening of the role of the judicial precedent"</i>
25-28 April	Mrs. E.Safaleru and Mr. V.Puscas, CC judges	Festivities and international symposium dedicated to the 50th anniversary of the Constitutional Court of Turkey	Ankara and Istanbul	<i>"Evolution of rights and freedoms in the XXIst century and the role of constitutional courts"</i>
12 May	Mr. A.Tanase, CC President	International colloquium organized by the Centre for Constitutional Law and Political Institutions	Bucharest, Romania	<i>"Exception of unconstitutionality in Romania - 100 years"</i>
21-22 May	Mrs. R.Secieru, General Secretary of the CC	UniDem International Seminar organized by the Venice Commission, University of Helsinki and the International Association of Constitutional Law	Helsinki, Finland	<i>"Constitutional design"</i>

31 mai- 2 June	Mrs. V.Sterbet, CC judge	Meeting of the 11th Joint Council of Constitutional Justice, the Venice Commission	Brno, Check Republic	Constitutional Courts cooperation with the Venice Forum, notices and opinions of the Venice Commission, cooperative activities CODICES database, miniconference "Rule of law "
7-8 June	Mrs. E.Safaleru and Mr. P.Railean, CC judges	International Conference dedicated to the 20th anniversary of the Constitutional Court of the Republic of Albania	Tirana, Albania	<i>"Separation and balance of powers - the role of constitutional control"</i>
21-22 June	Judges V.Sterbet, E.Safaleru, V.Puscas and P.Railean, R.Secieru, General Secretary and M.Beschieru, chief of the Section of External Relationships	Celebrations of the 20th anniversary of the Constitutional Court of Romania and celebration of 100 years of affirmation of the constitutional control in Romania, international conference	Bucharest, Romania	<i>"Control of constitutionality - tradition and perspectives"</i>
4-6 July	Mrs. R.Secieru, General Secretary of the CC	The 6th ACCPUF Congress hosted by the Constitutional Council of Morocco	Marrakech, Kingdom of Morocco	<i>"Citizen and constitutional justice"</i>

6-7 July	Mr. V.Puscas and P.Railean, CC judges	Regional Conference of Constitutional Courts of the Black Sea region organized by the Venice Commission	Batumi, Georgia	<i>“Right to equality: the scope of constitutional protection”</i>
29 August-1 September	Mr. A.Tanase, CC President, Mrs. R.Secieru, General Secretary, M.Beschieru, chief of the Section of External Relationships	International Conference and festivities on the occasion of the Constitution Day of Kazakhstan at the invitation of the Constitutional Council	Astana and Almaty, Kazakhstan	<i>“Constitution - base for the modernization of society and state”</i>
9-11 September	Mr. A.Tanase, CC President, Mrs. R.Secieru, General Secretary	Preparatory Meeting (Presidents’ Circle) of the XVIth Congress of the Conference of European Constitutional Courts, whose presidency is held for a period of 3 years by the Constitutional Court of Austria	Vienna, Austria	Adoption of resolutions on the organization of the CECC’s XVIth Congress, to be held in 2014
20-22 September	Mr. A.Tanase, CC President, Mrs. R.Secieru, General Secretary, L.Rusu, chief of the Section of Legal Expertise	International seminar attended by Constitutional Courts of the Eastern Partnership states organized by the Constitutional Court of Georgia	Batumi, Georgia	<i>“Role of constitutional courts in Eastern Partnership states in the harmonization of national legislation with the EU acquis”</i>

5-6 October	Mrs. V.Sterbet, CC judge, Mrs. T.Berladean, judge clerk	The XVIIth International Conference with the participation of constitutional courts of new democracies	Ere- van, Arme- nia	<i>“Interaction of constitutional courts and other institutions to ensure execution of constitutional court decisions”</i>
10 Oc- tober	Mrs. V.Sterbet, CC judge	Festive event dedicated to the 20th anniversary of the establishment of the “Hanns Seidel” Foundation in Romania	Bucha- rest, Roma- nia	<i>“Peace, security and development - responsibility for Europe”</i>
5-9 Novem- ber	Mr. A.Tanase, CC President, Mrs. R.Secieru, General Secretary	Meetings with senior officials of the European Court of Human Rights, Council of Europe, Venice Commission, European Court of Justice, European Commission and European Parliament, organized by the “Konrad Adenauer” Foundation as part of the State of Rule Program of South East Europe	Stras- bourg, Lux- em- bourg, Brux- elles	Dialogue meet- ings

