REPORT

ON THE EXERCISE
OF CONSTITUTIONAL
JURISDICTION IN 2015

PROIECT UE
SUPORT PENTRU CURTEA
CONSTITUȚIONALĂ A REPUBLICII MOLDOVA

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REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2015

CHIȘINĂU 2016

Republic of Moldova
CONSTITUTIONAL COURT

JUDGEMENT

on approval of the Report
on the Exercise of Constitutional
Jurisdiction in 2015

Chisinau
19 January 2016

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

Mr. Alexandru TANASE, *President,*
Mr. Aurel BAIESU,
Mr. Igor DOLEA,
Mr. Victor POPA,
Mr. Tudor PANTIRU, *judges,*

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

having examined in the plenary session the Report on the Exercise of Constitutional Jurisdiction in 2015,

guided by the provisions of Art.26 of Law No.317-XIII of 13 December 1994 on Constitutional Court, Art.61 para.(1) and Art.62 let. f) of the Constitutional Jurisdiction Code No.502-XIII of 16 June 1995,

based on Art.10 of Law on Constitutional Court, Art.5 let. i) and Art.80 of the Constitutional Jurisdiction Code,

DECIDES:

1. To approve the Report on the Exercise of Constitutional Jurisdiction in 2015, according to the Annex.
2. This Judgment shall be published in the *Official Gazette of the Republic of Moldova.*

President Alexandru TANASE

Chisinau,
19 January 2016,
JCC No. 1

Approved by
Judgement of the Constitutional Court
No. 1 of 19 January 2016

REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2015

TITLE I

THE CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

I

TITLE I

THE CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

A | CONSTITUTIONAL JURISDICTION

The status of the Constitutional Court as the sole authority of constitutional jurisdiction in the Republic of Moldova, autonomous and independent from legislative, executive, and judicial powers, is enshrined by the Constitution which establishes concurrently the principles and the main functional powers of the Court. The status of the Constitutional Court is determined by its primary role of ensuring the respect for rule of law values: to guarantee the supremacy of the Constitution; to ensure the implementation of the principle of separation of the state powers; to guarantee the responsibility of the State toward the citizen and of the citizen toward the State. These major functions are performed through instruments guaranteed by the Constitution.

In a good organization of the state power, the role of the Constitutional Court is essential and definitive, representing a true pillar supporting the state and democracy, guaranteeing equality before the law, human rights and fundamental freedoms. At the same time, the Constitutional Court contributes to the good functioning of public authorities within the constitutional relationships of separation, balance, cooperation and mutual control of the state powers.

The constitutional powers provided for in Art. 135 of the Constitution are developed in the Law No. 317-XIII of 13 December 1994 on the Constitutional Court and Constitutional Jurisdiction Code No. 502-XIII of 16 June 1995, which regulate, *inter alia,* the procedure of examination of complaints submitted to the Court, the procedure of electing judges of the Constitutional Court and of the President of the Court, as well

as the powers, rights and responsibilities thereof. Based on the constitutional provisions, the Constitutional Court:

a) exercises, upon referral, the control over the constitutionality of laws and regulations of the Parliament, decrees of the President of the Republic of Moldova, decisions and orders of the Government as well as international treaties, which the Republic of Moldova is a party to;

b) interprets the Constitution;

c) delivers its opinion on the initiatives to revise the Constitution;

d) confirms the results of republican referenda;

e) confirms the results of parliamentary and presidential elections in the Republic of Moldova, validates the mandate of the Members of the Parliament and of the President of the Republic of Moldova;

f) assesses the circumstances justifying the dissolution of the Parliament, resignation of the President of the Republic of Moldova, interim office of the President, impossibility of the President of the Republic of Moldova to perform his/her duties for over 60 days;

g) settles exceptions of unconstitutionality of legal acts, challenged by the Supreme Court of Justice;

h) decides on matters concerning the constitutionality of a party.

B | JUDGES OF THE CONSTITUTIONAL COURT

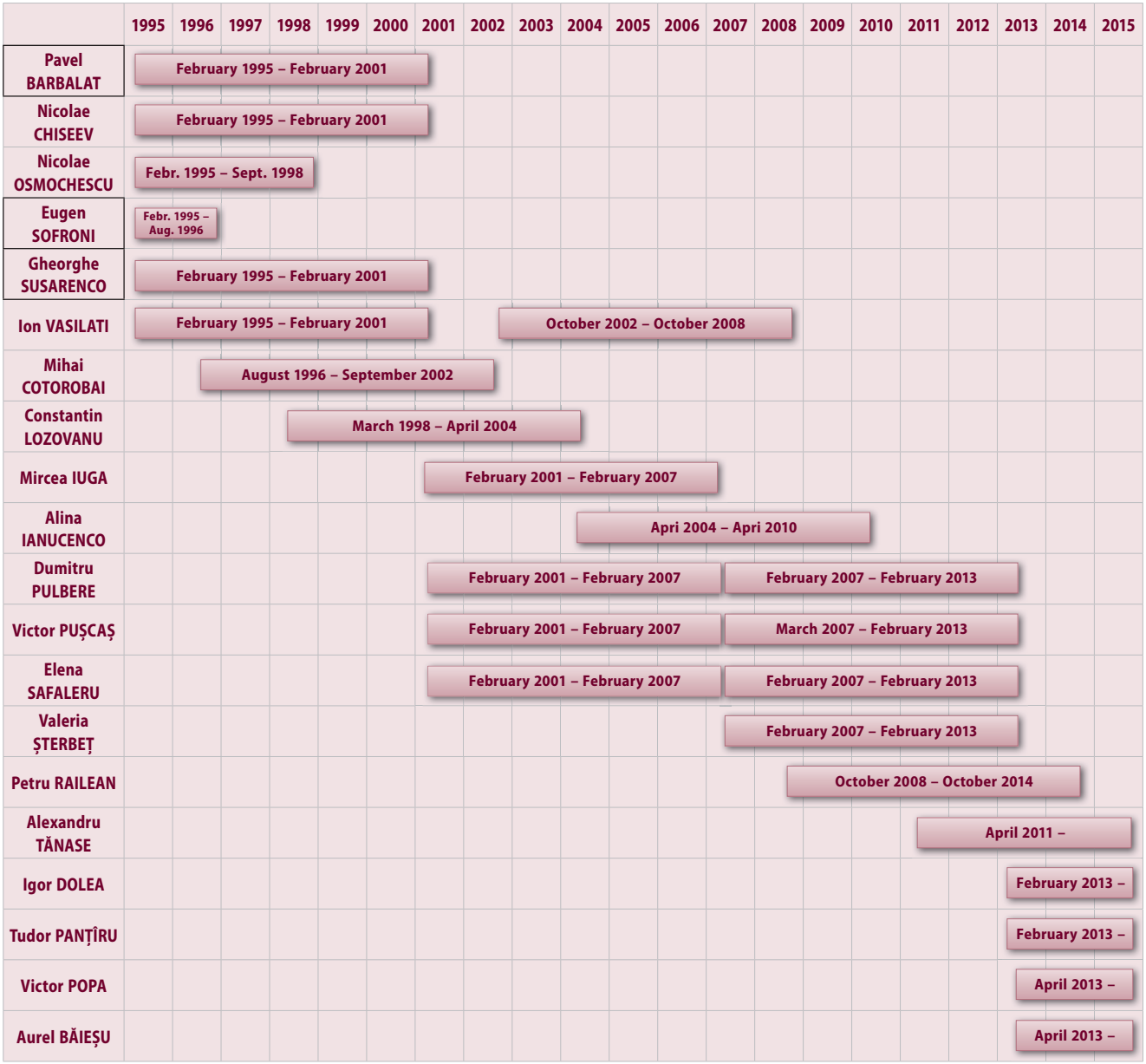
According to Art. 136 of the Constitution, the Constitutional Court is composed of six judges appointed for a term of six years.

In 2015 the Constitutional Court consisted of five judges. No judge has been appointed by the Government at the moment of approval of this Report.

The structure of the Plenum of the Constitutional Court in 2015 was as follows *(in order of accession into office):*

1. Alexandru TANASE, President
2. Igor DOLEA
3. Tudor PANȚÎRU
4. Aurel BĂIEȘU
5. Victor POPA, judges.

Since its foundation, the Constitutional Court has had 20 constitutional judges acting in periods shown below:



Assistant Judges

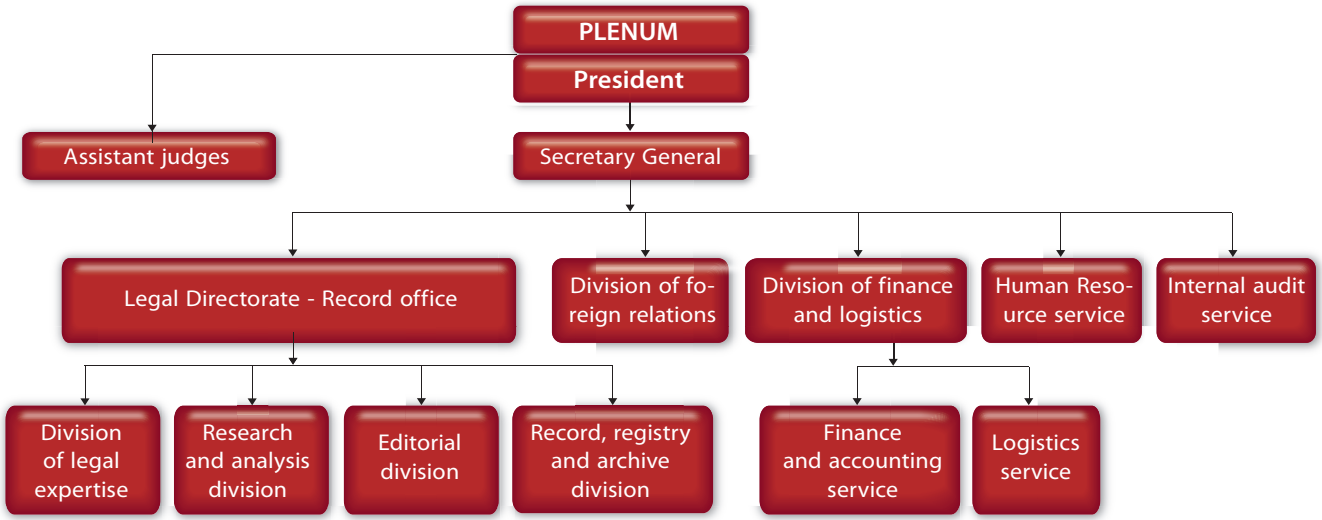
According to the organizational chart, the judges of the Constitutional Court are assisted by assistant-judges fulfilling the following basic functional powers while carrying out their activity:

- assist the judges in exercising jurisdiction on complaints under examination, according to the provisions of the Constitutional Jurisdiction Code;
- elaborate opinions at the request of the judge-rapporteur, of the Plenum and of the President of the Court;
- review the written objections on the complaint submitted by the authorities;
- take appropriate measures necessary to settle the case according to the instructions of the judge-rapporteur, the Plenum and the President of the Court.

The assistant judge is assimilated to a judge of the Court of Appeal.

C | ORGANISATIONAL STRUCTURE OF THE CONSTITUTIONAL COURT

In 2015 the Constitutional Court has carried out its activity based on the organizational chart approved on 5 June 2012, as follows:



The organization of the Constitutional Court activity, main rights and duties of the administration and of the Court's employees as well as other functional aspects are provided in the Regulation on the internal organization of the Constitutional Court approved by Court Decision No. AG-4 of 3 June 2014[1].

The Secretariat of the Court assists constitutional judges throughout the process of managing and processing cases, provides informational, organizational, scientific and other assistance to the Court, performs the examination of complaints filed with the Constitutional Court prior to the admissibility stage, and ensures audience of citizens.

The Secretariat is headed by the Secretary General of the Court who is responsible mainly for:

- preparation, organization and coordination of work within the competence of the Secretariat;
- ensuring the control over meeting the deadline for the examination of complaints;
- drafting the complaints examination plan, submission of the plan for approval to the judges, assistant judges, subdivisions of the Secretariat and control over its performance;
- oversees the communication of Constitutional Court documents to public authorities according to the law;
- makes recommendations and consults the President on issues related to the performance of the constitutional jurisdiction and the general management of the Court;
- organizes the agenda, meetings and working sessions of the President of the Court;
- performs any other duties ordered by the President or by the Plenum of the Constitutional Court.

The activity of the subdivisions of the Secretariat, the main functions and responsibilities are provided in the above mentioned Regulation on the internal organization of the Constitutional Court.

[1] http://constcourt.md/public/files/file/Baza%20 legala/r_organizare_interna_cc_19062014.pdf

D | COURT PROCEDURE

1 COMPLAINTS FILED WITH THE COURT

The Constitutional Court carries out its activity upon referral by the subjects vested with the right to file complaints. The current legislation of the Republic of Moldova does not provide the Court with the competence to exercise constitutional jurisdiction ex office. The Constitutional Court thus exercises constitutional jurisdiction based on complaints filed by the subjects entitled according to Art. 25 of the Law on the Constitutional Court and Art. 38 para. (1) of the Code of Constitutional Jurisdiction:

- the President of the Republic of Moldova;
- the Government;
- the Minister of Justice;
- the Supreme Court of Justice;
- the Prosecutor General;
- members of the Parliament;
- Parliamentary factions;
- Ombudsman and Ombudsman for Children's Rights;
- People's Assembly of Gagauzia (Gagauz-Yeri).

The complaints filed by the subjects entitled with this right must be motivated and should meet the requirements of form and content set out in Art. 39 of the Code of Constitutional Jurisdiction. The Constitutional Court must rule on the complaint within 6 months of the receipt of materials, and this term may be extended by decision of the President of the Court.

2 EXAMINATION OF COMPLAINTS

The complaints submitted to the Constitutional Court are examined according to the provisions of the Law on the Constitutional Court no. 317-XIII of 13 December 1994 and the Code of Constitutional Jurisdiction no. 502-XIII of 16 June 1995. In order to detail the legal provisions cited above, the Court has adopted the *Rules on the examination of complaints submitted to the Constitutional Court* by Decision No. AG-3 of 3 June

2014[2] (Official Gazette of the Republic of Moldova no.185-199 of 18.07.2014) that regulate the procedure to prepare admissibility of the complaint, as well as examination of the admissibility, preparation of the case for examination within public hearings of the Court, examination of the case within the public hearing of the case, deliberation.

2.1. Procedure to prepare admissibility of the complaint

The complaints submitted before the Court by the subjects entitled according to Art. 25 of the Law on the Constitutional Court, are transmitted by the Registration, Registry and Archives Service to the President of the Court; by a resolution the President acknowledges transmission of the complaint to the Secretariat of the Court to carry out the analysis prior to admissibility. Within the Secretariat, the Secretary General shall assign the complaint to the Division of Legal Expertise and coordinates the entire analysis procedure prior to the admissibility thereof.

The Division of Legal Expertise reviews the complaint within a 15-day term, as a rule, starting with the date of assignment, unless another term is stipulated in the resolution. While performing prior examination of complaints concerning the control of constitutionality of laws, exceptions of unconstitutionality and interpretation of the Constitution, the Division of Legal Expertise prepares the Analytical Sheet of the complaint - an internal document consisting of the following structural elements:

a) *object of complaint* – clearly outlines the provisions of the challenged normative act or the constitutional provisions which interpretation is requested;

b) *nature of challenged rules* – briefly lays down the essence of the issue covered by the contested norms or by the constitutional rules which interpretation is requested;

c) *constitutional provisions invoked* – indicates direct wording of the articles of the Constitution alleged to be violated;

d) *arguments of the author of complaint* – briefly and clearly indicates the essence of the problems addressed in the complaint and the information that is considered by the author to be relevant for the complaint;

[2] http://constcourt.md/public/files/file/Baza%20legala/D_AG3.pdf

e) *conclusions of the object of complaint* – indicates the scope of the challenged law and the relationship with other legal provisions; the challenged norm is examined in light of constitutional provisions invoked;

f) *relevant international references* – indicates the norms of international acts, expert reports by international bodies, the case-law of the European Court of Human Rights and the jurisprudence of the constitutional courts of other states, if these are relevant for the object of the complaint;

g) *case-law of the Constitutional Court* – indicates references to the previous judgments or decisions of the Constitutional Court when it ruled in a case that is similar or even identical to the object of the complaint;

h) *substantive and/or procedural conclusions* – clearly indicates the causal link between the contested rules and constitutional provisions alleged to be violated, as well as compliance with the requirements of procedure and form while submitting the complaint.

The complaint accompanied by the Analytical Sheet is presented to the President of the Court to appoint a judge-rapporteur. The complaint is dismissed if it has been stated in the Analytical Sheet that the complaint was lodged by the subject that is not entitled or the complaint is submitted repeatedly while the 9-month term following the date when the subject has withdrawn previously submitted complaint has not expired yet.

2.2. Examination of the admissibility of the complaint

The examination period of the admissibility of the complaint should not exceed 60 days from the date of its registration; however, if additional examination is necessary, the President may extend this period. The complaints submitted on the same or similar object may be joined by a decision of the President of the Court and assigned to the same judge-rapporteur. If this extends substantially the examination period of admissibility, the complaints will not be joined.

The hearing on the admissibility of the complaint, which is considered deliberative if attended by a majority of Court judges, shall be attended also by the assistant judge, Secretary General and judiciary assistant (legal secretary) of the judge-rapporteur. During the hearing the judge-rapporteur presents the opinion on the complaint and the Plenum

adopts one of the following solutions based on this opinion: a) declares the complaint admissible; b) declares the complaint inadmissible; c) joins the admissibility with the examination on the merits of the complaint; d) decides on the restitution of the complaint. If a decision on inadmissibility of the complaint is made, the judges may issue dissenting opinions.

The complaint shall be declared inadmissible if:

a) its resolution is not the competence of the Court;

b) the exception of unconstitutionality of challenged normative act has been resolved;

c) challenged rules were amended or repealed;

d) there is a previous judgment of the Court related to the problem invoked in the complaint.

The complaint shall be returned to the author by letter, when:

a) the complaint is not reasoned and fails to contain the object on which the requirements are based;

b) the causal link between the challenged provisions and constitutional norm invoked has not been proved;

c) the complaint fails to meet pattern requirements;

d) the author of the complaint failed to submit additional information and to answer the questions asked by the Court in due time.

The decision on the inadmissibility of the complaint shall be published in the Official Gazette of the Republic of Moldova and the author of the complaint shall be notified. If the complaint has been declared inadmissible, the possibility for repeated submission of a new complaint on the same subject and grounds is excluded. The return of the complaint by the Court does not exclude the possibility to file a new complaint on the same object and grounds, if the author of the complaint removes discovered shortcomings.

2.3. Preparing the case for examination in public hearing of the Court

When preparing the case for examination in public hearing of the Court, the judge-rapporteur assisted by an assistant judge and a judiciary assistant (legal secretary) from the Legal Expertise Division requires all relevant authorities to present their opinions on

the complaint. Upon request of opinion, depending on the case, the Court formulates questions about the nature of the case addressed to the authorities. Failure to present such opinions in due time shall not prevent the Court from examining the complaint.

According to the modifications in the Rules on the examination of complaints submitted to the Constitutional Court operated by the Decision of the Constitutional Court No.AG-2 of 23 June 2015[3], the opinions submitted to the Court are communicated to the parties that are entitled, within the time limit provided by the Court to present their commentaries over the opinions of other parties (para. 35[1] of the Rules on the examination of complaints submitted to the Constitutional Court).

The author(s) of complaint and other participants to the trial shall be informed about the venue, date and time of hearing ten days before the public hearing. In emergencies, the participants to the trial may be informed in a shorter period.

Besides the author(s) of the complaint, the hearing shall be also attended by: a) a representative of the Parliament and, where appropriate, of the President and of the Government of the Republic of Moldova, when exercising the review of constitutionality of a law; b) a representative of the Parliament, when exercising the review of constitutionality of a parliamentary decision; c) a representative of the President of the Republic of Moldova, when exercising the review of constitutionality of a Presidential Decree; d) a representative of the Government when exercising the review of constitutionality of a Government Decision; e) a representative of the Parliament and representatives of other concerned institutions, at the decision of the President of the Court, when a constitutional provision is being interpreted; f) the party (or its representative) who has invoked the exception of unconstitutionality in judicial proceedings; g) interveners.

The complaint may be withdrawn by its author at any stage of the proceedings.

2.4. Examination of the case in public hearing of the Court

The Court examines the complaints in public hearings that are organized, as a rule, in four sessions: winter, spring, summer and autumn.

[3] http://constcourt.md/public/files/file/Baza%20legala/D_AG3.pdf

The complaints prepared for examination are put on the Court agenda. The draft agenda of the public hearings shall be approved by the Plenum, and the announcements referring to public hearings of the Court (date, time and venue) should be placed on the Court's website.

Court hearings are chaired by the President of the Court or by a judge designated for this purpose. The directions given by the chairman of the hearing are binding for the participants and for the persons present. During the hearing, the parties present the facts and legal aspects of the case and their opening statements shall not exceed 15 minutes.

According to the amendments to the Rules on the examination of complaints submitted to the Constitutional Court operated by the Decision of the Constitutional Court No.AG-2 of 23 June 2015, at the request of parties, the President of session may provide the parties with 15 minutes to formulate their opinions on the questions asked by the judges.

After the closing statements, the chairperson of the hearing will announce the withdrawal of judges into the deliberation room. The participants in hearing will be informed about the venue, date and time when the dispositive part of the judgement shall be pronounced.

If in the process of case examination, the Court states that:

a) the complaint has been withdrawn;

b) the complaint is not the competence of the bodies and persons who have submitted it;

c) the Constitutional Court is not competent to resolve the complaint;

d) the exception of unconstitutionality of the challenged normative act has been resolved;

e) there is a previous judgment of the Constitutional Court on this issue;

f) there is a tie vote when adopting the judgment

the Constitutional Court shall rule the dismissal of the case.

According to the amendments introduced by Decision of Constitutional Court No.AG-2 of 23 June 2015, the complaints requesting the interpretation of the Constitution or the Court opinion on the initiatives to amend the Constitution shall be examined *in camera* session, without the participation of parties.

The dispositive part of the judgement regarding the interpretation of the Constitution and the opinions on the amendments to the Constitution shall be made public. The parties shall be informed about the date and venue of delivery of the judgment. The dispositive part of the judgement shall be communicated to interested third parties.

2.4.1. Representation in public hearing of the Court

According to the amendments to the Rules on the examination of complaints submitted to the Constitutional Court adopted by the Decision of Constitutional Court No.AG-5 of 23 November 2015[4], the author of the complaint may represent himself/herself in public hearing of the Court or may appoint a representative.

The 2015 Decision mentions *expresis verbis* that the representative of the author of the complaint and representatives of participating authorities in public hearings of the Court shall have a degree in law, unless the Plenum of the Court decides otherwise. The qualification of representative shall be proved by corresponding documents.

If the author of the complaint appoints multiple representatives, at least one representative shall have a degree in law. The chairperson of the hearing, following consultations with the representatives of parties, decides who starts the opening. If only one person is appointed, and this person is not eligible to participate in the hearing, and the Plenum of the Court has not ruled otherwise, the chairperson of the hearing shall refuse his/her admission as party in public hearing of the Court and to opening. In exceptional situations and at any stage of proceedings, when the circumstances or conduct of appointed representative justifies this, the Plenum of the Court may rule that he/she cannot participate in public hearing of the Court, and the party should appoint another person.

2.5. Deliberation

The judges of the Court deliberate in chambers and the deliberation shall be secret. Following the conclusion of deliberations, the chairman of the hearing asks the judges to vote on the proposals of judge-rapporteur and of other judges. The judge of the Court

[4] http://constcourt.md/public/files/file/Baza%20legala/D_AG3.pdf

shall not be entitled to abstain from voting and the chairman of the hearing shall vote the last.

If during deliberations a tie vote is registered, the chairing judge may decide to resume the examination of the case to consider new arguments or circumstances that are essential for the case. The case may be re-examined in the situations when the judges establish the necessity for an additional examination. In this case, the chairman of the hearing shall announce the discontinuation of the hearing or shall postpone the examination of the case.

The dispositive part of the judgement shall be read by the Chairperson. On the day of reading the dispositive part of the judgement, a press-release and the dispositive part shall be placed on the web page of the Court.

3 ACTS OF THE COURT

Following the complaint examination, the Court shall adopt the judgments, decisions and shall issue opinions. The judgments and opinions are adopted in the name of the Republic of Moldova and are pronounced by the Plenum of the Constitutional Court in case when the complaint has been examined on its merits. Decisions are delivered in case of failure to settle the complaint on its merits. The judgments of the Constitutional Court are binding for the future.

The acts of the Constitutional Court shall be official and enforceable for all public authorities, for individuals and legal persons throughout the country. The normative acts or parts thereof declared unconstitutional shall become void and shall not be applied after the corresponding judgment of the Constitutional Court. The acts of the Constitutional Court are not subject to appeal; these are final and shall enter into force on the date of adoption and shall be published in the Official Gazette of the Republic of Moldova.

TITLE

II

JURISDICTIONAL ACTIVITY

TITLE II

JURISDICTIONAL ACTIVITY

A | COURT'S ASSESSMENT

1 GENERAL PRINCIPLES

1.1. Anticorruption efforts in public institutions and rule of law guarantees

The Court notes that fight against corruption has been declared as a national objective within various international conventions and national documents such as Criminal Law Convention on Corruption (signed at Strasbourg on 27 January 1999 and ratified by the Republic of Moldova on 14 January 2004 by the Law no. 428 of 30 October 2003), National Anticorruption Strategy for the years 2011-2015 (approved by the Decision of Parliament no. 154 of 21 July 2011), the Justice Sector Reform Strategy for the years 2011-2016 (approved by the Law no. 231 of 25 November 2011) and the Action Plan for its implementation (approved by the Decision of Parliament no. 6 of 16 February 2012), Law on preventing and combating corruption no. 90 of 25 April 2008, the Strategy for institutional strengthening of the National Anticorruption Centre (approved by the Decision of the Parliament no. 232 of 25 October 2012) (*JCC No. 7 of 16.04.2015*[5]*, § 34).*

[5] Judgment of the Constitutional Court No.7 of 16.04.2015 *on constitutional review of certain provisions of the Law no. 325 of 23 December 2013 on professional integrity testing.*

Nevertheless, the Republic of Moldova continues to face serious challenges in combating and preventing corruption, a widespread phenomenon in nearly all public sectors *(JCC No. 7 of 16.04.2015, §35).*

The Court reiterates that corruption represents a threat for the values of the rule of law, for the democracy and human rights, undermines the principles of good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral basis of the society *(JCC No. 7 of 16.04.2015, §37).*

Therefore it is extremely necessary to ensure a certain degree of compliance and efficient legal means that would be compatible with the ongoing process of modernization and technological development, so that criminality is effectively controlled and successfully diminished. Due to this particular aspect protection of human rights cannot be absolute, these rights cannot be exercised in absurdum and they may be subject to certain limitations that can be justified depending on the goal pursued (*JCC No. 7 of 16.04.2015, §38).*

The Court thus encourages and welcomes all efforts made by the competent authorities in fighting against this phenomenon. At the same time, the Court considers that an important issue is that these efforts should not compromise the constitutional order, jeopardise the stability of democratic institutions and violate the fundamental human rights *(JCC No. 7 of 16.04.2015, §39).*

In this respect Article 1 para.(3) of the Constitution enshrines the principle of the rule of law; the requirements of this principle are directed to the major goals of the activity of the state and are challenged into what is called prominence of the law, a phrase that involves the subordination of the state to the law, insurance of means that could permit the law to criticize political options and in this regard, to ponder possible abusive, discretionary tendencies of the state institutions. The rule of law ensures the supremacy of the Constitution, correlation of laws and of all regulatory acts to the Basic Law, existence of the regime of separation of public powers that have to act within the legal limits, namely within the framework of a law expressing the general will. The rule of law enshrines certain guarantees, including jurisdictional ones, that ensure respect for the

rights of a man and a citizen through the autonomy of the state, and subsequently, enclosing public authorities within the framework of the law (*JCC No. 7 of 16.04.2015, §40).*

Limitation of the exercise of some individual/personal rights, taking into account some collective rights and rights referring to the public interest that are related to national security, public order or criminal prevention has always constituted a delicate operation from the regulatory point of view, as in this case maintenance of a fair balance between individual rights and interests, on the one hand, and the rights and interests of the society, on the other hand, is necessary (*JCC No. 7 of 16.04.2015, §41).*

The confidence of citizens in the integrity of public officials and institutions in general represents the democratic foundation of the activity of these public officials and institutions *(JCC No. 7 of 16.04.2015, §42).*

Confidence in institutions is part of the "social capital", together with the general confidence (in peers) and the associative networks where the individuals are involved (*JCC No. 7 of 16.04.2015, §43).*

"Confidence in the State institutions" motivates people to get involved more in the public life. The level of public confidence in institutions influences also economic development of the society *(JCC No. 7 of 16.04.2015, §44).*

Although it manifests a high degree of relativity, confidence in some institutions is in a crucial way influenced by their representatives (*JCC No. 7 of 16.04.2015, §45).*

According to the fundamental value of the rule of law, persons holding public offices must prove that they correspond to high standards of integrity *(JCC No. 7 of 16.04.2015, §46).*

Therefore, the values enshrined in the Constitution of the Republic of Moldova in Article 1 para. (3) implicitly provide for the responsibility of those holding public offices who exercise their functions in order to achieve the public interest *(JCC No. 7 of 16.04.2015, §49).*

In general, one of the essential components and requirements for the existence of an efficient authority in fighting corruption is the existence of an adequate and stable legal framework that would regulate its competences. There are several aspects of the independence of this authority including political, functional, operational and financial ones. Its freedom in decision-making and freedom on taking appropriate measures

are the most important elements, especially for effective and efficient investigation of allegations, in the absence of undue influences or obligations (*JCC No. 7 of 16.04.2015, §179).*

Therefore, the Court notes, as a principle, that professional integrity testing may be applied to all professional categories of public agents. No professional category is, by its nature, excluded from professional integrity testing (*JCC No. 7 of 16.04.2015, §181).*

However, this procedure must respect the guarantees of the right to a fair trial and of the right to respect for private life, as well as those referring to the separation of powers in the State (*JCC No. 7 of 16.04.2015, §182).*

1.2. Principle of legality

The rule of law enshrined in Article 1 para. (3) of the Constitution is based on the principle of legality. No law or other legal act which contravenes the provisions of the Constitution shall have legal force (Article 7 of the Constitution), and the observance of laws that do not contravene the Constitution shall be compulsory (*JCC No.22 of 16.07.2015*[6]*, §51).*

The importance of the principle of legality first implies that the law must be followed. This requirement applies not only to individuals, but also to authorities, public and private. In so far as legality addresses the actions of public officials, it requires also that they require authorisation to act and that they act within the powers that have been conferred upon them (*Report on the Rule of Law adopted by the Venice Commission at its 86th plenary session, 2011, §42) (JCC No.22 of 16.07.2015, §52).*

The principle of the supremacy of the law specific to rule of law implies the obligation to comply notably with the law by those who prescribed it (*JCC No.22 of 16.07.2015, §53).*

The principle of legality has consequently the obligation to comply with the laws, including by the supreme legislative forum of the State (*JCC No.22 of 16.07.2015, §100).*

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[6] Judgement of the Constitutional Court No. 22 of 16.07.2015 *on constitutional review of the Parliament's Decision no. 140 of 3 July 2015 on the appointment of the People's Advocate for the rights of the child*

1.2.1. Ensuring the principle of legality in appointing and dismissing the public dignity office-holders

1.2.1.1. Appointing the People's Advocate for the rights of the child

Article 6 of Law No. 52 of 3 April 2014 on the People's Advocate (Ombudsman) stipulates eligibility criteria for the position of the People's Advocate. The People's Advocate position may be held by the individual corresponding to the following criteria: a) citizen of the Republic of Moldova; b) full legal capacity; c) license diploma or its equivalent; d) work experience of at least 10 years and notorious activity in the area of human rights protection and promotion; e) enjoying a spotless reputation; f) knowing the official state language *(JCC No.22 of 16.07.2015[7], §82).*

The reputation in the area of human rights protection and promotion is a quality of the person who wants to hold the position of the People's Advocate. As a matter of fact, this quality implies that the candidate is known by a large number of persons as activating in the human rights protection and promotion field *(JCC No.22 of 16.07.2015, §86).*

The reputation in the field of human rights protection and promotion may be proved including by speaking in cases that guarantee human rights in national or international courts when these rights are violated; by taking a public position when the observance of human rights is not a priority of the authorities or when their observance is not complete; by organising public activities – in accordance with the Law – to prevent violation of human rights; by organising conferences, seminars, roundtables, etc. on human rights and the importance of their observance; by drafting legal proposals to ensure a more efficient manner of human rights protection; through political and moral public activism example on human rights promotion to the society; through scientific activity in constitutional law and human rights; by recognising as such this activity by international organisations that fight for human rights protection, etc (*JCC No.22 of 16.07.2015, §87).*

[7] Judgement of the Constitutional Court No. 22 of 16.07.2015 *on constitutional review of the Parliament's Decision no. 140 of 3 July 2015 on the appointment of the People's Advocate for the rights of the child*

The reputation is determined by the fact that the People's Advocate institution and implicitly the institution of People's Advocate for the protection of rights of the child is a democratic development guarantor, being a mediator between the society and the State to ensure the dialogue and observance of universal values regarding human rights and fundamental freedoms. Taking into account the importance of the position of the People's Advocate for a democratic society, the reputation should be consolidated as well by knowing well the human rights field (*JCC No.22 of 16.07.2015, §88).*

The Court underlined that the professionalism and reputation are two key elements that make that person heard by other state authorities and institutions *(JCC No.22 of 16.07.2015, §90).*

The notion of 'notorious activity' does not fall under the activity of the person but expresses person's professional evaluation and appraisal (*JCC No.22 of 16.07.2015, §94).*

Appointing a person who does not meet the legal criteria of the position of the People's Advocate undermines the principles of democracy and rule of law. Promoting a person who does not meet necessary criteria of experience and reputation in this important function to ensure human rights observance may compromise the principles of legality, equality, impartiality and democracy, which are fundamental for the activity of the People's Advocate. This situation can lead to the inefficiency of the People's Advocate Institution *(JCC No.22 of 16.07.2015, §96).*

The main instrument of the Ombudsman is his/her authority in making a case and critics, in being receptive and supportive of all public authorities, having the support of civil society. For that reason, the reputation of the Ombudsman should be *a fortiori* expression of his/her authority. There is a fundamental difference between having authority and being an authority. Formal exercising of authority does not involve naturally imposing the authority through person's personality (*JCC No.22 of 16.07.2015, §99).*

The Ombudsman (People's Advocate) institution plays a key role in enhancing the democracy, rule of law and human rights; it is the guarantor of democratic deve-

lopment and is a mediator between the society and the State in ensuring the dialogue and observing universal human rights and freedoms *(JCC No.22 of 16.07.2015, §55,56).*

The Ombudsman institution may act as a mechanism of democratic responsibility promoting, thus, the progress of human rights in another state and may be considered an institution with horizontal responsibility in democratic governance. The role of the Ombudsman should consist in improving the administrative responsibility of the representatives of the Government through impartial and objective analysis of the public administration behaviour, through *de lege ferenda* recommendations and including, through actions before justice (*JCC No.22 of 16.07.2015, §57, 58).*

Through its activism, the Ombudsman in a democratic society should fight for the consolidation of accountability mechanisms of all actors involved in the protection of fundamental rights facilitating thus, a good governance in a rule of law. Taking into account the role of this institution, the Court mentions that in order to carry out properly the mission, the position of the Ombudsman should be held by a well-known person, who is active in the dialogue between the society and the authorities *(JCC No.22 of 16.07.2015, §§59, 60).*

1.2.1.2. Dismissal of the Director of National Energy Regulatory Agency

The Court underlined that the Directors of the Board of the National Energy Regulatory Agency hold public positions, are official state persons, exponents of a special public interest (*JCC No.30 of 08.12.2015*[8]*, §57).*

The Court noted that to ensure the independence of persons holding public office, the constitutional and legal norms impose the observance of the mandate *(JCC No.30 of 08.12.2015, §58).*

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[8] Judgement of the Constitutional Court No.30 of 08.12.2015 *on constitutional review of the Parliament's Decision No. 224 of 3 December 2015 repealing the decisions of the Parliament on the appointment of the Directors of the Board of the National Energy Regulatory Agency*

In this context, the Court recalled that the Republic of Moldova has adhered to the Energy Community as full member in 2010. The Energy Community Treaty was adopted on 25 October 2005 in Athens, and entered into force on 1 May 2010 for the Republic of Moldova. From that moment the legal norms adopted based on the Treaty, including Directives of the European Union that establish the governance structure in the energy and gas sector, become binding at international level *(JCC No.30 of 08.12.2015, §61).*

Both, Directive 2009/72/CE and respectively, Directive 2009/73/CE mention that the energy and gas regulatory authorities have to be fully independent from the public or private interests, which does not exclude judicial and parliamentary supervision (*JCC No.30 of 08.12.2015, §62).*

Thus, to ensure the independence of energy regulatory authority, the Court noted that the legislature envisaged a specific procedure to terminate earlier the mandate of Directors of the Board of the ANRE *(JCC No.30 of 08.12.2015, §65).*

The Court mentioned that the express provision of conditions to dismiss officials in a special law results from the rationale to ensure the independence of respective persons from public authority that appoints or dismisses these officials. So, even if the State has a legal interest to request from these persons trust and loyalty, this fact does not justify the omission of public authorities to observe the legal procedure for dismissal *(JCC No.30 of 08.12.2015, §67).*

Hence, the Court noted that when cancelling the decisions on appointing directors of the Board of the ANRE, the Parliament should have ensured the observance of the principle of legality and namely the existence of a reason stipulated in Art. 4^2 para. (6) of the Law on Energy. Thus, the competence of the Parliament enshrined by this Law is not discretionary (*JCC No.30 of 08.12.2015, §68).*

In the light of those mentioned above, the Court established that the persons holding public positions should be dismissed based on legal provisions expressly stated and not by repealing the act on their appointment (*JCC No.30 of 08.12.2015, §69).*

1.3. Principle of the Rule of Law in the Criminal Law

The legislator has the right to evaluate the situations that need to be regulated through legal norms. This right signifies the possibility to decide on the opportunity to adopt the legal framework in accordance with the criminal policy promoted in the general interest *(JCC No.6 of 16.04.2015[9], §87).*

At the same time, any regulation should be within the principles stated in the legal system in force and should observe the principle of the rule of law *(JCC No.6 of 16.04.2015, §88).*

The rule of law is ensured throughout the entire legal system, including through criminal norms, which are characterised by certain individual, distinctive features compared to other categories of norms that differ based on their character, structure and scope (*JCC No.6 of 16.04.2015, §89).*

The criminalisation of the facts in criminal law, setting the related punishment, as well as other regulations, are based on reasons of criminal policy. Thus, the criminal law is a set of legal rules formulated in a clear, concise and precise manner (*JCC No.6 of 16.04.2015, §91).*

The Court noted that according to Article 23 of the Constitution, the State shall ensure the right of every individual to be aware of his/her rights and duties. For this purpose the State shall publish and make accessible all the laws and other normative acts. In its case-law, the European Court mentioned that a person has the right to know clearly what acts and omissions may lead to criminal liability (case *Kokkinakis v. Greciei,* 25 May 1993). When an act is seen as an offence, the judge may specify the constitutive elements of the offence, but cannot modify these in the detriment of the accused, and the manner in which he/she defines these constitutive elements should be predictable for every person consulted by a specialist (case *X. v. the United Kingdom,* 7 May 1982) *(JCC No.6 of 16.04.2015, §92, 93).*

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[9] Judgement of the Constitutional Court No.6 of 16.04.2015 *on constitutional review of some provisions of Criminal Code and Code of Criminal Procedure* (extended confiscation and illicit enrichment)

2 PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

2.1. Presumption of Innocence

2.1.1. Presumption of innocence in testing professional integrity

Presumption of Innocence is enshrined in Article 21 of the Constitution and Article 6 para. (2) of the European Convention and shall be guaranteed throughout the criminal or the disciplinary proceedings *(JCC No. 7 of 16.04.2015[10], §66)*.

The Court notes that the provision requiring the existence of "reasonable grounds" based on objective criteria is incident in case of use of undercover agents both in criminal and in disciplinary proceedings. Moreover, the European Court has consistently held in its case law that the presumption of innocence is applicable not only in criminal proceedings, but also in cases where domestic courts had to decide on the guilt. The aim of this presumption is to prevent any issuance of opinions regarding the guilt of the applicant prior to his conviction according to the law. It is sufficient that, in absence of concrete grounds and of a final decision of a court, there should exist such an opinion which suggests that the public authority considers the applicant guilty (see *Allenet de Ribemont v. France*, 10 February 1995, §.41, and *Minelli v. Switzerland*, 25 March 1983, § 28) *(JCC No. 7 of 16.04.2015, §67)*.

The Court holds, as a principle, that the first contact of the tester with the public agent within a simulated situation could be justified only if there are preliminary and objective grounds to suspect that a certain public agent is inclined to commit acts of corruption. Per a contrario, if impeccable professional behaviour of the public agent has never raised any suspicion as to his or her potential corruptibility, there is no societal need to cast a general shadow of suspicion on this particular public agent just because the public entity for which he/she works or other colleagues carrying out similar job might have shown leniency towards corruption *(JCC No. 7 of 16.04.2015, §79)*.