During 2012 the President of the Constitutional Court and the constitutional judges had numerous meetings and reunions, namely with the delegation of the Joint Committee for European Integration of the Parliament of Romania and the Parliament of the Republic of Moldova, lead by the Chairman of the Committee on Foreign Policy Mr. Titus Corlăţean, with the members of the delegation of the National Council of Italian Bars (*Consiglio Nazionale Forense*) visiting Moldova with the view of signing the Collaboration Agreement between the Union of Lawyers of the Republic of Moldova and *Consiglio Nazionale Forense* from Italy; with the co-rapporteurs of PACE Committee on monitoring the process of honouring the obligations and commitments assumed by the member-states of the Council of Europe.



T I T L E

ASSURANCE OF TRANSPARENT
ACTIVITY OF THE CONSTITU-
TIONAL COURT. PUBLICATIONS

VI

TITLE VI

ASSURANCE OF TRANSPARENT ACTIVITY OF THE CONSTITU- TIONAL COURT. PUBLICATIONS



A | WEB PAGE. DATABASE

The point of contact in the communication policy of the Court is the new web page www.constcourt.md. This page is updated regularly, especially with news on the Court's decisions in important cases, and users can subscribe to some RSS feeds of news for updates.

The web page provides a wide range of information on the work of the Court. Visitors of the site will find: details about the role and duties, membership and structure of the Court, its judicial activity; press releases on decisions taken and on external relationships of the Court, statistical and other reports and general information, photo galleries and video presentations about the work of the Court.

The information about complaints filed with the Court and decisions issued on their basis may be found in the “legal activity” or through press releases to the Court, while hearings can be viewed through webcasts.

The web page contains also the “CCDOC” database, which systematizes the whole jurisprudence of the Court, with the possibility to download the document sought (currently it is partly under construction).

The “CCDOC” database of the new web pages provides better and more efficient possibility of searching information through the interface that contains a series of art

features designed to facilitate the search. Users will be able to perform complex searches using the grouping by year, the type of document, the language chosen, as well as through additional filters. However, the database has an advanced search system among various types of documents using different terms. Thus, by launching the database, the search for information in the Court's jurisprudence becomes more rapid and efficient.

B | LAUNCH OF THE COMMENTARY ON THE CONSTITUTION OF THE REPUBLIC OF MOLDOVA

Any state needs Constitution as a tool of social integration that would really work by the spirit and every letter of it. Laying down the political, ideological and moral values, on which basis the political system is organized and functions, the Constitution is the essential guarantee of the rule of law and seeks to establish a political balance and social harmony.

Starting from the idea that the Constitution is not a privilege of state, but belongs to all people, ordering their social life, and the role of constitutional justice is to ensure the respect for the Constitution, democratic principles and fundamental rights, in the strengthening of democracy and social progress, it was decided to develop a Commentary on the Constitution.

The Commentary on the Constitution of the Republic of Moldova is an original and complex work, first of its kind in the Republic of Moldova. In the paper the constitutional norms are analyzed in terms of the general theory of law, constitutional doctrine and jurisprudence of the Constitutional Court.

Starting from the fact that the Supreme Law is the principal source of all branches of law, the Commentary aims the affirmation and strengthening of constitutionalism in the Republic of Moldova.

The Commentary will contribute to the improvement of the constitutional justice, given that the role of the Constitutional Court lies in the guarantee of supremacy of the Constitution, assurance of the implementation of the principle of state power separation

in the legislative, executive and judiciary powers and guarantees the responsibility of the state to the citizen and of the citizen to the state.

This Commentary was developed with the participation of the Court's judges and prominent lawyers (theorists and practitioners) from the Republic of Moldova. The Commentary on the Constitution of the Republic of Moldova was published by the Constitutional Court with the financial support of the German Foundation "*Hanns Seidel*".