The Court observes that, in order to verify the fairness of trial, the authorities shall prove existence of an indication that the offence had been committed by the

[10] Judgment of the Constitutional Court No.7 of 16.04.2015 *on constitutional review of certain provisions of the Law no. 325 of 23 December 2013 on professional integrity testing*

tested public agent and without any involvement of state authorities (*JCC No. 7 of 16.04.2015, §80).*

The Court shares the opinion expressed by the Venice Commission that the disciplinary sanction imposed as a result of the negative result of the professional integrity test can be challenged by the public agent only in the administrative court, in the manner prescribed by the law. Therefore, the real protection of the aggrieved public agent begins only after he/she has been disciplinary sanctioned in the first instance so that the presumption of innocence is in fact neglected by the provisions of the Law no. 325 of 23 December 2013 (*JCC No. 7 of 16.04.2015, §88).*

2.1.2. Correlation between presumption of innocence and lifting the immunity of a Member of Parliament

Presumption of innocence does not have incidence in the procedure of lifting the immunity, because it refers to the possibility, measures and procedural actions that have to be applied by competent authority, and not the guilt or innocence of the Member of the Parliament *(JCC No. 27 of 17.11.2015*[11]*, §75).*

Moreover, the vote of the Parliament does not constrain in any way the competent authority to take respective measure or procedural action. It has to be mentioned that placing into custody, arrest, search or indictment shall be ruled only by the competent court and not by the Parliament *(JCC No. 27 of 17.11.2015, §76).*

The Parliamentary Committee authorised to draw up the note and report, as well as the Plenum of the Parliament, are not jurisdictional entities and are not competent to analyse the correctness or legality of legal classification of facts or to establish the guilt or innocence of the person; these are exclusive duties of the judiciary *(JCC No. 27 of 17.11.2015, §77).*

[11] Judgement of the Constitutional Court No.27 of 17 November 2015 *on constitutional review of the Parliament's Decision No. 172 of 15 October 2015 regarding the approval to lift the immunity of the Member of the Parliament Vladimir Filat*

In this context, the Court noted that the conscent of the Parliament does not represent a criminal procedure act. Decisions made in this regard by the Parliamentary structures that are political bodies by definition, are thus political and not judicial decisions. Hence, it is not necessary for these to meet the same rationale criteria as procedural acts of judicial bodies (Judgement *Kart v. Turkey* of 3 December 2009 of the Grand Chamber of the ECHR, §101) (*JCC No. 27 of 17.11.2015, §78).*

Decision made by the Parliament regarding the submitted application only evaluates whether the request is made in good faith, in the spirit of institutional loyalty, and whether it refers to facts that justify the damage – through mentioned measures – to the status of the Member of Parliament. A different condition would violate the exclusive duties of the judiciary and the principle of the separation of powers (*JCC No. 27 of 17.11.2015, §82).*

In the same context, the Court mentioned that the Constitution does not make a difference between the judgements adopted based on the consented action or measure: holding in custody, arrest, search or indictment. These actions or procedural measures may be agreed by the Parliament in one act. At the same time, the indictment of a person and recognition of a culprit does not have the significance of recognising the person's guilt, which refers to exclusive competence of the court. The indictment means sending the file to the competent criminal court, which based on evidence submitted, has the possibility to convict or acquit the person *(JCC No. 27 of 17.11.2015, §83).*

2.1.3. Right not to be judged based on the evidence gained by incitement

In its case law on the involvement of undercover agents and, in particular, on their use as agents provocateurs in (criminal) investigative proceedings the European Court analyses and assimilates their activity with acts of incitement to commit crimes *(JCC No. 7 of 16.04.2015*[12]*, §68).*

[12] Judgment of the Constitutional Court No.7 of 16.04.2015 *on constitutional review of certain provisions of the Law no. 325 of 23 December 2013 on professional integrity testing.*

Therefore, according to the European Court case law, incitement occurs where things are not limited to an essentially passive investigation of criminal activities of a suspect, rather an influence is exercised such as inciting to commit an offence that otherwise would not have been committed (see *Pareniuc v. Moldova*, 1 July 2014, §. 38; *Teixeira de Castro v. Portugal*, 9 June 1998, § 38) (*JCC No. 7 of 16.04.2015, §69).*

The guiding principles which can be derived from the European Court case law (see, in particular, *Furcht v. Germany*, 23 October 2014, §§47-53; *Bannikova v. Russia*, 4 November 2010, §§36-50; *Ramanauskas v. Lithuania*, 5 February 2008, §§50-61; *Khudobin v. Russia*, 26 October 2006, §128; *Texeira de Castro v. Portugal*, 9 June 1998, §36) can be summarized as follow:

– involvement of an undercover agent requires prior reasonable grounds to suspect that the person envisaged is involved in a similar criminal activity or has committed a similar criminal act before;
– authorization of an undercover agent's activity must be legal from the point of view of formalities; an administrative decision that does not contain full information regarding the purpose and reason for the application of such methods is not sufficient;
– as to the scope of the involvement of an undercover agent, s/he may (only) be allowed to join an ongoing criminal act and must abstain from inciting the person envisaged to commit a criminal act (agent provocateur), for example by "intensively" offering a sum of money for the commitment of a criminal offence (*JCC No. 7 of 16.04.2015, §70).*

According to the European Court case law, the public interest cannot justify any use by the court of evidences gained by incitement, as it would expose the public agent to the risk of being abridged from the start of the right to a fair trial (see *Teixeira de Castro v. Portugal*, §§ 35-36 and 39; *Khudobin v. Russia*, 26 October 2006, § 128; and *Vanyan v. Russia*, 15 December 2005, §§ 46-47) (*JCC No. 7 of 16.04.2015, §71).*

The Court notes that the Law no. 325 of 23 December 2013 allows the use of a false identity by the integrity testers and admits incitement of the public agents to commit offences. Thus, they should be considered as agents provocateurs (see, mutatis mutandis, Vanyan v. Russia, 15 December 2005, §47) (*JCC No. 7 of 16.04.2015, §111).*

2.2. Access to Justice

2.2.1. The non bis in idem *principle*

The Court noted that the *non bis in idem* principle implies not just the interdiction imposed on competent authorities *on trying or prosecuting twice a person* for the same offence *(JCC No.12 of 14.05.2015*[13]*, §52).*

In this sense, according to the case-law of the European Court, the *non bis in idem* principle has its applicability only in criminal charges (see, for instance, case *Maaouia v. France,* 5 October 2000) and, obviously in criminal files of the accused persons. Hence, the principle will be applied in the national criminal procedure, if the person was a suspect, defendant, culprit or previously convicted for an offence that later became an object of criminal prosecution of repeated proceedings *(JCC No.12 of 14.05.2015, §51)*

Article 287 of the Criminal Procedure Code stipulates the conditions and method for reopening a criminal prosecution after its cessation, dismissal or after dropping of the criminal prosecution against the person *(JCC No.12 of 14.05.2015, §2).*

The Court mentioned that handing down of a sentence and its enforcement or issuing a decision to drop criminal charges or cease criminal prosecution impedes the resumption of criminal prosecution, bringing more severe charges or application of more severe punishment for the same offence committed by the same person *(JCC No.12 of 14.05.2015, §53).*

At the same time, the Court noted that according to Article 4 par. 2 of Protocol No. 7 to the European Convention, the *non bis in idem* principle does not impede the resumption of criminal prosecution, if new or recent facts were discovered or a fundamental fault in previous procedure may affect the judgement *(JCC No.12 of 14.05.2015, §56).*

Thus, the Court noted that according to European Convention, two situations may determine the resumption of criminal prosecution, and namely: 1) there are new or recently discovered facts; 2) there is a fundamental fault *(JCC No.12 of 14.05.2015, §57).*

According to Art. 4 par. 3 of Protocol No. 7, no derogation from this Article is allowed according to Art. 15 of the European Convention. Hence, the states may not institute other reasons to reopen ceased cases in the law *(JCC No.12 of 14.05.2015, §58).*

[13] Judgement of the Constitutional Court No.12 of 14 May 2015 *on exception of constitutionality of Art. 287 para.(1) of the Code of Criminal Procedure* (resumption of the criminal prosecution)

In accordance with international provisions, Art. 22 para. (3) of the Criminal Procedure Code states that the decision of the criminal prosecution body on the dropping or cessation of the criminal prosecution, as well as the final court judgment prevents the resumption of the criminal prosecution, of the pressing of the charge or a heavier penalty for the same person for the same crime, except for the cases when new or recently discovered facts or a fundamental fault committed in the previous proceeding affected the delivered (*JCC No.12 of 14.05.2015, §59).*

The Court held that 'new facts' represent information about circumstances that were not known by the prosecution on the date of appealed judgement and that could not have been known at that time, and 'newly discovered facts' are the facts that existed on the date of judgement but could not have been discovered *(JCC No.12 of 14.05.2015, §61).*

Also, according to Explanatory Report to Protocol No. 7, the term "new or newly discovered facts" includes new means of proof relating to previously existing facts. Furthermore, Article 4 of Protocol No. 7 does not prevent a reopening of the proceedings in favour of the convicted person and any other changing of the judgment to the benefit of the convicted person *(JCC No.12 of 14.05.2015, §62).*

Referring to the circumstances enounced above, the Court mentioned that the Ordinance to terminate criminal prosecution, not take any further action or release the person from criminal prosecution may be annulled by reopening the criminal prosecution at any time within the statute of limitation, if new or newly discovered facts are invoked *(JCC No.12 of 14.05.2015, §64).*

At the same time, the Criminal Procedure Code (Art. 6 section 44)) treats the 'fundamental fault' committed in the previous proceeding affecting the delivered judgment as an essential violation of the rights and freedoms guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, by other international treaties, by the Constitution of the Republic of Moldova and other national laws (*JCC No.12 of 14.05.2015, §65).*

Also, if a fundamental fault is discovered, the prosecution may be resumed not later than one year from the date of enforcing the Ordinance to terminate the prosecution, not taking further action or release the person from prosecution (*JCC No.12 of 14.05.2015, §66).*

Based on the procedural and criminal rules set *supra,* according to which the prosecution may be resumed only based on new or newly discovered facts or existence of a fundamental fault, the national legislature tried to establish a balance between the tasks of criminal process – discovering the truth and exercising an equitable justice. The courts and the prosecution bodies that apply the procedural and criminal norms, shall act in such a way that no person is wrongly suspected, accused or convicted or subject arbitrarily or without procedural measures of constraint (*JCC No.12 of 14.05.2015, §68).*

At the same time, the Court noted that as long as Art. 287 paragraph (4) of the Criminal Procedure Code details the situations of resuming the prosecution mentioned in Art. 22 para. (3), then according to Art. 287 para. (1), the resumption of the criminal prosecution after the cessation of the criminal prosecution, dismissal of the criminal case or dropping of the criminal prosecution will be ordered by the hierarchically superior prosecutor through an ordinance, if it is found afterwards that, in fact, the reasons which have determined the taking of these measures did not exist or that the circumstance on which the cessation of the criminal investigation, dismissal of the criminal case and dropping of the criminal prosecution was based, disappeared *(JCC No.12 of 14.05.2015, §69).*

In this sense, the Court observed that according to Art. 287 of the Criminal Procedure Code, the resumption of the criminal prosecution may be ordered based on para. (1) and para. (4), the situations being different. At the same time, only Art. 287 para. (4) adopts the rules stipulated in Art. 22 of the Criminal Procedure Code and Protocol No. 7 Art. 4 § 2 to the European Convention. Hence, the conditions that admit resumption of criminal proceedings set forth in Art. 287 para. (1) of the Criminal Procedure Code exceed the limits falling under the scope of the European Convention creating an inadmissible derogation from the provisions of Art. 4 of the Protocol No. 7 to the Convention (*JCC No.12 of 14.05.2015, §70).*

The Court noted also that the provisions included in Art.287 para. (1), in fact, entitle the hierarchical superior prosecutor to resume the criminal prosecution at any time and lacking clearly defined reasons, which may be considered judicious in each individual case. The rule subject to constitutional review places the person in a state of uncertainty for an undefined period of time and for circumstances that may be invoked randomly when reopening the criminal case (*JCC No.12 of 14.05.2015, §71, 72).*

In principle, the Court stressed out that once the criminal prosecution is terminated, no further actions are taken or the criminal case is ceased, the person should have the certainty and belief that he/she will not be suspected and criminally prosecuted again *(JCC No.12 of 14.05.2015, §73).*

With reference to the resumption of criminal prosecution based on the reason that the initial investigation was not complete, in the case *Stoianova and Nedelcu v. Romania,* the European Court mentioned: 'the weaknesses of the authorities cannot be imputable to the defendants and should not put them in a disadvantageous situation' *(JCC No.12 of 14.05.2015, §74).*

Also, in the opinion of the European Court, the simple opinion that the investigations in a case would be 'incomplete and not objective', in the absence of some judiciary errors, severe violations of court proceedings or power abuse cannot reveal *per se* errors in applying the material law or from other considerable reasons that result from the interests of justice to indicate a fundamental fault in the previous proceedings. Thus, the defendant would be the one who would incur the consequences of omissions of authorities during preliminary investigation, and mere affirmation of a deficiency or omission during the investigation, although minor and insignificant, may create an unlimited possibility of the criminal prosecution to commit a procedural abuse by requesting a resumption of finalised proceedings *(JCC No.12 of 14.05.2015, §75).*

The Court held that the omissions or errors of the authorities must serve to the benefit of the suspect, culprit, and the accused person. In other words, the risk of any errors committed by the prosecution body or even by a court should be born by the State and the correction thereof should not be the responsability of the person, except for the cases listed above *(JCC No.12 of 14.05.2015, §76).*

In conclusion, the Court held that resumption of criminal prosecution after the criminal case is closed or the person is released from prosecution by the ordinance of the hierarchical superior prosecutor, if further it is established that there was in fact no cause that determined these measures or that the circumstance used to cease the criminal prosecution, close the criminal case or release the person from prosecution disappear, is in contradiction with the guarantees stated in Article 21 of the Constitution *(JCC No.12 of 14.05.2015, §77).*

2.2.2. Right to second instance in contravention matters

According to Article 119 of the Constitution, the parties involved in a trial and the competent state bodies may lodge appeals against judgments delivered by the courts of law, according to the legal provisions (*JCC No. 10 of 12.05.2015*[14]*, §45).*

The Court held that Article 2 of Protocol No. 7 to the European Convention obliges the contracting parties to institute the second instance in criminal law *(JCC No. 10 of 12.05.2015, §48).*

The Court ascertained that the case-law of the European Court mentioned that 'in principle the general character of contravention law and purpose of sanctions, which has a preventive and punishment character, is sufficient to prove that the defendant was found guilty of crimes in accordance with Article 6 of the Convention (see *Lauko v. Slovakia, Judgement of 2 September 1998, Reports 1998-VI, § 58*). Moreover, the contravention law contains provisions regarding such issues as mitigating and aggravating circumstances, accountability for the attempt to commit a crime, as well as self-defence that indicate actually the criminal nature of administrative contraventions.' *(JCC No. 10 of 12.05.2015, §38).*

The Court noted the applicability of guarantees, in case of contraventions, in the criminal law instituted by the European Convention, with specific particularities *(JCC No. 10 of 12.05.2015, §41).*

The Court mentioned that in the contravention field, the legislature has instituted the procedure for the appeal against contravention judgements of the court *(JCC No. 10 of 12.05.2015, §54).*

Thus, based on the provisions of Articles 395 and 465 para. (1) of the Code of Administrative Contraventions[15], the Court ascertains that contravention judgements adopted in the court of first instance, as well as judgements appealing a decision of extra-judiciary authority may be appealed upon *(JCC No. 10 of 12.05.2015, §55).*

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[14] Judgement of the Constitutional Court No. 10 of 12.05.2015 *on exception of constitutionality of Article 473 para.(1) pct. 2) of the Code of Administrative Contraventions* (examination of appeal in contravention procedure)

[15] Code of Administrative Contraventions No. 218-XVI of 24.10.2008

In this sense, under the aspect of court of appeal competence, according to Article 473 para. (1) of the Code of Administrative Contraventions, following the examination of the cassation, the court of cassation shall adopt one of the following decisions: 1) to reject it and uphold the decision appealed, if the cassation: a) is late; b) is inadmissible; c) is groundless or 2) *to admit it, repealing the decision, and to order the retrial of the case in first instance (JCC No. 10 of 12.05.2015, §56).*

To return a case for repeated trial, *per se*, is not a violation of Article 119 of the Constitution. Or, as it was shown *supra*, the legislature has a wide margin of appreciation in determining the right exercised according to Article 2 of Protocol No.7 to European Convention *(JCC No. 10 of 12.05.2015, §59).*

The Court held that although, according to Article 2 para. 2 of Protocol No. 7 to European Convention, minor offences may be excepted from the state's obligation to provide double level o jurisdiction, the national legislation has not excluded the contraventions from double level of jurisdiction, regulating in this sense the possibility of appeal against all contravention judgments of the court *(JCC No. 10 of 12.05.2015, §60).*

In this sense, the Court held that lack of authority of the court of cassation in retrying the appeal by ruling a new judgment, if admitted, is not a limitation to affect the substance of this right *(JCC No. 10 of 12.05.2015, §62).*

Or, from the analysis of contravention cassation, the Court ascertained that according to the examination procedure it competes with the remedy – appeal of criminal procedure. Thus, when the appeal is examined, both legal and factual grounds that determined the administration of new proof by the first instance may be invoked *(JCC No. 10 of 12.05.2015, §63).*

Hence, the findings of the court of cassation expressed in the decision to reverse the judgement should be analysed by the hierarchically superior court that would retry the appeal to remove the committed errors *(JCC No. 10 of 12.05.2015, §65).*

At the same time, the Court mentioned that in order to insure a fair process, the repeated adjudication of the case should be made by a different panel of judges and not by the panel that passed the judgement appealed by the court of cassation *(JCC No. 10 of 12.05.2015, §66).*

2.3. The right to private life

2.3.1. General principles of intimacy, private and family life

The right to respect for private life is enshrined in Article 28 of the Constitution, Article 8 of the European Convention and Article 17 of the International Covenant on Civil and Political Rights *(JCC No. 7 of 16.04.2015*[16]*, §117).*

Although the Constitution guarantees in general terms intimate, family and private life, the extent of these rights has to be established in accordance with the interpretation given by the European Court in its case law *(JCC No. 7 of 16.04.2015, §118).*

The concept of the European Court expressed in its case law indicates that private life includes two aspects: the right of the person to live as he/she wishes, hiding from indiscrete sights, as well as right to develop relationships with peers; thus it can be stated that the concept of privacy encompasses two main elements: intimate private life and social private life. No reason permits exclusion of activities of a professional nature from the notion of "private life" (see *Niemietz v. Germany*, §29; *Halford v. United Kingdom*, §§42-46) (*JCC No. 7 of 16.04.2015, §119).*

In its case law the Court noted that, although the right to respect and protect intimate, family and private life is not absolute, any interference with it must be in accordance with the law, in compliance with the unanimously recognized norms of the international law, shall be proportionate with the situation that caused it and must not endanger the existence of the right itself (*JCC No. 7 of 16.04.2015, §121).*

Article 28 of the Constitution and Article 8 of the European Convention protect individuals against arbitrary interferences by public authorities with their right to private and family life, the respect for the home and for their correspondence. This implies negative obligations of state authorities, namely the obligation not to interfere with the exercise of these rights by individuals in an unlawful way (*JCC No. 7 of 16.04.2015, §123).*

The European Court had mentioned that the States do not enjoy an unlimited discretion to subject to secret surveillance persons within their jurisdiction. The European

[16] Judgment of the Constitutional Court No.7 of 16.04.2015 *on constitutional review of certain provisions of the Law no. 325 of 23 December 2013 on professional integrity testing*

Court was aware of the danger of undermining or even destroying democracy under a pretext of defence (see *Klass and Others v. Germany*, §§49-50). Due to this fact, irrespective of the system of surveillance adopted there must exist adequate and effective guarantees against the abuse which may be committed by the public authorities *(JCC No. 7 of 16.04.2015, §124).*

In order to be compatible with the requirements of Article 8 of the European Convention, the secret surveillance systems must contain certain safeguards established by law and applicable when the activity of the bodies authorized to survey is reviewed. The procedures for the review must observe as much as possible the values of democratic society, especially the rule of law, which is expressly referred to in Preamble to the Convention. The rule of law implies that any interference by the executive authorities with an individual's rights should be subject to an effective control which should be effectively ensured by the judiciary, which offers the best guarantees of independence, impartiality and proper procedure (see *Klass and Others v. Germany*, § 55) (*JCC No. 7 of 16.04.2015, §125).*

Moreover, the European Court noted in *Iordachi and Others v. Moldova* (§34) that in absence of such a judiciary control, the mere existence of legal provisions entailing wiretapping or of other communications represents, for all who might be subjected to it a threat of being surveyed, and thus a violation of art. 8 of the Convention (*JCC No. 7 of 16.04.2015, §126).*

Protection of the right to privacy implies from the states the fulfilment of certain positive obligations inherent in order to ensure an effective respect for private and family life. That is the state is required to enact appropriate and sufficient legal means aimed to fulfil these positive obligations (*JCC No. 7 of 16.04.2015, §127).*

According to European Court case law, the phrase "in accordance with the law" not only requires that the impugned measure should have some basis in domestic law, but also refers to the quality of the law in question, requiring that it should be accessible to person concerned and predictable (see *Rotaru v. Romania*, 4 May 2000, § 52) (*JCC No. 7 of 16.04.2015, §128).*

In order to satisfy the requirements of Article 8 of European Convention, the wording of the law should be formulated with sufficient precision "to enable the concerned

persons to foresee, to a reasonable extent, the consequences which a given action may entail" (see *Margareta and Roger Andersson v. Sweden*, 25 February 1992, §75) (*JCC No. 7 of 16.04.2015, §129).*

In *Vetter v. France* of 31 August 2005 the European Court of Human Rights found violation of Article 8 of European Convention because the applicable law providing for wiretapping did not indicate with reasonable clarity the scope and the manner in which the discretion of authorities was exercised in allowing monitoring of private conversations; the applicant therefore did not enjoy the minimum degree of protection (*JCC No. 7 of 16.04.2015, §130)*

2.3.2. Protection of private life within professional integrity testing

The Court notes that, according to Article 12 para. (3) of the challenged law, in order to objectively assess the results of the professional integrity test, the latter shall be recorded on a mandatory basis by audio/video means and the communication means in the tester's possession or used by the tester. The audio/video recording means, the communication equipment and other technical means for undercover acquiring of information are the equipment of the National Anticorruption Centre and of the Intelligence and Security Service (*JCC No. 7 of 16.04.2015*[17]*, §131).*

The law sets out in a general manner the right of testers to use *any technical means for undercover acquiring of information* within the public agents' professional integrity testing (*JCC No. 7 of 16.04.2015, §132).*

The Court notes that according to Article 9 para. (3) of the Law no. 325 of 23 December 2013, "The methods and means to test and record professional integrity tests shall not represent special investigation activities as provided by Law no.59 of 29March 2012 on special investigation activity" (*JCC No. 7 of 16.04.2015, §133).*

On the other side, the term "dissimulated means" it is not very explicit and it is not clear how the means for undercover acquiring of information differ as compared

[17] Judgment of the Constitutional Court No.7 of 16.04.2015 *on constitutional review of certain provisions of the Law no. 325 of 23 December 2013 on professional integrity testing*

to the means used by the testers within special investigation activities (*JCC No. 7 of 16.04.2015, §134).*

Article 9 para. (3) of the Law no. 325 of 23 December 2013 allows application of undercover means and, therefore, interference in the private life of the public agents without judicial control *(JCC No. 7 of 16.04.2015, §135).*

The court notes that the notion of technical means for undercover acquiring of information as used in the Law submitted for the constitutional review overlaps with the notion audio/video recording means, the communication equipment and other technical means provided in Article 132/2 of the Criminal Procedure Code, means that can be ordered only by the instruction/investigating judge (para. (1)) or by the prosecutor (para. (2)) for a 30 days term, with a possibility to be prolonged on reasonable grounds up to 6 months. These measures, despite the fact that are provided for criminal cases, may be employed only in cases when there is a *reasonable doubt* referring to the preparation and commitment of *serious, extremely serious or exceptionally serious crimes* (Article 132/1 of the Criminal Procedure Code) (*JCC No. 7 of 16.04.2015, §136).*

The court holds that the use of such means, including audio/video recording means with a view to obtain data for the integrity testing constitutes, in essence, one of special investigation methods, according to art. 132/2 of the Criminal Procedure Code. Given the fact that in criminal matters referring to the facts with a higher social risk such means can be used only upon the authorization of the instruction judge, it is more impetuous that such intrusions are not justified without judicial authorization as referred to disciplinary offenses which constitute facts which social risk rate lower than that of the crimes (*JCC No. 7 of 16.04.2015, §137).*

To the extent to which the concepts with which the law operates (technical means for undercover acquiring of information) are not predictably specified, and the circle of information over which control is performed is uncertain, the Court considers that the challenged Law does not provide guarantees allowing effective protection against the risks of abuse, as well as against any illegal access and use of personal data. While special investigation means are defined by the Criminal Procedure Code, the concept of technical means for undercover acquiring of information may also represent similar special

means, given the regulatory framework of the law and the definitions it contains, so that carrying out of such supervising activities cannot be permitted unless authorized by a judge (*JCC No. 7 of 16.04.2015, §138).*

Absence of such authorization is equivalent to insufficiency of procedural safeguards required in order to protect the right to private life, as well as other rights enshrined in article 28 of the Constitution and Article 8 of the European Convention (*JCC No. 7 of 16.04.2015, §139).*

The challenged law fails to provide clear and precise rules on the time and manner in which professional integrity testers use intrusive means, on the ground of undefined notion of "justified risk" (*JCC No. 7 of 16.04.2015, §140).*

Moreover, the Court observes that the methods and means to test and record professional integrity tests may be used, according to Article 12 para. (5) of the Law no. 325 of 23 December 2013 during professional integrity testing, a period that is longer than that of the integrity test. However, as it is clear from the legal definition provided by Article 4 of the challenged Law the professional integrity testing period is longer than the period of the integrity test, due to the fact that it consists of the process of planning, initiating, organizing and carrying out professional integrity tests. Therefore, audio/video recording means, the communication, equipment and other technical means for undercover acquiring of information might be used for a period that is not provided by the law *(JCC No. 7 of 16.04.2015, §142).*

Consequently, the decision regarding professional integrity testing which further implies the use of means and methods for testing and recording that may constitute serious interferences with the public agents' private life – is not authorized by a judge or an authority that offer the largest guarantees of independence and impartiality, as it should be under the rule of law (see *Klass and Others v. Germany*, § 55) (*JCC No. 7 of 16.04.2015, §145).*

The Court considers that data that are covered by the provisions of the challenged law are likely to lead to quite definite conclusions regarding the private life of individuals whose data were collected, conclusions that can target the habits of everyday life, places of permanent or temporary residence, daily trips or other travelling, activities

performed, social relations of these people and their social environments (*JCC No. 7 of 16.04.2015, §146).*

The fact that retention of data and their subsequent use under the circumstances when the registered public agent is not informed on this may imprint on the consciousness of persons concerned the feeling that their private life is subject to *continuous supervision* (*JCC No. 7 of 16.04.2015, §147).*

The Court emphasizes that such retention and preservation of data clearly represents a limitation of the right to personal data protection and consequently of the constitutionally protected fundamental rights related to intimate, family and private life, privacy of correspondence and freedom of expression. Such limitation may take place only under Article 54 of the Constitution providing for the possibility of restricting the exercise of certain rights or freedoms unless it is provided by the law, and if they are required, as the case may be, in the interests of national security, territorial integrity, economic welfare of the country, public order aiming at preventing mass riots and crimes, protection of the rights, freedoms and dignity of other persons, prevention of disclosing confidential information or the guarantee of the power and impartiality of justice. A limitation measure shall only be ordered if it is necessary in a democratic society, it should be proportional to the situation which has caused it, it has to be applied without any discrimination and without any prejudice to the existence of a right or a freedom (*JCC No. 7 of 16.04.2015, §150).*

The Court notes that through primary rules it is necessary to establish a *genuine mechanism for the control* of personal data that shall be processed and used (*JCC No. 7 of 16.04.2015, §149).*

The lack of a precise legal rule which would exactly regulate the manner of storing and use of the data collected, offers possibility for potential abuses by the competent authorities. Moreover, the legal framework regulating such a sensitive area should be clear, predictable and absent of confusion, so that any possibility of arbitrariness or abuse of those called to apply the law is avoided at the largest extent possible (*JCC No. 7 of 16.04.2015, §151).*

The challenged law fails to contain clear and precise rules on the content and application of the measure related to withhold and use of data recorded, so that the

persons whose data were withhold could benefit from sufficient guarantees that are likely to ensure effective protection against abuse and any illegal access or usage. The law thus fails to provide objective criteria that would limit the number of people permitted access and use of data withheld to the required minimum, that access to the data stored is not subjected, in any case to the condition of prior review by a court or independent administrative entity that would limit this access and the use of these data to the extent required precisely to achieve the goal pursued (*JCC No. 7 of 16.04.2015, §154).*

The Court considers that the legal guarantees concerning storage and use of data withhold are not sufficient and adequate to blow off the fear that personal rights are violated, so that the expression of these is performed in an acceptable manner (*JCC No. 7 of 16.04.2015, §155).*

Thus, limitation of the exercise of such personal rights in consideration of some collective rights and public interests regarding national security, public order or the prevention of corruption, break the fair balance that should have existed between individual rights and interests, on the one hand, and the interests of the society, on the other hand; the challenged law fails to provide sufficient guarantees which would ensure effective data protection against the risk of abuse, as well as against any illicit access and use of personal data *(JCC No. 7 of 16.04.2015, §157).*

2.4. Freedom of opinion and expression

2.4.1. Limits on freedom of expression

The Court underlines that the freedom of expression is one of the fundamental elements of a democratic society and a condition for progress and personal fulfilment *(JCC No. 28 of 23.11.2015*[18]*, §47).*

Freedom of expression is not an absolute right, it may be susceptible to restrictions provided by Article 54 of the Constitution (*JCC No. 28 of 23.11.2015, §49).*

[18] Judgement of the Constitutional Court No. 28 of 23.11.2015 *on constitutional review of some provisions of Article 1 of Law No.54 of 21 February 2003 on fighting extremist activity* (interdiction to use symbols that may be confused with Nazis symbols or attributes)

Freedom of expression may be susceptible to restrictions based on special provisions imposed by Art.32 para.(2) and (3) of the Constitution. In this connection, the constitutional rule stipulates that exercising the freedom of expression may not harm the honour, dignity or the rights of other people to have and express their own opinions or judgments. Also, the constitutional rule allows public authorities to forbid and prosecute all actions aimed at denying and slandering of the State and people, instigation to sedition, war of aggression, national, racial or religious hatred, incitement to discrimination, territorial separatism, public violence, or other manifestations encroaching upon the constitutional order (*JCC No. 28 of 23.11.2015, §50).*

In its case-law, the European Court established that although the freedom of expression may be subject to some exceptions, these 'should be interpreted as restraining', and 'the necessity for any restrictions must be convincingly established' (see, *Observer and Guardian v. United Kingdom,* of 26 November 1991, § 59, series A No. 216), *(JCC No. 28 of 23.11.2015, §51).*

Also, the European Court established that measures that restrict the freedom of expression, other than those applied in cases of incitement to violence or rejection of democratic principles – as shocking and inacceptable they are, may be seen as different opinions by the authorities – do not in fact serve the democracy and often may even endanger it (*Sergey Kuznetsov v. Russia,* 23 October 2008, § 45; *Alekseyev v. Russia,* 21 October 2010, § 80), *(JCC No. 28 of 23.11.2015, §52).*

2.4.1.1. Restricting the use of symbols similar to Nazi that could amount to confusion

Article 1 of Law No. 54 of 21 February 2003 on fighting extremist activity defines the notion of extremist activity and its forms, one of which is public propagation and demonstration of attributes or symbols similar to Nazi ones that could amount to confusion [let. b)] (*JCC No. 28 of 23.11.2015*[19]*, §7).*

[19] Judgement of the Constitutional Court No. 28 of 23.11.2015 *on constitutional review of some provisions of Article 1 of Law No. 54 of 21 February 2003 on fighting extremist activity* (interdiction to use symbols that may be confused with Nazis symbols or attributes)

Restrictions regarding freedom of conscience and of expression are laid down in the context of public propagation and demonstration of some attributes/symbols that are so similar that one could amount to confusion with Nazi attributes or symbols (*JCC No. 28 of 23.11.2015, §62).*

The Court noted that the entire wording of Art. 1 let. b) of Law No. 54 of 21 February 2003 is formulated in an imprecise and unclear manner, granting the courts extremely grand discretion, a fact that generates the existence of court judgments with diametrically opposed interpretations. In those circumstance, the uncertainty of legal situation begins for people – who from different reasons – want to use attributes or symbols similar to Nazi ones that could amount to confusion (*JCC No. 28 of 23.11.2015, §67).*

Inexistence of an exhaustive list of Nazi attributes and symbols in the law, as well as attributes and symbols that are similar to these make the challenged normative provisions a regulation that lacks sufficient specification (*JCC No. 28 of 23.11.2015, §68).*

Thus, the formulation 'attributes or symbols similar to Nazi ones that could amount to confusion' creates a state of incertitude under the following aspects:

(1) inexistence of some definitions or descriptions of Nazi attributes and symbols in the law;

(2) lack of margin of appreciation delimitation regarding the 'similarity that could amount to confusion' with Nazi attributes or symbolic (JCC No. 28 of 23.11.2015, §69).

At the same time, the Court noted that Article 1 let. b) of Law No. 54 of 21 February 2003, read together with Article 10 para. (6) of the same law may be interpreted, given the ambiguity of the phrase 'public propagation and demonstration of Nazi attributes or symbols, of attributes and symbols that can amount to confusion with Nazi attributes or symbols', that mere use or demonstration of symbols brings in criminal liability. According to Art. 10 para. (6), persons guilty of illegal preparation, spreading or storing for further broadcasting of abovementioned materials shall be held criminally liable or subject to contravention/administrative liability (*JCC No. 28 of 23.11.2015, §73).*

In the same context, the European Court established that to justify the interference with the defendant's rights, the Government has to prove that the sign used by the defendant is identified exclusively with totalitarian ideas (*Fratanoló v. Hungary,* No. 29459/10, Judgement of 3 November 2011, § 27), *(JCC No. 28 of 23.11.2015, §75).*

In case *Faber v. Hungary,* the European Court mentioned that assuming that the displayed symbol by the defendant has multiple meanings – i.e. may be viewed as a historic symbol and, at the same time, as reminiscent symbol of Nazi party of Hungary – only in a thorough examination of the context when these offending expressions are used, an essential distinction may be traced between shocking and abusive expressions protected by Article 10, and those that lose the right to be tolerated in a democratic society. Showing negative emotions or feelings of resentment in the absence of intimidation cannot represent an imperious social necessity in the light of the provisions of Art.10 § 2 of the Convention *(JCC No. 28 of 23.11.2015, §78).*

The Court noted that in the absence of a precise list or definition of Nazi attributes and symbols in Article 1 let.b) of Law No. 54 of 21 February 2003, its provisions become imprecise and unclear, thus, not allowing citizens to understand which symbols are forbidden, which are similar to the Nazi ones; at the same time, this grants an extremely broad margin of discretion to the courts (*JCC No. 28 of 23.11.2015, §72).*

2.5. Right to information

2.5.1. Access to information

The Court noted that the right to information includes the following elements:

- right of the person, organisation or legal entity to request information of public interest form public authorities and institutions without proving the legal interest of the request;
- right of the person to request personal information from public authorities and institutions;
- obligation of public authority and institution to answer or provide the requested information, a fact that implies the existence of request and timeframe management mechanisms to reply to these requests;

– existence of some exceptions that would permit not to submit certain categories of information. These exceptions include defence of national security, international relations, private life of persons, commercial confidentiality, public order and law enforcement, as well as the refusal to submit information obtained under confidential conditions or that results from internal discussions. To be invoked, the exceptions should justify the existence of a damage to the public interest, if the information was to be communicated;
– existence of certain appeal mechanisms for information seekers, if public authorities and institutions refuse to submit;
– existence of certain external remedies, in case of a refusal to submit information (usually ordinary courts);
– condition that public authorities and institutions should communicate *ex officio* certain types of information about their structure, rules and activities *(JCC No.19 of 22.06.2015[20], §36).*

The Court noted that the right to information is a prerequisite to exercise other rights, and namely, political, economic and social rights; right to private life protection, right to take part in public affairs, right to a fair trial, etc (*JCC No.19 of 22.06.2015, §37).*

The Court noted that according to Article 54 para. (2) of the Constitution, the exercise of the rights and freedoms may not be subdued to other restrictions unless for those provided by the law, which are in compliance with the unanimously recognised norms of the international law and are requested in such cases as: the defence of national security, territorial integrity, economic welfare of the country, public order aiming at preventing mass riots and crimes, protection of the rights, freedoms and dignity of other persons, prevention of disclosing confidential information or the guarantee of the power and impartiality of justice (*JCC No.19 of 22.06.2015, §49).*

In this context, the Court held that restriction of the right to information should comply with these legitimate purposes (*JCC No.19 of 22.06.2015, §50).*

[20] Judgment of the Constitutional Court No.19 of 22.06.2015 *on the interpretation of Article 34 para. (3) of the Constitution of the Republic of Moldova* (access to information)

The Court mentioned that by assigning the title of 'state secret' to a document or information, the citizens are deprived totally from the right to information about those documents (*JCC No.19 of 22.06.2015, §52).*

The Court found out that according to Article 34 para. (3) of the Constitution, the right to information shall not prejudice neither the measures taken to protect the citizens nor the national security. Therefore, these provisions stipulate that the access to information may be limited due to the need to ensure protection measures of citizens or protection of national security (*JCC No.19 of 22.06.2015, §57).*

As for the expression 'national security', there are *two aspects*: 1) right of access to information related to national security; and 2) right to communicate information relating to national security (*JCC No.19 of 22.06.2015, §58).*

The Court noted that restriction justified based on the purpose of national security protection is not legitimate, if it does not have a connection to national security (*JCC No.19 of 22.06.2015, §61).*

The Court underlined the fact that no information may be disclosed, if it harms or might harm the legitimate interest of national security, except for the situation when the public interest in knowing the information overweighs the harm that might be caused by information disclosure. Hence, the information related to national security and public interest in knowing this information must be always carefully considered *(JCC No.19 of 22.06.2015, §62).*

The Court mentioned that according to Principle 15 of the Johannesburg Principles, no person may be punished on national security grounds for disclosure of information if (1) the disclosure does not actually harm and is not likely to harm a legitimate national security interest, or (2) the public interest in knowing the information outweighs the harm from disclosure (*JCC No.19 of 22.06.2015, §63).*

With regard to the expression 'protection measures of citizens', the Court noted that it includes all national positive and negative obligations of state authorities in time of peace and war to ensure the protection of population and its property under conditions of natural and ecological calamities, accidents and catastrophes, plant diseases, animal diseases, fires, as well as when modern destruction means are applied (*JCC No.19 of 22.06.2015, §64).*

As for the first aspect, the Court mentioned that the activity of public authorities related to civil protection and safety of population in exceptional situations should be open to public opinion and to the mass media. Also, public authorities are obliged to ensure correct information of population through the mass media about their level of protection, and in case of exceptional situations, about the type of danger, actions of population in existing situation and protection measures *(JCC No.19 of 22.06.2015, §66).*

As for the second aspect, the interdiction according to which the communication of information should not prejudice the protection measures of the citizens refers to all information means that would mislead regarding civil protection and population safety in exceptional situations (*JCC No.19 of 22.06.2015, §67).*

The Court noted that the democracy is based on citizens' consent, and the consent requires prior information of citizens about the issues of public interest, including those that referr to the spending of public money (*JCC No.19 of 22.06.2015, §70).*

The Court underlined that openness and transparency are recognised as essential part of modern governance. The transparency is vital for supervising the activity of public authorities and institutions and represent constitutional dimensions *(JCC No.19 of 22.06.2015, §74).*

Based on Article 34 para. (3) of the Constitution:

– restriction of the right to information may take place only if there is real and justified purpose for the protection of a legitimate interest regarding the protection of citizens or national security, and the public interest for such information does not prevail;
– any restriction of the access to information, including specific and limited categories of information that cannot be disclosed in order to protect the citizens or national security must be envisaged by law and must be necessary in a democratic society to protect a legitimate interest;
– justification of the legitimate interest shall be based on the gravity of its harm, if such information is published, and the public authority should demonstrate that information disclosure would threat severely the protection of citizens or national security *(JCC No.19 of 22.06.2015, operative part).*

2.6. Right to education

2.6.1. Age limit of the PhD supervisor

The Court mentioned that the right to autonomy is granted implicitly to PhD schools as integral part of the universities they refer to. According to Code of Education, PhD schools are organisational and administrative structures established by institutions that offer higher education programmes for PhD studies in a certain or interdisciplinary sectors *(JCC No.14 of 15.06.2015*[21]*, §43).*