Annex



Judgments of the Constitutional Court in 2012

No.	No. of Judgments	No. of complaint
1.	Judgment No.1 of 12 January 2012 on the control of constitutionality of the Judgment No.266 of 23 December 2011 on the results of ordinary elections of the President of the Republic of Moldova	Complaint No.37a/2011
2.	Judgment No.2 of 24 January 2012 on the approval of the Report on constitutional jurisdiction of 2011	
3.	Judgment No.3 of 09 February 2012 on the control of constitutionality of some provisions of the Law No.163 of 22 July 2011 on the amendment and supplement of certain legal acts	Complaint No.30a/2011
4.	Judgment No.4 of 19 March 2012 on the control of constitutionality of some Judgments of the Parliament and confirmation of results of elections of the President of the Republic of Moldova	Complaints No.4e/2012 and No.5a/2012

5.	Judgment No.5 of 10 April 2012 on the control of constitutionality of provisions of Article 4 para.(2) let.a) and b), 9 para.(1) and 13 para.(1) let.c) of the Law No.289-XV of 22 July 2004 on allowances for temporary disability and other social insurance benefits, as amended and supplemented	Complaint No.39a/2011
6.	Judgment No.6 of 03 May 2012 on the control of constitutionality of the paragraph 3, Article 3 of the Law No.142-XVI of 7 July 2005 on the approval of the Classifier of fields of professional education and specialities for the preparation of staff in higher educational institutions, cycle I	Complaint No.35a/2011
7.	Judgment No.7 of 24 May 2012 on the control of constitutionality of some provisions of the Law No.1234-XIV of 22 September 2000 on the election procedure of the President of the Republic of Moldova	Complaint No.1a/2012
8.	Judgment No.8 of 19 June 2012 on the interpretation of Articles 68 para.(1), (2) and 69 para.(2) of the Constitution	Complaint No.8b/2012
9.	Judgment No.9 of 28 June 2012 on the control of constitutionality of the phrase “any member” of the paragraph (1) Article 10 of the Law No.950-XIII of 19 July 1996 “On the Disciplinary Board and Disciplinary Liability of Judges”, amended and supplemented, in the part where the Prosecutor General, member of law of the Superior Council of Magistracy, is given the right to institute disciplinary proceedings against judges	Complaint No.6a/2012
10.	Judgment No.10 of 12 July 2012 on the control of constitutionality of certain provisions on the status of deputy in the Parliament	Complaint No.7a/2012
11.	Judgment No.11 of 30 October 2012 on the exception of unconstitutionality of Article 28 let.(a) of the Law on citizenship of the Republic of Moldova No.1024-XIV of 2 June 2000, as amended and supplemented	Complaint No.16g/2012

12.	Judgment No.12 of 01 November 2012 on the control of constitutionality of some provisions of Article 32 para.(4) let.j) of the Law No.162-XVI of 22 July 2005 on the status of military people	Complaint No.12a/2012
13.	Judgment No.13 of 06 November 2012 on the control of constitutionality of some provisions of Annex No.2 to the Regulation on medical and military expertise in the Armed Forces of the Republic of Moldova approved by the Government Judgment No.897 of 23 July 2003 and the Annex No.8 the Regulation on recruitment of citizens in the military service with full or reduced term approved by the Government Decision No.864 of 17 August 2005	Complaint No.17a/2012
14.	Judgment No.14 of 15 November 2012 on the control of constitutionality of some provisions of the Civil Procedure Code of the Republic of Moldova No.225-XV of 30 May 2003	Complaint No.21a/2012
15.	Judgment No.15 of 04 December 2012 on the control of constitutionality of some provisions concerning the execution of the right of legislative initiative	Complaint No.18a/2012
16.	Judgment No.16 of 04 December 2012 on the validation of deputy term in the Parliament of the Republic of Moldova	Complaint No.40e/2012
17.	Judgment No.17 of 06 December 2012 on the control of constitutionality of some provisions of the Broadcasting Code of the Republic of Moldova No.260-XVI of 27 July 2006	Complaint No.25a/2012
18.	Judgment No. 18 of 11 December 2012 on the control of constitutionality of some provisions of the Administrative Litigation Law No. 793-XIV of 10 February 2000	Complaint No.20a/2012
19.	Judgment No. 19 of 18 December 2012 on the control of constitutionality of some provisions of Article 18 of the Law No. 113 of 17 June 2010 on bailiffs	Complaint No.34a/2012

Constitutional Court

Judgment No. 2 of 31 January 2013 on the approval of the Report on the exercise of the constitutional jurisdiction in 2012

//Official Gazette 42-47/4, 01 March 2013

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