The Court noted that according to Code of Education, the PhD study is a post-university form of education, which is accomplished through scientific research. One of the main subjects who participate in the scientific activity within PhD studies is the PhD supervisor. In accordance with Article 94 para. (11) of the Code of Education, the PhD supervisor may be the person who already holds the title of Doctor or Doctor habilitatus *(JCC No.14 of 15.06.2015, §48).*

In the light of the respective provisions, the PhD supervisor has a determinant role in accomplishing PhD studies by guiding the activity of the student during the studies, by following the PhD study programme, as well as in accordance with professional interests of the PhD candidates (*JCC No.14 of 15.06.2015, §49).*

In the context when the university autonomy enshrined in the provisions of Art. 35 para. (6) of the Constitution has extended on the PhD studies, the Court notes that it involves equally educational and institutional autonomy. The educational autonomy is expressed through functional or academic university autonomy, and the institutional autonomy involves organisational, administrative and financial autonomy. These two forms of autonomy are indispensable, or, the institutional autonomy cannot be guaranteed without the academic freedom (teaching activity) *(JCC No.14 of 15.06.2015, §50).*

In the same context, the Court noted that the Lisbon Declaration of the European University Association of 13 April 2007 has established the fields of university auto-

[21] Judgement of the Constitutional Court No. 14 on 15.06.2015 *on constitutional review of some provisions of paragraphs 25, 55 and 58 Regulation on the Organisation of PhD Studies, third cycle of academic studies, approved by Government Decision no. 1007 of 10 December 2014* (regulating the activity of PhD supervisor)

nomy, which includes human resources, that foresees the 'freedom of the university to recruit and select qualified human resources', obligation to conclude labour contracts, setting salaries, bonuses depending on the value of human potential.' *(JCC No.14 of 15.06.2015, §51).*

Based on its autonomy, the university has the right to recruit and select qualified human resources who meet necessary professional requirements *(JCC No.14 of 15.06.2015, §52).*

The Court mentioned that the provisions of the Regulation[22] lay down rules that describe the process *per se* of the activity of PhD supervisor and restriction of the right of education institutions in selecting staff. However, based on the principles of university autonomy, the institutions authorised to organise PhD studies have to select autonomously, based on labour contract, with normal timetable or part time job, the PhD supervisors *(JCC No.14 of 15.06.2015, §58).*

At the same time, the Court established that according to the Regulation, the PhD supervisors after turning the age of 65 do not benefit from the right to request the registration of new PhD candidate unless in joint supervision with another PhD supervisor who did not reach 65 years of age, maintaining at the same time, his/her tasks in relations with previously registered PhD candidates until they finish their PhD studies *(JCC No.14 of 15.06.2015, §59).*

The Court reminded that Article 16 of the Constitution ensures equality of all citizens, without any differentiation, assuming the interdiction to apply differentiated legal treatment to a person in similar legal circumstances, a treatment to place the person in a superior or inferior position compared to other persons *(JCC No.14 of 15.06.2015, §61).*

In this sense, the Court mentioned that due to the complex character of its scientific research, the coordination process of PhD study requires a high level of professional training and broad expertise in the field from the supervisor. The PhD supervisor guides the PhD candidates during research in different fields bringing an indispensable contribution to scientific development *(JCC No.14 of 15.06.2015, §63).*

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[22] *Regulation on the Organisation of PhD Studies, third cycle of academic studies, approved by Government Decision no. 1007 of 10 December 2014*

Hence, setting an age limit for PhD supervisor in exercising the activity decreases considerably the contribution of specialists with broad experience during the scientific career, research development in different fields *(JCC No.14 of 15.06.2015, §64).*

Due to these reasons, the Court considered unjustified the application of a differentiated treatment based on age restrictions to PhD supervisors and did not find any legal purpose that would be proportional to the means used for this purpose (*JCC No.14 of 15.06.2015, §65).*

2.7. Right to health care

2.7.1. Obligation to participate in the mandatory health insurance system

The Court noted that the right of every citizen to health care is guaranteed in Art.36 of the Constitution. According to Art.36 para.(2) of the Constitution, the minimum health insurance provided by the State shall be free of charge *(JCC No. 18 of 19.06.2015*[23]*, § 39).*

Also, according to Art.47 of the Constitution, the State shall be bound to take actions in order that every person has a decent standard of living that would ensure him/her and his/her family members health protection and welfare including food, clothing, shelter, medical care, as well as necessary social services *(JCC No. 18 of 19.06.2015, § 41).*

The right to a standard of living adequate for the health results also from Art.25 para.(1) of the Universal Declaration of Human Rings and the International Covenant on Economic, Social and Cultural Rights *(JCC No. 18 of 19.06.2015, § 42).*

Mandatory health insurance system, according to existing regulations, is organised and functions based on *the principles of unicity, equality, solidarity, obligation, contribution and repartition (JCC No. 18 of 19.06.2015, § 51).*

The Court held that the principle of *mandatory insurance and principle of solidarity* are essential for this system and are manifested based on the fact that the entire society should contribute to the protection of public health *(JCC No. 18 of 19.06.2015, § 52).*

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[23] Judgement of the Constitutional Court No. 18 of 19.06.2015 *on constitutional review of para.3 of Annex No.2 to Law No. 1593–XV of 26 December 2002 on Amount, Procedure and Terms of Payments of Compulsory Health Insurance Premiums*

The Court noted that the principle of *obligation* represents a way of accountability of citizens to assume the risk that may appear in case of worsening the health, having the obligation to participate in the mandatory health insurance system by paying a contribution, by financially covering the expenses related to appearance of insured events *(JCC No. 18 of 19.06.2015, § 53).*

At the same time, the Court mentioned that the principle of *solidarity* is the foundation for the social insurance system organisation and operation. Thus, due to solidarity of those who contribute, this system may achieve its main goal: *to insure a free minimum of health insurance to the population,* including to persons who cannot contribute to the creation of medical insurance funds *(JCC No. 18 of 19.06.2015, § 54).*

The Court held that to ensure the right to health care and to implement compulsory medical insurance, *the existence of compulsory health insurance funds* is necessary *(JCC No. 18 of 19.06.2015, § 56).*

The Court noted that based on compulsory health insurance system, the State *insures the risks* of expenses related to illnesses of citizens by prior collection of necessary funds *(JCC No. 18 of 19.06.2015, § 58).*

In this context, the Court indicated that the health insurance contributions are formed based on premiums paid by the payers provided by law *(JCC No. 18 of 19.06.2015, § 59).*

In this sense, the Court mentioned that the legislative, according to constitutional and legal provisions, had the freedom to set the amount of the contributions that are due by the citizens. At the same time, it should be remembered that in fact, if the person does not make the contribution, he/she cannot be considered as insured and cannot benefit from the minimum guaranteed by the health insurance *(JCC No. 18 of 19.06.2015, § 68).*

Hence, to benefit from health insurance in the volume provided by the United Program of Compulsory Health Insurance, the person has to contribute to the compulsory health insurance system in accordance with the law and principles that govern this system *(JCC No. 18 of 19.06.2015, § 69).*

Social character of the state implies establishing a political system that would permit the adoption of adequate measures for the redistribution of welfare in accordance with the principles of social equity, so all members of the society may enjoy a minimum

guaranteed by social insurance, in accordance with Art.47 of the Constitution *(JCC No. 18 of 19.06.2015, § 70).*

Also, the obligation to contribute to health insurance fund results from the principle of solidarity, which lays the foundation of the public social insurance system, as a manifestation of social state *(JCC No. 18 of 19.06.2015, § 71).*

The Court noted that one of the main resources allowing the public health insurance system to achieve its general objective, and namely, to ensure minimum health insurance to the population, including the category of people who cannot contribute to the development of health insurance funds, which are insurred by the Government, is the contribution of the insured persons to this system. Therefore, the principle of solidarity applied to this system imposes and justifies the obligation to pay the contribution by unemployed persons who cannot prove lack of income *(JCC No. 18 of 19.06.2015, § 72).*

The Court underlined that by exempting the unemployed persons from paying health insurance premium, the employed persons, payers of health insurance premium as a salary deduction will have to bear the disproportional burden *(JCC No. 18 of 19.06.2015, § 73).*

The Court noted that the legitimate purpose set forth by law is to achieve the general objective of the health insurance system: to ensure minimum health insurance to the population *(JCC No. 18 of 19.06.2015, § 79).*

2.8. Exercise of the right to vote

2.8.1. Organisation of polling stations abroad

According to Article 2 of the Constitution, national sovereignty resides with the people of the Republic of Moldova, who shall exercise it directly and through its representative bodies *(JCC No. 15 of 16.06.2015*[24]*, §37).*

The Court noted that the national sovereignty resides with the right of the people to decide unconditionally on their interest and to promote them in the form pro-

[24] Judgement of the Constitutional Court No. 15 of 16.06.2015 *on constitutional review of some provisions of Article 291 para.(3) of the Electoral Code* (Organisation of polling stations abroad)

vided by the Supreme Law. This constitutional principles derive from Article 1 of the Constitution that enshrines the sovereign character of the state *(JCC No. 15 of 16.06.2015, §38).*

The Court underlined that according to constitutional rule, the national sovereignty may be enjoyed directly by the population by participating in the parliamentary elections, local public administration authorities, as well as referenda *(JCC No. 15 of 16.06.2015, §39).*

The Court reiterated that the constitutional provisions of Articles 1 para. (3) and 2 para. (1) should be correlated with the provisions of Article 38 of the Supreme Law, according to which the will of the people represents the basis of state power that is expressed through free periodical elections based on universal, equal, direct, secret and freely expressed vote *(JCC No. 15 of 16.06.2015, §42).*

The Court mentioned that practical enforcement of the right to vote by the citizens takes places by taking part in parliamentary, local elections and referenda *(JCC No. 15 of 16.06.2015, §44).*

The Court reiterated that one of the essential elements of the rule of law, in general, and of the electoral system, in particular, is the right to vote. However, the right to vote does not belong to the category of absolute rights *(JCC No. 15 of 16.06.2015, §48).*

In its case-law, the European Court noted that the right to free elections enshrined in Art. 3 of Protocol No. 1 to the European Convention is not absolute and makes room for implicit restrictions; the contracting states shall benefit of an appreciation margin in the field *(JCC No. 15 of 16.06.2015, §49).*

The Court underlined that the Parliament, as supreme representative body of the people of Moldova and the sole legislative authority of the state, through exclusive competence vested by the Constitution, regulates the electoral system through organic law. In exercising regulatory tasks covered by provisions of Art.72 of the Constitution, the Parliament is entitled to adopt, amend and repeal rules regarding electoral system *(JCC No. 15 of 16.06.2015, §51).*

The Court mentioned that the entire procedure of organising the parliamentary scrutiny, elections of local public administration authorities, as well as referenda is regulated by the Electoral Code *(JCC No. 15 of 16.06.2015, §53).*

The Court held that the organisation of polling stations abroad, additional to those open within diplomatic missions covered by the jurisdiction of the Republic of Moldova, may take place based on *preliminary registration of citizens voting abroad* and *upon the consent of the authorities of the respective state (JCC No. 15 of 16.06.2015, §60).*

The Court mentioned that the organisation of polling stations abroad additionally to those within diplomatic missions is an exclusive right of the state. Thus, the state may establish its determinative criteria to open these polling stations, criteria to be imposed due to technical rationale for authorities responsible for the organisation of the electoral process *(JCC No. 15 of 16.06.2015, §61).*

Respectively, the Court held that by imposing the condition of preliminary registration of citizens of the Republic of Moldova voting abroad, the state pursues more legitimate objectives, such as establishing the estimative number of voters abroad in order to open additional polling stations abroad; concluding the voters list at the respective polling station, as well as establishing the estimative number of ballot papers to be distributed in the respective polling stations *(JCC No. 15 of 16.06.2015, §62).*

At the same time, the Court mentioned that preliminary registration is not mandatory. Citizens, who from different reasons, do not register can exercise their right to vote, by going on the elections day to the polling stations abroad, under the conditions stipulated in the Regulation on voting of citizens of the Republic of Moldova voting abroad, approved by Decision of Central Electoral Commission No.3375 of 27 July 2010. These voters will be included in additional lists *(JCC No. 15 of 16.06.2015, §63).*

Thus, preliminary registration list does not restrict the right to vote. The registration is a determinant criterion for the authorities responsible for the organisation of electoral process and not for the voters *(JCC No. 15 of 16.06.2015, §64).*

Moreover, the Court mentioned that based on challenged provisions that grant the right to organise polling stations additional to those within the diplomatic missions, the legislature has instituted additional facilities in exercising the right to vote for the citizens of the Republic of Moldova voting abroad *(JCC No. 15 of 16.06.2015, §65).*

Due to these considerations, the Court appreciated that these conditions do not harm the essence of the electoral rights, do not violate the right to vote, do not anni-

hilate the free expression of people's will in electing the legislative or in referenda. The challenged provisions regulate only the procedure based on which additional polling stations can be opened *(JCC No. 15 of 16.06.2015, §66).*

2.9. Right to association

2.9.1. Right to associate in professional organisations

The Court held that professional organisations vested with duties of the state, which are not assimilated with public associations may be established by law *(JCC No. 13 of 15.05.2015*[25]*, §48).*

In this sense, the European Court also stated that the 'Belgian Order des médecins is a public-law institution. It was founded not by individuals but by the legislature; it remains integrated within the structures of the State and judges are appointed to most of its organs by the Crown. It pursues an aim which is in the general interest, namely the protection of health, by exercising under the relevant legislation a form of public control over the practice of medicine. Within the context of this latter function, the Order is required in particular to keep the register of medical practitioners. For the performance of the tasks conferred on it by the Belgian State, it is legally invested with administrative as well as rule-making and disciplinary prerogatives out of the orbit of the ordinary law (prerogatives exorbitantes du droit commun) and, in this capacity, employs processes of a public authority' (case *Le Compte, Van Leuven and De Meyere vs Belgium*, Judgement of 23 June 1981, § 64) *(JCC No. 13 of 15.05.2015, §49).*

The Court noted that the professional orders are organisations that mandatorily include members of different professions that due to powers conferred by law intervene in the regulation and oversight of the access to profession and exercising it by combining public and private activities in professional organisation. The legal nature of professional orders is that of public service; the professional order has the task to fulfil a legal public interest by organising the profession and professional discipline. Professional orders are

[25] Judgement of the Constitutional Court No. 13 of 15.05.2015 *on constitutional review of Law No. 261 of 01.11.2013 on the College of Physicians of the Republic of Moldova*

professional entities that have prerogatives of public power without having the quality of public establishments *(JCC No. 13 of 15.05.2015, §52).*

Professional bodies established by law cannot be considered associations in the sense of the right to association as the legislature empowered them with the status of professional organisation, assigning them prerogatives of public interest *(JCC No. 13 of 15.05.2015, §59).*

The European Commission has admitted that generally speaking, the freedom of association involves also the freedom not to associate or not to adhere to an association, except for public-law bodies. Hence, the professional orders that are public-law bodies regulated by law and pursuing goals of general interest are not considered associated in accordance with Art. 11 of the Convention (Case *X vs Holland,* Judgement of the European Commission of 1 March 1983) *(JCC No. 13 of 15.05.2015, §60).*

Legal personality of professional orders is guaranteed by law. A professional order shall unite all members of a profession, the adhesion being mandatory; each order includes mandatorily all persons authorised to exercise the profession. The professional order does not result from a free association *(JCC No. 13 of 15.05.2015, §61).*

2.9.2. Instituting by law the self-managing entity for the medical profession

The current legislation observes the freedom of association of the representatives of medical profession and provides for regulations, according to which, in order to protect their rights and interests, the doctors have the right to associate voluntarily, in accordance with the law on non-commercial organisations, in local, central and international professional associations based on individual or collective membership, and to register these accordingly *(JCC No. 13 of 15.05.2015*[26]*, §63).*

The Court mentioned that the rule defining the membership of the College based on free consent contravenes in essence to the concept of *'professional body instituted by law',* where the membership is obtained *as a right stipulated by law (JCC No. 13 of 15.05.2015, §65).*

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[26] Judgement of the Constitutional Court No. 13 of 15.05.2015 *on constitutional review of Law No. 261 of 01.11.2013 on the College of Physicians of the Republic of Moldova.*

According to the membership procedure, which is voluntary, the College may be assimilated with a public association, while based on the competences vested, which refer exclusively to the state competence, tasks that may be delegated by law to a professional body with the status of public institution, on the condition that it does not substitute and overlap the competences of the Ministry of Health, which is the central medical authority that promotes the health policy, in accordance with Article 107 of the Constitution *(JCC No. 13 of 15.05.2015, §67).*

The Court established that the norms of Law No. 261 of 01.11.2013 on the College of Physicians of the Republic of Moldova intercalates elements of a professional body with those of a voluntary association, instituting thus, an ambiguous legal status for the College of Physicians. Although, on one hand, the abovementioned Law relates that the adhesion is based on voluntary principles, on the other hand, it provides the College with decisional competences regarding the entire medical profession *(JCC No. 13 of 15.05.2015, §68).*

Some tasks of the College of Physicians are overlapping even with the exclusive tasks of the Ministry of Health, which is the central medical authority that promotes the health policy *(JCC No. 13 of 15.05.2015, §71).*

The Court held that legal institution of such organisations with tasks in the health field should be made simultaneously with the amendment of the entire legal framework in the field. Clear delimitation of tasks exercised by the Ministry of Health, on one hand, and of professional body, on the other hand, may be ensured only through a legal, unique and simultaneous approach *(JCC No. 13 of 15.05.2015, §72).*

2.10. Right to work

2.10.1. Termination of labour contracts of principals of some education institutions

The Court reminded that the right to work represents a complex social and economic right guaranteed by Article 43 of the Constitution. According to paragraph (1) of this Article, every person shall enjoy the right to work, to freely choose his/her professi-

on and workplace, to equitable and satisfactory working conditions, as well as to protection against unemployment *(JCC No. 8 of 11.05.2015*[27]*, §47).*

The Court held that whatever is the manner of exercising the right to work, the exigencies and legal conditions that entitles the holder to the right to work cannot be ignored. These conditions, as a rule, guide the capacity of the person to become an employee in a certain field and/or for a certain period. Hence, the right to work has to be exercised legally. Failure to observe legal provisions result in the impossibility of carrying out a certain type of activity or holding a certain position *(JCC No. 8 of 11.05.2015, §50).*

In these conditions, the totality of individual and collective labour relations, control over labour regulations, labour jurisdiction, as well as other conditions related directly to labour relations are regulated by the Labour Code and other laws that describe thoroughly constitutional provisions *(JCC No. 8 of 11.05.2015, §51).*

The Court indicated that according to Art. 6 of the Labour Code, everyone is free in his choice of work place, trade, occupation or activity. Nobody in his lifetime can be obliged to work or not to work in a certain workplace or in a certain trade (*JCC No. 8 of 11.05.2015, §52).*

The Court found that this freedom may not be absolute and unlimited. The labour legislation conditions the employment under certain terms, and sets out different situations for termination of labour relations *(JCC No. 8 of 11.05.2015, §53).*

The Court found that Art. 5 let. j) of the Labour Code stipulates the main principle of regulating labour relations the 'combination of the state and contractual regulation of labour relations and other relations directly connected to them' *(JCC No. 8 of 11.05.2015, §56).*

The validity of the contract as provided in the law, which is inferior to that stipulated initially, may restrict the contract effects; to the extent to which such law envisages expressly that it is applied to the contacts under implementation. The unilateral modification of contracts may take place only in exceptional cases related to national or local interests, where applicable *(JCC No. 8 of 11.05.2015, §60).*

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[27] Judgement of the Constitutional Court No. 8 of 11.05.2015 *on constitutional review of Art. 153 of the Education Code*

The Court mentioned that labour relations in the field of education are determined and regulated by the Education Code and Labour Code, which contain primary rules of general and mandatory application, which condition the employment based on certain conditions and which set the termination of labour relations *(JCC No. 8 of 11.05.2015, §61).*

The Court held that according to the challenged rule (Art.153 of the Education Code[28]), the individual labour contracts with principals of public education institutions, except for higher education, shall cease after more than 5 years from the appointment following the expiry of 4 months from the enforcement of the Education Code *(JCC No. 8 of 11.05.2015, §63).*

Hence, the challenged rule stipulates, as an exception, certain conditions which due to the specifics of the scope of regulation and concerned subjects, derogates from the general principles applicable to individual labour contract *(JCC No. 8 of 11.05.2015, §65).*

The Court mentioned that Art.50 para. (5) of the Education Code stipulates, as generally applicable rule, the contest-based application for the positions of principal and deputy principal based on professional and managerial skills. Paragraph (6) of the same article stipulates the appointment in the position for a 5-year term of the principal and deputy principal of public general education institution, and the individual labour contract of the principal shall be terminated when this term expires *(JCC No. 8 of 11.05.2015, §66).*

In this context, the Court mentioned that the challenged provisions are closely related to requirements and legal conditions specific to this scope of regulation, which cannot be ignored. These conditions direct generally the capacity of a person to obtain the status of employee in a certain field and/or for a certain period *(JCC No. 8 of 11.05.2015, §69).*

As it was mentioned *supra*, the Supreme Law guarantees both *the right to work* and *free choice of work*. By enshrining this freedom, the state provides every person with the

[28] Education Code No. 152 of 17.07.2014, Official Gazette No.319-324/634 of 24.10.2014

possibility to choose the profession and the working place. Such choice is determined by certain skills, economic needs and obviously, by the will of interested parties *(JCC No. 8 of 11.05.2015, §70).*

Thus, the right to work includes the freedom of the person to select the work place, but the carried out activity should observe certain conditions set forth by the legislature, depending on the work, including the teaching activity *(JCC No. 8 of 11.05.2015, §71).*

The Court reiterated that the right to work, choice of profession, job or occupation, as well as working place refers to the possibility of every person to exercise the desired profession or job in certain conditions laid down by the legislature, and does not refer to the obligation of the state to guarantee the access of all persons to all professions. *In other words, the choice of profession is free from the moment when the conditions required for this profession are met (JCC No. 8 of 11.05.2015, §81).*

The conditions of exercising this fundamental right are susceptible to modification, in accordance with the needs dictated by the reality of the society, being at the same time, regulated uniformly in legislation. Or, the right to work has to be exercised under conditions of the law, and failure to observe legal provisions shall have as consequence the impossibility to carry out a certain type of activity or hold certain positions *(JCC No. 8 of 11.05.2015, §72).*

In this sense, setting some conditions for carrying out teaching activity is legally applicable to all persons in similar situation, without discrimination, so there is no way to say that the legal rule violates the constitutional principles of freedom of choosing a profession, working place or the right to work *(JCC No. 8 of 11.05.2015, §82).*

At the same time, the Court noted that termination of labour contracts of principals of public education does not exclude their right to participate in a new contest for the same position, *without discrimination (JCC No. 8 of 11.05.2015, §84).*

A contrary rationale would impede the state to change the principals of public education institutions before they reach the retirement age, which would limit any effort of the state to adapt the education system to the time needs and make a timely reform *(JCC No. 8 of 11.05.2015, §86).*

2.11. Right to property

2.11.1. Assigning of the wage to 'possessions'

The European Court has established that the notion of 'possessions' can be either 'existing possessions' or assets, including claims, in respect of which the applicant can argue that he or she has at least a 'legitimate expectation' of obtaining effective enjoyment of a property right. *Per a contrario*, the hope of recognition of a property right which it has been impossible to exercise effectively cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1 (see *Kopecky v. Slovakia,* No. 44912/98, Judgement of 28 September 2004). Thus, future earnings may not be considered 'possessions' except for the case when the right has been already earned and it is sure that it is going to be paid (*Koivusaari and others v. Finland*, No. 20690/06, Judgement of 23 February 2010) *(JCC No.8 of 11.05.2015[29], §95).*

The notion of "legitimate expectation" must therefore be of a more concrete nature than a mere hope and be based on a legal provision or a legal act such as a judicial decision. No legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law (case *Kopecky v. Slovakia*) *(JCC No.8 of 11.05.2015, §96).*

The Court noted that according to Art. 128 para. (1) of Labour Code, wages represent a compensation or earnings in terms of money, paid to the employee by the employer on the basis of the individual labour contract, for the executed or subject to performance work *(JCC No.8 of 11.05.2015, §97).*

The notion of 'wages' *per se*, in the acceptance of the European Court, is a 'possession', and the wages are covered by the property right, regulated by Art.1 of Protocol No.1 to the Convention *(JCC No.8 of 11.05.2015, §98).*

Hence, a person may pretend to his/her wage rights only if these were 'earned' being reported to the effective period of work. The termination of labour relations results in cancelation of wages *(JCC No.8 of 11.05.2015, §99).*

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[29] Judgement of the Constitutional Court No. 8 of 11.05.2015 *on constitutional review art. 153 of Code of Education*

In the Judgement of Grand Chamber in the case *Vilho Eskelinen v. Finland* of 19 April 2007, the European Court stated: "that there is no right under the Convention to continue to be paid a salary of a particular amount. A claim may only be regarded as an "asset" for the purposes of Article 1 of Protocol No. 1 where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it *(JCC No.8 of 11.05.2015, §100).*

In the context of those mentioned above, an essential distinction between the right to continue to be paid in the future and the right to effectively receive a wage earned for a period of work performed should be made *(JCC No.8 of 11.05.2015, §101).*

2.11.2. Presumption of illicit enrichment

The provision that institutes illicit character of enrichment is a fundamental element of Article 46 of the Constitution, which together with other provisions of the same article, has the purpose to guarantee the right to private property and its protection *(JCC No.6 of 16.04.2015[30], §41).*

The presumption of illicit enrichment represents a general guarantee that pursuits protection of property rights of all citizens from unjustified interferences of the state *(JCC No.6 of 16.04.2015, §42).*

This presumption, ensuring legal security and legality of the property implies the responsibility of the state to present evidence proving the illegality of enrichment *(JCC No.6 of 16.04.2015, §43).*

Thus, the Court reiterated that under the constitutional norm, the duty to present evidence that would prove the illegality of acquiring goods is assigned to the authorities *(JCC No.6 of 16.04.2015, §45).*

The Court held that the presumption of illicit enrichment is an application of the principle of presumption of innocence enshrined in the Constitution and other infra-constitutional acts of the Republic of Moldova, as well as in the international human rights instruments. According to Art.21 of the Constitution: 'Any person accused to have

[30] Judgement of the Constitutional Court No.6 of 16.04.2015 *on constitutional review of some provisions of the Criminal Code and Criminal Procedure Code* (extended confiscation and illicit enrichment)

committed an offence shall be presumed innocent until found guilty on legal grounds, brought forward in a public trial, safeguarding all the necessary guarantees for his/her defence' *(JCC No.6 of 16.04.2015, §50).*

Along the same line, the Court underlined that according to principles of criminal procedure law, no one is obliged to prove his innocence, the burden of proof thus lies with the prosecution, and the situation of doubt is being interpreted in favour of the accused *(in dubio pro reo)* (*JCC No.6 of 16.04.2015, §53).*

The *in dubio pro reo* rule is a complement of the presumption of innocence, an institutional principle that reflects the manner how the principles of discovering the truth, enshrined in the criminal procedure law, is found in probation *(JCC No.6 of 16.04.2015, §54).*

2.11.3. Extended confiscation of assets – an instrument to fight against organized crime and corruption

The Court held that in order to discourage organised crime, it is essential to punish the offenders by seizing the object of crime. In this sense, the confiscation and recovery of assets obtained from criminal activities represent an efficient way to fight against organised crime *(JCC No.6 of 16.04.2015*[31]*, §56).*

The confiscation impedes the use of assets of criminals as funding sources for other criminal activities, removing the danger to corrupt the society *(JCC No. 6 of 16.04.2015, §57).*

The Court held that the *confiscation measure* is constitutionally regulated only when offences or contraventions are committed, i.e. in established situations in accordance with the law as representing the facts with a certain level of social danger *(JCC No. 6 of 16.04.2015, §65).*

Having examined the criminal law, the Court established that *'extended confiscation of property',* as a safety measure, and the crime of illicit enrichment were introduced in

[31] Judgement of the Constitutional Court No.6 of 16.04.2015 *on constitutional review of some provisions of the Criminal Code and Criminal Procedure Code* (extended confiscation and illicit enrichment)

the Criminal Code by the Law no. 326 of 23 December 2013 (Art.106/1 of the Criminal Code) *(JCC No. 6 of 16.04.2015, §66).*

The Court mentioned that while *special confiscation* represents forced or voluntary transfer of assets into state's property (including currency) used to commit crimes or that resulted from criminal activity, then the *extended confiscation* is applied to other assets, which, although not used in committing crimes, originated from criminal activities *(JCC No. 6 of 16.04.2015, §67).*

The Court noted that, according to Art. 106[1] para. (2) of the Criminal Code, extended confiscation is ordered, if the following conditions are met cumulatively: *a) value of assets obtained by the person convicted during 5 years before and after committing the crime before the date when the sentence was adopted, significantly exceeds his/her illicit income; b) the court establishes based on evidence that the respective assets result from criminal activities described in para. (1) (JCC No. 6 of 16.04.2015, §70).*

According to provisions set forth, criminal origin of assets should *be established by the court based on submitted evidence (JCC No. 6 of 16.04.2015, §71).*

Regarding the possibility of confiscating the assets transferred by convicted person or a third person to a family member, a company under the control of convicted person or other persons who knew or know about illicit origin of assets, the Court mentioned that according to Art.5 para. (24) of the *Directive 2014/42/EU:*

> '(24) [...] Such confiscation should be possible at least in cases where third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer was carried out free of charge or in exchange for an amount significantly lower than the market value. The rules on third party confiscation should extend to both natural and legal persons. In any event the rights of bona fide third parties should not be prejudiced' (JCC No. 6 of 16.04.2015, §73).

The Court concluded that the challenged rule does not represent an interference in the right to private property, in accordance with Art. 46 of the Constitution, and does not affect the principle of presumption of innocence as component part of the right to

fair trial, to the extent to which the presumption of illicit enrichment is challenged by the evidence provided by the state authorities *(JCC No. 6 of 16.04.2015, §74).*

As for the enforcement manner of the examined rule, according to Article 106[1] para. (2) let. a) of the Criminal Code, extended confiscation is ordered only if the value of assets acquired by the convicted person 5 years before and after the offence, before the adoption of the sentence substantially exceeds the revenues from illicit enrichment *(JCC No. 6 of 16.04.2015, §75).*

Setting the 5-year term has the goal to avoid abuses and divergences of interpretation of the period when the court has to consider it to establish the existence of a disproportion between the assets acquired by a convicted person and illicit revenues obtained by this person *(JCC No. 6 of 16.04.2015, §76).*

At the same time, the Court held that the Law No. 326 of 23 December 2013 that regulated the institution of extended confiscation of property was published in the Official Gazette of the Republic of Moldova on 25 February 2014, when it has entered into force *(JCC No. 6 of 16.04.2015, §77).*

The Court mentioned that according to Article 22 of the Constitution, no one shall be sentenced for actions or drawbacks which did not constitute an offence at the time they were committed. No punishment more severe than that applicable at the time when the offence was committed shall be imposed. This principle proceeds from the principle of legality that represents a value of the rule of law *(JCC No. 6 of 16.04.2015, §78).*

In this context, the Court underlined that the principle *lex retro not agit* is applied in criminal matters, according to which the law cannot be retroactive, and the principle *mitior lex*, according to which, more favourable criminal norm will be applied in situations determined by the succession of criminal law *(JCC No. 6 of 16.04.2015, §79).*

Respectively, the Court underlined that the provisions of Art. 106[1] of the Criminal Code cannot be applied retroactively regarding the confiscation of assets acquired before the date of its entering into force. Ordering the extended confiscation measure on assets acquired before the date the law entered into force violates the constitutional principle of non-retroactivity. Thus, based on the non-retroactivity of the criminal law principle, only the assets acquired after the date of entry into force (25 February 2014) may be confiscated *(JCC No. 6 of 16.04.2015, §83).*

2.11.4. Payment of dividends

The establishment, liquidation procedure, as well as legal status of joint-stock companies, rights and obligations of the shareholders, members of the Board or other persons with high positions in the company are regulated by the Law No. 1134-XIII of 2 April 1997 on Joint-Stock Companies *(JCC No.17 of 19.06.2015[32], §6).*

According to the law, the shareholders have the right to dividends, which represent the share of the benefit of the company *(JCC No.17 of 19.06.2015, §7).*

According to Art. 49 para. (13) of the Law, the dividends, not received by the shareholder due to his fault within three years from the date of occurrence of the rights on their reception, shall be used in the income of a company and cannot be requested by the shareholder *(JCC No.17 of 19.06.2015, §8).*

The Court held that 'asset', protected by Art. 46 of the Constitution, may be any element of person's assets with economic value. The term 'asset' includes *per se* the real property rights or obligations *(JCC No.17 of 19.06.2015, §40).*

The Court held that according to the law, the document that proves the right of the owner (shareholder) to participate in the company's management, to receive dividends, and a share of the company's assets in case of its liquidation is the share *(JCC No.17 of 19.06.2015, §49).*

The Court held that by purchasing shares, the shareholder has the purpose to earn profit under the form of dividends *(JCC No.17 of 19.06.2015, §54).*

The Court mentioned that to be eligible for dividends, there is a number of conditions that have to be met: the joint-stock company must register profit; the general assembly should be legally convoked and organised and should make the decision to pay the dividends to the shareholders by setting the term and payment method *(JCC No.17 of 19.06.2015, §57).*

The Court mentioned that the shareholder may claim his/her share from the company, including all resulting consequences, from the moment the general assembly announces the decision to pay the dividends to the shareholders. At this moment, the right to dividends is the property of the shareholder, in accordance with Art.284 para.(2)

[32] Judgement of the Constitutional Court No.17 of 19.06.2015 *on constitutional review of provisions of Art. 49 para.(13) of Law No. 1134 – XIII of 2 April 1997 on Joint-Stock Companies* (payment of dividends)

of the Civil Code, which stipulates that all person's property enters its patrimony *(JCC No.17 of 19.06.2015, §61).*

Along the same line, the Court held that the property right over the assets is extended to the results yield of this asset. Thus, according to Art. 317 of the Civil Code, everything that a property produces and everything that joins it or is incorporated into it due to owner's act, the act of another person or due to an accident, pertains to the owner, unless the law provides otherwise *(JCC No.17 of 19.06.2015, §62).*

In the light of the above-mentioned, the Court established that the right of the shareholder to receive dividends that results from holding shares in a company, falls under the incidence of the norms that protect the property right, stipulated in Articles 9, 46 and 127 of the Constitution and Article 1 of Protocol No.1 to the European Convention, because this right *per se* is a property right with economic value, and its holder has the possibility to register revenues *(JCC No.17 of 19.06.2015, §65).*

At the same time, the legislature may establish certain conditions for exercising subjective civil rights, which failure to exercise may lead to cancelation of these rights. These conditions refer also to temporary limits of arising, exercising or defence of civil rights, named 'periods' in the civil law *(JCC No.17 of 19.06.2015, §69).*

The different periods set forth in the civil law include also the period to exercise the civil rights, called as well 'limitation period' or 'prescription period'. These are time periods when the holders of subjective rights are authorised to exercise their rights, failure to do so being sanctioned with their loss (JCC No.17 of 19.06.2015, §72).

Along the same line, the Court noted that the 3-year term is reasonable for shareholders to claim their dividends *(JCC No.17 of 19.06.2015, §73).*

At the same time, the Court held that in the case when the shareholder intentionally does not collect his/her dividends in the 3-year period, these have to be transferred to the revenue of the company and may not be claimed by the shareholder, presuming that in this way the shareholder tacitly accepts the transmission of dividends into the property of the company *(JCC No.17 of 19.06.2015, §83).*

At the same time, the Court mentioned that the 3-year term may not be imputed to shareholder, if he/she did not have the opportunity to learn about the dividends *(JCC No.17 of 19.06.2015, §84).*

In the context of the above-mentioned, the Court held that deprivation of the right of shareholder who intentionally did not claim his/her dividends during 3-year period, the legislature set an efficient and equitable mechanism to ensure the security of legal relations, which do not contravene Articles 9 and 46 of the Constitution *(JCC No.17 of 19.06.2015, §85).*

3 PUBLIC AUTHORITIES

3.1. Organization and functioning of the Parliament

3.1.1. Parliamentary autonomy

The regulated autonomy cannot be exercised discretionally, abusively, by violating constitutional tasks of the Parliament or **imperative norms regarding parliamentary procedure** *(JCC No. 27 of 17.11.2015[33], §37).*

3.1.2. Transparency of parliamentary activity

Taking into account the role and weight of the Parliament in the institutional architecture of the state, it is necessary to guarantee that the Parliament represents the interests of the citizens in a completely open and transparent manner *(JCC No. 27 of 17.11.2015[34], §42).*

The importance of transparency in the activity of the Parliament is determined by the unique role of the legislature in a democracy, and namely to represent its voters and to follow the needs, interests and aspirations of the citizens in its activity *(JCC No. 27 of 17.11.2015, §44).*

The principle of transparency derives from the representative mandate, enshrined in Article 68 of the Constitution, which stipulates that in the exercise of their mandate

[33] Judgement of the Constitutional Court No.27 of 17 November 2015 *on constitutional review of Parliament Decision No. 172 of 15 October 2015 on the consent of lifting parliamentary immunity of MP Vladimir Filat*

[34] Judgement of the Constitutional Court No.27 of 17 November 2015 *on constitutional review of Parliament Decision No. 172 of 15 October 2015 on the consent of lifting parliamentary immunity of MP Vladimir Filat*

the members of Parliament are in the service of the people. Hence, the citizens entrust MPs with the representative mandate. Therefore, during the mandate, the MP should be always under the supervision and control of public opinion. The representative mandate guarantees the fact that the entire activity of the MPs is under electoral control through meetings with voters, interviews or press conferences, participation of voters in Parliamentary sessions and overseeing the behaviour of those elected, the open character of the Parliamentary vote, live streaming of some parliamentary sessions, publication of parliamentary debates, publication of adopted acts *(JCC No. 27 of 17.11.2015, §45).*

Hence, the citizens have the right to follow closely the activity of elected Members of Parliament, ensuring that they observe the strict behavioural principles and have balanced relations with the representatives of groups of interests. Also, the citizens are entitled to have great expectations regarding the standards of behaviour and efficiency of the Members of the Parliament. Last but not least, the citizens have to be entitled with access to documents of the Parliament within the limits described in the law. In essence, all transparency instruments have as objective to allow the citizens to supervise the activities and, especially the legislative activity of the Parliament *(JCC No. 27 of 17.11.2015, §46).*

In this context, the constitutional principle of the transparent activity of the Parliament involves the right to information of any citizen about the activity of all Members of the Parliament. Thus, it is necessary to show transparency in the parliamentary activity, including with regard to votes expressed by every deputy in part *(JCC No. 27 of 17.11.2015, §48).*

Without the open, transparent and traceable vote, the citizen cannot follow the activity of the MP who represents the voter, and consequently cannot evaluate correctly the way he/she is represented in the Parliament. Or, the MPs should assume the responsibility for expressed policies, first of all, by open vote *(JCC No. 27 of 17.11.2015, §49).*

On the other hand, the Constitution does not regulate special requirements regarding the vote (*open* or *secret*) to lift the immunity of a MP *(JCC No. 27 of 17.11.2015, §55).*

The Court held that according to Article 65 of the Constitution, the sessions of Parliament are public. In corroboration with provisions of Article 34 (Right of citizens to

information) and Article 68 (Representative mandate), to ensure the constitutional principle of transparency, the vote of every MP shall be open. The exceptions from this rule are expressly and exhaustively stipulated in the Constitution. Hence, the Constitution envisages three situations when the Parliament adopts decisions by secret vote, and namely in cases related to: election and revocation of the Speaker of the Parliament – Art. 64 para. (2), election of the President of the Republic of Moldova – Art. 78 para. (5) *(JCC No. 27 of 17.11.2015, §56).*

The Court held that the provisions of Article 97 para.(6) of the Rules of Procedure of the Parliament, which stipulates that lifting the immunity of a Member of the Parliament shall be adopted by '*open vote of the majority of elected parliamentarians, secretly expressed'* are unconstitutional according to provisions of Article 65 corroborated with Article 34 of the Constitution, as well as provisions of Article 74 para.(2) of the Constitution. For the same rationale, the provisions of paragraph (7) are also unconstitutional as well as the word 'secret' in paragraph (8) of Article 97 of the Rules of Procedure of the Parliament, adopted by Law No. 797-XIII of 2 April 1996, and paragraph (5) of Article 10 of Law No. 39-XIII of 7 April 1994 on the Status of the Member of Parliament, which enshrines same unconstitutional legislative solution *(JCC No. 27 of 17.11.2015, §60).*

Thus, the Parliament should decide on the motion to lift the immunity by an *open vote* of the majority of *present* members of the Parliament, in public session, following the provisions of Art. 74 of the Constitution *(JCC No. 27 of 17.11.2015, §68).*

Open voting is not a violation of the Constitution, on the contrary, secret voting is not a constitutional express requirement to lift the immunity is contrary to the provisions of the Constitution *(JCC No. 27 of 17.11.2015, §69).*

3.1.3. Mandate of a Member of Parliament

3.1.3.1. Extending parliamentary inviolability

The situation of a MP is characterised by a status that involves numerous benefits and tasks that have the purpose to guarantee the freedom of exercising the mandate and the independence of a MP protecting him/her from pressure that might compromise

his/her independence. In this sense, the guarantees of remuneration and social protection, incompatibility and immunity are included *(JCC No.2 of 20.01.2015[35], §40).*

The scope of parliamentary inviolability may be analysed under four essential aspects: *ratione personae* (beneficiaries of protection), *ratione temporis* (beginning and end of protection), *ratione loci* (space limits of protection) and *ratione materiae* (acts covered by the inviolability) *(JCC No.2 of 20.01.2015, §59).*

i. *ratione personae* – inviolability is *intuitu personae* and is applied exclusively to persons who are members of Parliament *(JCC No.2 of 20.01.2015, §60).*

ii. *ratione temporis* – MPs benefit of parliamentary inviolability from the moment of election but under a cancelation condition of the invalidity of their election. Limited in time and regulated by specific rules regarding especially the suspension of prescription term, the immunity can be only a temporary procedural obstacle in criminal proceedings, an impediment that does not cancel, however, for the interested party the possibility of final resolution of the litigation *(JCC No.2 of 20.01.2015, §61, 62).*

The effect of parliamentary inviolability on criminal prosecution is temporary, but at the same time, parliamentary structures cannot intervene as a matter of principle on the course of justice as it is. Having examined the motion to lift parliamentary immunity, it should assess if the inviolability in its temporary interruption of justice procedure should be lifted immediately or if it is preferable to wait before the MP mandate expires. Thus, the Parliament may only suspend the course of justice, without intervening or participating in it *(JCC No.2 of 20.01.2015, §63).*

As for the procedures launched before the mandate, these should continue in accordance with the general legal conditions, if a certain phase of the procedure was reached. Thus, the following differences are operated: 1) if the person was already sued for a criminal offence before the day of his/her elections, the procedure will continue as for any citizen, without being necessary to lift the immunity; 2) if the person was not sued before the elections day, the person enjoys inviolability, thus, it is necessary to lift the immunity. In this sense, suspending case examination and requesting to lift the immu-

[35] Judgement of the Constitutional Court No.2 of 20.01.2015 *on the interpretation of Articles 1, 69 and 70 of the Constitution* (immunity and cessation of the MP mandate).

nity in the case of sued person before the elections day is contrary to the constitutional provisions *(JCC No.2 of 20.01.2015, §64).*

iii. ratione loci – place of crime committed by the member of Parliament has no influence on the application of parliamentary inviolability *(JCC No.2 of 20.01.2015, §66).*

iv. ratione materiae – the scope of parliamentary inviolability in the Republic of Moldova is limited to criminal (and contravention, by assimilation) cases. The Constitution does not operate any difference depending on the nature and gravity of the action. The inviolability protection is valid only for certain restrictive procedure measures, listed expressly and exhaustively by the Constitution: custody, arrest, and search. There is an exception in case of 'flagrant offence' *(JCC No.2 of 20.01.2015, §67).*

Thus, based on only these reserves, criminal proceedings may be instituted and prosecution may be initiated against the MP without the need to lift the immunity. At the same time, at the end of criminal prosecution, sending the case to trial by the prosecutor who concluded the indictment may be done only after the immunity is lifted under the conditions laid down in the Rules of Procedure of the Parliament *(JCC No.2 of 20.01.2015, §70).*

The Court admits that criminal prosecution of a Member of Parliament, as well as associated coercive measures, may affect even the functionality of the Parliament and may disrupt the work of the Parliament. The Court recognises, in this sense, the institutional finality of this prerogative that refers to normal functionality and integrity of the parliamentary institution. In these circumstances, the derogation from common law has legitimate purposes *(JCC No.2 of 20.01.2015, §72).*

Under Article 70 para. (3) of the Constitution, the parliamentary inviolability in the Republic of Moldova protects the MPs from judiciary prosecution for actions that do not have anything to do with parliamentary activity. However, the requirements of the rule of law impose that parliamentary immunity may not function unless by reporting to the legitimacy of addressed purposes and namely, by maintaining the integrity of the Parliament and protection of opposition. Taking into account the rationale to exist, the useless extension of parliamentary immunity and with no criticism towards issues that have nothing in common with the respective public position does nothing but affecting the public confidence in the parliamentary democracy itself. The more the 'covering' be-

haviour goes further from the tasks of respective public function, the more justified the authorisation of immunity application should be, and by extension, the refusal to lift the parliamentary immunity becomes imperative. When the immunity operates in such a manner that the persons are protected against the action of criminal tribunals, then the reason for the refusal to lift the immunity should be clear and convincing *(JCC No.2 of 20.01.2015, §73, 74, 75).*

Thus, according to Article 70 para. (3) of the Constitution, the parliamentary immunity has no incidence on the Member of Parliament convicted by a final judgement, because the protection of inviolability ends when the case is referred to court *(JCC No.2 of 20.01.2015, §80).*

Taking into account that the immunity of the MP is lifted because of the case being referred to court, serving a criminal sentence against the Member of Parliament does not require separated lifting of immunity or this is an integrated part of the judiciary process, because the MP does not benefit anymore from the inviolability protection *(JCC No.2 of 20.01.2015, §79).*

3.1.3.2. Ineligibility for MP position

Ineligibility is a concept that refers to the requirements that impede the persons to stand for elections. Ascertained or appeared during the validly of the mandate, applied as *mutatis mutandis,* the ineligibility conditions should be understood as terms of incompatibility with the status of a Member of Parliament. Effects produced by the violation of the principle of ineligibility cannot be eliminated during the mandate, because these represent absolute obstacles for the mandate and participation in elections. The legal consequences of the principle of ineligibility is to cancel the election of the person who does not meet the eligibility criteria *(JCC No.2 of 20.01.2015*[36]*, §130,131,132).*

Thus, violation/loss of eligibility requirements implies two types of consequences depending on the moment of discovering the violation of eligibility conditions, before or after the validation of elections: (1) if the ineligibility is proven before the validation

[36] Judgement of the Constitutional Court No.2 of 20.01.2015 *on the interpretation of Articles 1, 69 and 70 of the Constitution* (immunity and cessation of the MP mandate).

of elections results and expiry of the period when these may be appealed, the mandate shall not be validated; (2) if the ineligibility is proven after the validation of elections results and expiry of the period when these may be appealed, or if during the mandate, one of the two cases of ineligibility is discovered, in accordance with the Electoral Code, including conviction by final and irrevocable court judgement for offences committed intentionally, the person is absolutely incompatible with the parliamentary membership, his/her mandate legally expiring *(JCC No.2 of 20.01.2015, §133).*

Moreover, if there is a final and irrevocable court judgement, it will produce *ipso jure effects*, being inadmissible and contrary to the principle of rule of law giving the possibility to censor it by a decision of the Parliament, which is a highly political body. Thus, the court judgement generates the loss of the mandate of MP – generally called 'deprivation'. Consequently, the Parliament will declare the MP mandate vacant *(JCC No.2 of 20.01.2015, §134).*

3.1.3.3. Incidence of parliamentary immunity within the procedure of recognising and enforcing foreign judgements

The procedure of recognising a foreign criminal judgement by national courts does not imply judicial debates on the merits and evidence handling; the case is being examined on the merits by the courts of the sentencing state. In this context, the procedure for recognising a foreign criminal judgement is non-contentious, limited to the verification by the national courts if procedural guarantees were observed by the courts of the sentencing state. Thus, the procedure for recognising a foreign criminal judgement is not equivalent to 'refer the case to court' *(JCC No.2 of 20.01.2015*[37]*, §98).*

Hence, the situation of the person under the procedure of recognition of foreign criminal judgement may not be included in cases mentioned in Article 70 para. (3) of the Constitution, which requires lifting parliamentary immunity. Therefore, it is not necessary to lift the immunity of the Member of Parliament to recognise and enforce a final criminal judgement ruled by foreign courts *(JCC No.2 of 20.01.2015, §99).*

[37] Judgement of the Constitutional Court No.2 of 20.01.2015 *on the interpretation of Articles 1, 69 and 70 of the Constitution* (immunity and cessation of the MP mandate).

The mandate of a Member of Parliament convicted for offences committed intentionally by the court of a foreign state shall cease legally on the date the judgement to recognise the conviction becomes final and irrevocable. If a Member of Parliament is convicted for crimes committed intentionally and/or is convicted to imprisonment (freedom deprivation) by final and irrevocable judgement, including by a foreign state, his/her mandate cannot be lifted because it ceases de jure *(JCC No.2 of 20.01.2015, §139).*

3.1.3.4. Forced termination of mandate of a Member of Parliament

Forced termination of MP mandate is regulated exclusively by the Parliament, and includes: lifting the mandate of a parliamentarian or incompatibility taking into account the principles and spirit of the Constitution, democratic norms and standards and the practice of other states. In this context, the Court starts from the precondition that the rule has to be interpreted as allowed and not as excluding its implementation. Hence, inherent rules of such exercise, in the absence of some express regulations, may be deducted from the Constitution, by applying the principle of 'minimal useful effect' *(JCC No.2 of 20.01.2015[38], §117, 118, 119).*

Thus, in the absence of express regulations, the rules that govern forced termination of the mandate should be deducted from the applicable rules for appointing, taking into account the particularity that in the logics of free representation, the mandate of the Member of Parliament is irrevocable, and the voters do not have the possibility to early terminate it *(JCC No.2 of 20.01.2015, §120).*

Consequently, if there is a conviction for crimes committed intentionally and/or a sentence to prison (freedom deprivation) by final and irrevocable judgement, irrespective if it happened before or after the validation of mandate, the Member of Parliament is in a situation of ineligibility, which is incompatible with the status of a Member of Parliament *(JCC No.2 of 20.01.2015, §142).*

The person, whose ineligibility is proved after the validation of elections results and expiry of appeal period or who during the mandate may be in one of the ineligibility

[38] Judgement of the Constitutional Court No.2 of 20.01.2015 *on the interpretation of Articles 1, 69 and 70 of the Constitution* (immunity and cessation of the MP mandate).

cases stipulated by the Electoral Code, shall be incompatible with the requirements for a Member of Parliament, and the mandate is ceased de jure *(JCC No.2 of 20.01.2015, operative part).*

3.1.3.5. Legal framework of the incompatibility of MP position

a) General aspects regarding the incompatibilities of Members of Parliament

Normal functioning of the entire political and legal system imposes efficient protection of parliamentary mandate and institution of protection measures, such as incompatibilities, immunities *(JCC No. 21 of 24 June 2015[39], §33).*

The significance of the notion of 'incompatibility' consists of interdiction stipulated by law to cumulate two positions, to ensure the independence of a person who holds public office, to avoid the concentration of excessive prerogative on the same person, as well as to protect his/her moral and professional integrity *(JCC No. 21 of 24 June 2015, §34).*

The Court held that the incompatibility is instituted at the moment of acquiring the position and envisages a period of time during which the holder of position should choose between the main and the new position *(JCC No. 21 of 24 June 2015, §35).*

The incompatibility does not represent a protection measure only for the established position, but also for the positions that become incompatible with the public office, limiting their accumulation *(JCC No. 21 of 24 June 2015, §36).*

In this sense, the Court noted that express provision of incompatibilities for the MP position is based on the rationale that the Member of Parliament should not be only independent from any influences, but should also abstain from holding positions or carrying out activities that by their nature would contradict his/her representative mandate or which would impede him/her to exercise the mandate *(JCC No. 21 of 24 June 2015, §37).*

The incompatibilities, besides the fact that these protect the independence of the Parliament, represent an interest from the perspective of conflict of interest. Or, by cum-

[39] Judgement of the Constitutional Court No. 21 of 24 June 2015 *on the interpretation of Articles* 69 *para.(2), 70 para.(1), 99 and 100 of the Constitution of the Republic of Moldova* (incompatibilities of Members of Parliament)

mulating the MP mandate with another position, the Member of Parliament has a conflict of interest with the prerogatives and obligations set forth by his/her status, a fact that may create a material dependency on the cumulated position and may determine the possible attempt to settle some issues of particular interest with the assistance of the mandate *(JCC No. 21 of 24 June 2015, §38).*

Also, the Member of Parliament requires an increased concentration of efforts, a fact that makes this position incompatible with another public or private position *(JCC No. 21 of 24 June 2015, §39).*

The incompatibility concept of the Member of Parliament position is based on the principle of separation of powers in the state, enshrined in Article 6 of the Constitution, which represents a principle of state legal order *(JCC No. 21 of 24 June 2015, §40).*

According to this principle, the state authorities have the duty to exercise their competence within the limits imposed by the Constitution and law, without involving other authorities in their duties *(JCC No. 21 of 24 June 2015, §41).*

The Court mentioned that the constitutional principle of separation of powers in the state, as well as ensuring the independence of the MP mandate, imposed the regulation of incompatibilities as a legal instrument for protection of MP mandate *(JCC No. 21 of 24 June 2015, §43).*

The Court held that the institution of incompatibilities represents a guarantee of objectivity and credibility, which should characterise a public position held in a democratic society, in a rule of law state *(JCC No. 21 of 24 June 2015, §44).*

b) Incompatibility effect between MP and other positions

The Court mentioned that the incompatibility effect represents termination of MP mandate, either legally when an incompatibility arises, or by dismissing the parliamentarian, if he/she renounces to hold the mandate *(JCC No. 21 of 24 June 2015[40], §73).*

The Court held that the legislature stipulated in Art.5 para.(1) of Law No.39-XIII of 7 April 1994 the dismissal of a Member of Parliament who faces one of incompatibi-

[40] Judgement of the Constitutional Court No.21 of 24.06.2015 *on the interpretation of Articles 69 para.(2), 70 para.(1), 99 and 100 of the Constitution of the Republic of Moldova*

lity cases in a 30-day period from the validation of the mandate *(JCC No. 21 of 24 June 2015, §74).*

Hence, the Court found out that setting the 30-day term from the mandates validation date by the legislature for actions to remove the incompatibility is a transitory period, during which the Member of Parliament should choose one of the positions that cannot be held at the same time and act accordingly *(JCC No. 21 of 24 June 2015, §75).*

In these circumstances, the Court held that the incompatibility of newly-appointed Members of Parliament appears at the moment of MP mandate validation *(JCC No. 21 of 24 June 2015, §76).*

At the same time, the Court distinguished the appearance of an incompatibility situation for current Members of Parliament. Hence, the Court establishes that for current Member of Parliament who will choose another position, the incompatibility will arise when he/she starts exercising the other position *(JCC No. 21 of 24 June 2015, §77).*

The Court held that the person who was elected as Member of Parliament and who is facing an incompatibility will have to choose between the MP mandate and his/her current position that generates the incompatibility until the legally stipulated term expires, quitting, hence, one of the positions *(JCC No. 21 of 24 June 2015, §78).*

The Member of Parliament will quit the position incompatible with the MP mandate within 30 days from the date when incompatibility appeared, and vice versa, if the MP decides to keep current position, he/she should quit the MP position by submitting a letter of resignation *(JCC No. 21 of 24 June 2015, §79).*

The Court held that if a letter of resignation from MP position is submitted by the MP in an incompatible situation, the MP mandate shall be terminated on the date the letter of resignation is submitted *(JCC No. 21 of 24 June 2015, §80).*

At the same time, the Court mentioned that when a letter of resignation from the MP position is submitted, the Parliament should act promptly to observe the legal provisions *(JCC No. 21 of 24 June 2015, §81).*

The Court held that the resignation represents an externalized will, a legal act by which a dignitary withdraws from a position *(JCC No. 21 of 24 June 2015, §82).*

The dismissal of a Member of Parliament generated a number of procedures consisting of few consecutive phases that imply a set of actions undertaken by both the

Member of Parliament in incompatible situation, and the Parliament (Speaker of the Parliament, Standing Bureau, Standing Committees, Plenum of the Parliament), Central Electoral Commission, Constitutional Court, and is regulated by legal acts in the field *(JCC No. 21 of 24 June 2015, §83).*

At the same time, the Court held that if the incompatibility continues at the expiry of validity term set forth by law in the case of the Member of Parliament in incompatible situation, he/she shall be considered legally dismissed from the MP position *(JCC No. 21 of 24 June 2015, §86).*

In this sense, the MP mandate is ceased de jure when the 30-day term expires, in accordance with Art. 5 para. (1) of Law No. 39-XIII of 7 April 1994 on the Status of a Member of Parliament *(JCC No. 21 of 24 June 2015, §87).*

Hence, the Court mentioned that all legal procedures related to the incompatibility of parliamentarians should be finalised in a 30-day term set forth by law, when the incompatibility arises, otherwise, after the 30-day term expires, the MP mandate is ceased de jure without being necessary to satisfy other conditions *(JCC No. 21 of 24 June 2015, §88).*

In the light of what has been said above, the Court held that based on Art.69 para.. (2) of the Constitution, the incompatibility is one of the causes to terminate the MP mandate, either by resignation of the parliamentarian or ceased de jure *(JCC No. 21 of 24 June 2015, §89).*

c) Incompatibility between MP position and position of a member of the outgoing Government

Based on the constitutional norms, the Court underlined that when a new Parliament is formed, if the members in office of the outgoing Government are elected as Members of the Parliament, they can hold both positions until the date the new members of the Government are sworn in *(JCC No. 21 of 24 June 2015*[41]*, §120).*

[41] Judgement of the Constitutional Court No.21 of 24.06.2015 *on the interpretation of Articles 69 para.(2), 70 para.(1), 99 and 100 of the Constitution of the Republic of Moldova*

3.1.4. Dissolution of the Parliament

3.1.4.1 Maintaining institutional balance by ensuring the ongoing character of executive power in the State

The Court mentioned that the constitutional sanction applied to the Parliament – dissolution – is admitted according to the provisions stipulated in the Constitution, in situations when the supreme legislative and representative body cannot exercise its duties and thus, cannot express the will of the voters. Based on these considerations, due to arisen dysfunction, the Parliament dissolution and organisation of early elections, the voters have the possibility to solve constitutionally the conflict between the authorities *(JCC No.29 of 24.11.2015[42], §34).*

At the same time, the prerogative of the President of the State to dissolve the Parliament is a constitutional guarantee that allows an institutional crisis to be settled and unlocked *(JCC No.29 of 24.11.2015, §35).*

The discretionary right of the President to dissolve or not the Parliament, if the confidence vote for the formation of the Government is not accepted intervenes under the circumstances of Art. 85 para. (2) of the Constitution, and namely, within 45 days following the first request and only upon declining at least two requests of investiture before the 3-month term expires *(JCC No.29 of 24.11.2015, §38).*

Thus, the discretionary right of the President – to dissolve or not the Parliament stipulated in Art. 85 para. (2) – is transformed into an obligation imposed by the will of the constituting legislator in Art. 85 para. (1) *(JCC No.29 of 24.11.2015, §39).*

Hence, the Court held that based on the provisions included in Article 85 para. (1) and para. (2) of the Constitution, it is intended to restrain the political and institutional crises period, and to ensure the functionality of constitutional bodies of the state, and by vesting the President with the right to dissolve the Parliament, the obstruction of a state power activity is avoided *(JCC No.29 of 24.11.2015, §41).*

Taking into account what has been said above, the Court held that the interdiction to dissolve the Parliament in the last 6 months of the mandate of the President of the

[42] Judgement of the Constitutional Court No. 29 of 24.11.2015 *on the interpretation of 85 para.(1) and para.(4) of the Constitution of the Republic of Moldova* (dissolution of the Parliament)

Republic of Moldova, stipulated in para. (4) of Art. 85 of the Constitution should function along with other constitutional provisions of the same article, as a power balancing mechanism and not to generate or perpetuate an institutional crisis or a conflict between powers *(JCC No.29 of 24.11.2015, §42).*

The Court revealed that the imperative obligation to dissolve the Parliament after 3 months derives from the fact that, as opposed to exercising the interim position of the President of the country, where the interim president exercises the same duties as the elected president, the mandate of the interim Government is limited to duties that refer to *'administration of public affairs' (JCC No.29 of 24.11.2015, §44).*

The Court underlined that permanent interim governance, by definition, is contradicting the spirit of the Constitution and represents a threat to the parliamentary democracy *(JCC No.29 of 24.11.2015, §48).*

Balancing the constitutional provision that orders the dissolution of the Parliament if the formation of the Government fails within a period of 3 months (para. (1) Art. 85 of the Constitution) and that to prohibit the dissolution of the Parliament in the last 6 months of the President's mandate (para. (4) Art. 85 of the Constitution), as well as based on the functional interpretation of constitutional norms, the Court stated that the provision allowing to re-establish full functioning of the Government has priority *(JCC No.29 of 24.11.2015, §51).*

3.1.4.2. Rationale of constitutional norm regarding the restriction to dissolve the Parliament in the last 6 months of the mandate of the President of the Republic of Moldova

The Court held that the interdiction to dissolve the Parliament in the last 6 months of the mandate of the President, if the Government is not formed, is specific to the regime when the President of the country is elected by universal vote and is not characteristic to parliamentary regime, where the President is elected by the Parliament. This interdiction does not have a functional justification, if the President of the country is elected by the Parliament, because these suffrages obviously cannot overlap *(JCC No.29 of 24.11.2015*[43]*, §60).*

[43] Judgement of the Constitutional Court No. 29 of 24.11.2015 *on the interpretation of 85 para.(1) and para.(4) of the Constitution of the Republic of Moldova* (dissolution of the Parliament)

Moreover, the Court reminded that in any cases – the dissolution of the Parliament if the formation of the Government fails after 3 months or after the presidential mandate elapses – the President will continue to exercise his mandate as long as the new Parliament elects a new President *(JCC No.29 of 24.11.2015, §61).*

Thus, the Court found out that in any of the above-mentioned cases, the procedure sequence should be followed, and the dissolution of the Parliament 6 months later after the President's mandate is nothing else but a delay of an certain action that would happen, and favours only the delay of further formation of the new Government and reinstatement of full authorities of the Executive *(JCC No.29 of 24.11.2015, §62).*

In the light of the above-mentioned, the Court held that the dissolution of the Parliament temporary limited by Article 85 para.(4) is not applicable in the situation when the Parliament did not form a Government within 3 months *(JCC No.29 of 24.11.2015, §63).*

Based on these considerations, the Parliament shall be dissolved if a Government is not formed during 3 months, even if this period falls in the last 6 months of the mandate of the President of the Republic of Moldova *(JCC No.29 of 24.11.2015, §64).*

3.2. President of the Republic of Moldova

3.2.1. Collaboration between the President and Parliament in the process of forming the Government

3.2.1.1. Appointing a candidate for the position of Prime-minster

From the logics of constitutional structure of rule of law, the President of the state cannot express a political will, because it might inevitably confused with the subjective will, hence, discretionary of the holder or the respective position *(JCC No. 32 of 29.12.2015[44], §80).*

The Court held that from the provisions of Article 98 of the Constitution results that the President should cooperate with the Parliament in appointing the Government,

[44] Judgement of the Constitutional Court No.32 of 29.12.2015 *on constitutional review of the Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointing a candidate for the position of Prime-minister*

both authorities having their constitutional role to start the formation of the Government *(JCC No. 32 of 29.12.2015, §82).*

The Court noted that Article 98 para. (1) of the Constitution stipulates exclusive responsibility of the President of the Republic to appoint a candidate for the position of Prime-minister. At the same time, the Court held that although exclusive, this responsibility cannot be discretionary, because the President will appoint a candidate for the position of Prime Minister only after consulting with parliamentary factions *(JCC No. 32 of 29.12.2015, §84).*

Also, the Court held that the constitutional text does not stipulate, after the appointment of the Prime-minister, the right of the President of the Republic to express his reserves towards the government team accepted by the Parliament or towards the governance programme. Thus, from the moment of appointing the candidate for the position of PM, the President of the Republic has no responsibility, neither political nor legal, regarding how this person obtains the support of the majority of the Parliament *(JCC No. 32 of 29.12.2015, §85).*

From the moment of appointment by the President of the Republic, the PM candidate has the power to include any person in the list of members of the Government, which is submitted to the Parliament. This is a discretionary right of the PM candidate, which he/she may exercise by assuming the responsibility for not being approved in the Plenum of the Parliament, including of the governance programme, because the list of members of the Government is supported as a bloc, and the Parliament will vote for the integral list and not for the persons on the list *(JCC No. 32 of 29.12.2015, §86).*

If the programme and list of members of the Government are accepted by the Parliament, the procedure to form the Government is opened; the President of the Republic of Moldova has an active, but at the same time, formal and strictly protocol role that is resumed to issuing the Decree and take the oath *(JCC No. 32 of 29.12.2015, §87).*

Hence, the vote of the Parliament is essential in forming and sworning in the Government. The Government will be politically accountable only to the Parliament, who can dismiss it *(JCC No. 32 of 29.12.2015, §88).*

Based on the above-mentioned rationale, analysing the weight of both public authorities in forming the Government, the Court established that the role of the Parliament

is decisive with regard to the role of the President of the Republic of Moldova. This difference in weight is due to the parliamentary essence of the form of governance *(JCC No. 32 of 29.12.2015, §89).*

3.2.1.2. Consultation with parliamentary factions

The Court held that the purpose of consultations is to identify political support of the parliamentarians for a certain person capable to form the Government that would enjoy the trust of the Parliament. What really matters in these consultations is receiving political support for a person who might be appointed as candidate for PM position. This is the main goal of the consultations used by the President of the state *(JCC No. 32 of 29.12.2015[45], §91).*

For the same purpose, the President may attend the consultations with own candidate, who might be accepted. It is also possible that the candidate suggested by the President for PM position may not be accepted in the political consultation by the attending partners *(JCC No. 32 of 29.12.2015, §92).*

In this context, the Court held that the President may not subordinate his partners in the political dialogue he is consulting. In this role, the President of the Republic of Moldova acts only as the representative of the state, who has the right and responsibility to find a way of the dialogue and to evaluate the will and capacity of consulted parliamentarians to support a parliamentarian opinion about a certain candidate *(JCC No. 32 of 29.12.2015, §93).*

Appointing the PM candidate, as a result of consultations mentioned in Article 98 of the Constitution, the President of the Republic of Moldova should show his political impartiality and neutrality, equidistance toward all parliamentary groups. The President does not have the constitutional right to overlap the parliamentary groups *(JCC No. 32 of 29.12.2015, §94).*

At the same time, the President must enjoy his right to evaluate the qualities, competence, experience and capacity of a politically involved or not person, to run the Go-

[45] Judgement of the Constitutional Court No.32 of 29.12.2015 *on constitutional review of the Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointing a candidate for the position of Prime-minister*

vernment and to attract the political support of the majority of the Parliament, who will support him during his mandate, but does not have a constitutional support to impose his own candidate. Thus, the President may intervene exclusively as the representative of the state to establish and formalise based on the importance and solemnity of his position and to maintain with his authority the balance between the Parliament and a possible future Government *(JCC No. 32 of 29.12.2015, §95).*

3.2.1.3. Consultation with independent or non-affiliated members of Parliament

The Court underlined that by virtue of representative mandate, when the Member of Parliament begins to exercise his/her mandate, he/she no longer has the legal obligation to support his/her party or decisions of his/her fraction within the legislative framework *(JCC No. 32 of 29.12.2015[46], §103).*

Thus, based on the constitutional principles that reject any form of imperative mandate, the Member of the Parliament is not prohibited to change his/her option or political affiliation *(JCC No. 32 of 29.12.2015, §104).*

At the same time, the Court held that the fundamental principle of parliamentary procedure which is seldom mentioned explicitly in national constitutions, but may be deducted through interpretation, is equality between the representatives of the Parliament *(JCC No. 32 of 29.12.2015, §105).*

Also, the Court held that the dialogue with all political parties of the Parliament is ensured by means of a consultation process, because only political parties may ensure political balance and stability *(JCC No. 32 of 29.12.2015, §106).*

Pursuing this rationale, but not taking into account the principles listed in its previous case-law, the Court held that carrying out his constitutional attribute to propose a candidate for the position of Prime-minister, the President of the Republic of Moldova, who is elected by parliamentary majority, has to ensure by consulting parliamentary factions both the support of parliamentary majority, and possible constructive cooperation with the minority in opposition *(JCC No. 32 of 29.12.2015, §107).*

[46] Judgement of the Constitutional Court No.32 of 29.12.2015 *on constitutional review of the Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointing a candidate for the position of Prime-minister*

Hence, in the constitutional meaning, the notion 'consultation with parliamentary factions' covers groups of non-affiliated parliamentarians, who have in mind achieving joint programmatic objectives and have the vocation to determine or influence the course of social and political events *(JCC No. 32 of 29.12.2015, §108).*

3.2.1.4. Observing the principle of parliamentary majority

The general principle of democracy is the principle of majority. The Decision is made by it [majority] and by those who represent a majority of voters, irrespective of the number of parties this majority consists of or if there is a bigger party (but in minority) than the parties that form the majority in part. Ignoring the will of majority means dictatorship *(JCC No. 32 of 29.12.2015[47], §110).*

The Court held that provisions of Article 98 para.(3) of the Constitution describes the need to identify the parliamentary majority *(JCC No. 32 of 29.12.2015, §112).*

It is very clear that only the parliamentary majority may vest the Prime-minister and his/her activity programme with confidence and the Government can be sworn in only by it. This is the role of consultations *(JCC No. 32 of 29.12.2015, §113).*

In this matter, the Constitutional Court has stated previously that the phrase 'parliamentary majority' means the absolute majority of elected Parliament members who, based on constitutional provisions, can grant the vote of confidence to the Government and the Prime minister, appointed by the President of the Republic (Judgement No. 21 of 2 July 1998) *(JCC No. 32 of 29.12.2015, §114).*

The provisions of Article 98 paragraph (3) stipulate half plus one of the total number of elected members of the Parliament *(JCC No. 32 of 29.12.2015, §115).*

Based on this rationale, only the person proposed by the majority party or coalition may be appointed as Prime-minister, irrespective of the fact who this person is: independent, leader of a bigger party or another member, and irrespective of the fact, if the person comes from the party with the biggest number of parliamentarians (if the party with the biggest number of parliamentarians does not have the absolute majority in the

[47] Judgement of the Constitutional Court No.32 of 29.12.2015 *on constitutional review of the Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointing a candidate for the position of Prime-minister*

Parliament). This is the democratic, constitutional procedure to appoint *(JCC No. 32 of 29.12.2015, §116)*.

Hence, the interpretation in the sense of existence of discretionary right of the President to appoint a candidate for the position of the Prime-minister lacks and reduces much legal logics, because the President may not require the Parliament to accept a certain option regarding the person who would hold the position of the Prime-minister, this fact having the nature to create preconditions for artificial institutional conflicts *(JCC No. 32 of 29.12.2015, §117)*.

For these considerations, the Court held that there is not constitutional and democratic motive for the President not to appoint the person who has the majority support in the Parliament as the Prime-minister, even if it is opposite to the President *(JCC No. 32 of 29.12.2015, §118)*.

In this context, the Court held that when no party has an absolute majority in the Parliament, the President must consult with the parliamentarians not only *pro forma*, but appoint the candidate supported by the majority, even if the party supported by the President does not have a majority *(JCC No. 32 of 29.12.2015, §119)*.

Thus, the President shall appoint the candidate, who meets the requirements for proposal and appointment and enjoys the support of the parliamentary majority, for the position of the Prim-minister *(JCC No. 32 of 29.12.2015, §120)*.

The Court considered important to underline the need to transparently form the parliamentary majority so the voter may identify the political actors who would have the political responsibility for governing. From these considerations, the parliamentary majority should be formalized, not only declared, by indicating the parliamentarians who form it and by specifying the availability to support a certain candidate for the function of the Prime-minister with the official notification of the President of the Republic of Moldova *(JCC No. 32 of 29.12.2015, §128)*.

Thus, when an absolute parliamentary majority is formed, the President of the Republic of Moldova shall appoint the candidate supported by this majority *(JCC No. 32 of 29.12.2015, §130)*.

Only if an absolute parliamentary majority is not formed, the President of the Republic of Moldova has the obligation, after consulting parliamentary factions to appoint

a candidate for the position of the Prime-minister, even if the parliamentary factions do not agree to the proposal of the President *(JCC No. 32 of 29.12.2015, §131).*

3.2.2. Competence of the President of the Republic of Moldova in citizenship-related matters

Considering the nature and status of the position of the President of the Republic of Moldova, his competences in citizenship-related matters refer to the issues that involve exercising the sovereign and discretionary right of the State in granting citizenship, as well as naturalization and recovery in cases when the citizenship of the Republic of Moldova is granted by a Decree of the President *(JCC No.24 of 06.10.2015*[48]*, §69).*

The Court underlined that in the case on birth, recognition and adoption, the citizenship of the Republic of Moldova is confirmed by justifying documents and simplified administrative procedures, and there is no need for a Decree of the President *(JCC No.24 of 06.10.2015, §70).*

Article 10 of Law on Citizenship stipulates five ways to acquire the citizenship, and namely: a) birth; b) recognition; c) adoption; d) recovery; e) naturalization *(JCC No.24 of 06.10.2015, §50).*

The Court held that acquiring the citizenship of the Republic of Moldova by recognition is one of the ways to identify the citizenship of a person based on civil acts *(JCC No.24 of 06.10.2015, §56).*

Acquiring the citizenship through recognition, unlike acquiring the citizenship through recovery, represents re-establishing the citizenship lost in unforeseeable circumstances without personal request and without issuing an administrative act in this sense. This way to acquire the citizenship is also called reintegration or repatriation *(JCC No.24 of 06.10.2015, §59).*

Thus, the essence of recognising the citizenship consists in the fact that the State may restore the citizenship of persons who had the citizenship by virtue of political and

[48] Judgement of the Constitutional Court No.24 of 06.10.2015 *on constitutional review of Article 28 let. b) of Law No. 1024-XIV of 2 June 2000 on Citizenship of the Republic of Moldova*

legal circumstances or who lost it as a result of some historical events (modification of borders, deportations, etc.) *(JCC No.24 of 06.10.2015, §60).*

The Court reminded that this way of acquiring the citizenship is mere restoration of historical truth, which was previously established by issuing a birth certificate to the person *(JCC No.24 of 06.10.2015, §61).*

According to Art.28 letter b) of the Law on Citizenship, the Ministry of Information Technology and Communications (hereinafter – MITC) has the competence to 'examine applications to recover the citizenship through recognition' *(JCC No.24 of 06.10.2015, §62).*

The Court held that the MITC was vested with a technical task through organic law; under procedure aspect, the *decision of the Ministry is nothing but an acknowledgement* that the person may be recognised a citizen of the Republic of Moldova based on the justifying acts *(JCC No.24 of 06.10.2015, §63).*

The MITC has the competence to control the veracity of submitted acts regarding the citizenship of the person, to issue an opinion in this regard, and issue acts that confirm the citizenship. In this sense, the term 'recognise' signifies the action to confirm, validate or identify a fact previously confirmed *(JCC No.24 of 06.10.2015, §64).*

Thus, the actions undertaken by the MITC are not equivalent with the settlement on the merits of the application for citizenship *(JCC No.24 of 06.10.2015, §65).*

The Court held that, in the examined case, the MITC only establishes a fact based on justifying material not having the discretion to grant or not the citizenship, if all the requirements laid down in the law are met, and hence, does not violate the citizenship-related attributes of the President of the Republic of Moldova stipulated in Art. 88 let. c) of the Constitution *(JCC No.24 of 06.10.2015, §71).*

3.3. Law-making

3.3.1. Legal effects of Parliament documents on appointment

The Court held that the act of 'designation/appointment' in constitutional sense, is a consumed act and therefore is not susceptible to being abrogated, except the cases when the Constitutional Court finds, applying a constitutional review, certain funda-

mental flaws that affect the validity of the act itself (absolute grounds of nullity) *(JCC No.30 of 08.12.2015[49], §51).*

In its previous case-law, the Court held that once consumed the act cannot be annulled. A procedure of annulment of consumed acts is not and cannot be provided for, since it would distort legal order, undermining the legislative authority of the State, and affecting the legal certainty and even national security, in the event there is considered the possibility of returning to these acts, following a period of time, out of political or personal interests of the moment *(JCC No.30 of 08.12.2015, §52).*

Thus, the Court mentioned that in the cases when an individual act arises suspicions regarding its legality being at the same time susceptible to constitutional review, the competent authority should abstain from its annulment and should refer to legitimate levers stipulated by the Constitution *(JCC No.30 of 08.12.2015, §53).*

The Court stated that once the appointment is consumed, termination of office can take place only through the process of dismissal/resignation from office, following the procedure established by law. Otherwise, the act of abrogation would generate abusive annulment of all decisions of dismissed persons and their rights, including salary rights, obtained from exercising the position, an absolutely inadmissible fact that comes in obvious contraction with principles that governs the rule of law and its institutions *(JCC No.30 of 08.12.2015, §54).*

3.3.2. Principle of legality in criminal law

The Court mentioned that the principle of legality of criminal provisions, in the sense of *nulum crimen sine lege,* imposes two obligations on the legislator: 1) to provide, in a legal text, the deeds considered criminal offenses and appropriate sanctions (*lex scripta*); 2) to draft clearly the legal text (*lex certa*) *(JCC No. 25 of 13.10.2015[50], §34).*

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[49] Judgement of the Constitutional Court No.30 of 08.12.2015 *on constitutional review of Decision of the Parliament No. 224 of 3 December 2015 on abrogating the Parliament Decisions on the appointment of the Board of Directors of National Agency for Energy Regulation (ANRE).*

[50] Judgement of the Constitutional Court No.25 of 13.10.2015 *on constitutional review of some provisions of Government Decision No. 79 of 23 January 2006 on approving the List of narcotic drugs, psychotropic substances and plants containing such substances discovered in illicit trafficking and their quantities*

At the same time, on the basis of the fact that criminal law is *lex stricta*, it should be underlined that it cannot have incriminating or explanatory text. As compared to other laws, the criminal law should be interpreted by applying jointly the grammar and teleological interpretation which provides for an explanation of legal rule starting from its outcome *(JCC No. 25 of 13.10.2015, §38).*

In spite of its accuracy, the criminal law expressed as *lex certa* is a sensible legal field due to the excess of normative text necessary to be interpreted (especially in the case of legal object either of subjective component of the crime) inclusive based on referral or blank provisions *(JCC No. 25 of 13.10.2015, §39).*

The principle of legality, in a formal sense, sets mainly the relations between the norms and their acts of applicability, differencing thus, the norms from the rules of their applicability *(JCC No. 25 of 13.10.2015, §40).*

3.3.3. Adopting laws based on the procedure of responsibility assumption by the Government

The Court mentioned that according to Article 60 paragraph (1) of the Constitution, the Parliament is the supreme representative body of the people of the Republic of Moldova and the sole legislative authority of the State *(JCC No. 11 of 13.05.2015*[51]*, §42).*

At the same time, based on Articles 106^1 and 106^2 of the Constitution, the legislature has vested the Government with powers of law-making. If Article 106^1 of the Constitution regulates the liability of the Government before the Parliament for a programme, statement of general policy or a draft law, then Article 106^2 institutes the procedure of legislative delegation *(JCC No. 11 of 13.05.2015, §44).*

Thus, the fundamental law has established 3 ways of law-making: a simple, customary way, which according to Article 60 of the Constitution, belongs to the Parliament and two exceptional ways at the disposal of the Government, which allow him to enter the primary regulation scope of social relations – either through assuming the responsibility before the Parliament (Art. 106^1), or by issuing ordinances (Art. 106^2) *(JCC No. 11 of 13.05.2015, §46).*

[51] Judgement of the Constitutional Court No. 11 of 13.05.2015 *on constitutional review of some Government Decisions on assuming the responsibility for some draft laws and laws adopted based on the procedure of responsibility assumption*

The Court mentioned that based on Article 106[1] para. (1) of the Constitution, the Government may assume responsibility before the Parliament upon a programme, a statement of general policy or a draft law. Also, the Government is dismissed if a motion of censure, brought before within 3 days following the date of presentation of the programme, of statement of general policy or of the draft law, has been passed in terms of Article 106 (with the vote of majority of parliamentarians). If the Government has not been dismissed, the lodged draft law is considered to be adopted, and the programme or the statement of general policy becomes mandatory for the Government (*JCC No. 11 of 13.05.2015, §47).*

The Court held that assuming the responsibility by the Government with regard to a draft law represents an indirect legislative way to adopt a law *(JCC No. 11 of 13.05.2015, §50).*

The Court mentioned that although the constituting legislature has vested the Government with law-making attributes, the provisions of Article 106[1] of the Constitution cannot be interpreted as permitting the Government to substitute the Parliament any time and under any circumstances *(JCC No. 11 of 13.05.2015, §52).*

Thus, the Court underlined that although at the first sight the possibility of assuming the responsibility is not subject to any requirements, the opportunity and content of the initiative are theoretically speaking at the exclusive discretion of the Government, *this cannot be absolute (JCC No. 11 of 13.05.2015, §53).*

The Court held that the procedure of assuming responsibility by the Government is *in extremis;* when it refers to a draft law, the object of regulation should consist of clearly stipulated provisions only in one field *(JCC No. 11 of 13.05.2015, §55).*

The Court mentioned that the Parliament is the sole legislative authority, even when the Government assumes the responsibility. Or, the provisions of Article 106[1] of the Constitution regulates expressly an exception from the rule instituted through constitutional provisions of Article 60, this being able to remove the Parliament from fulfilling its role because the procedure of assuming responsibility by the Government is performed before the Parliament and under the supervision of the Supreme Legislative Forum which by virtue of constitutional provisions has the right to dismiss the Government by initiating and debating a no-confidence motion *(JCC No. 11 of 13.05.2015, §56).*

Accepting the idea according to which the Government may assume discretionally the responsibility for a new draft law, at any time and under any circumstances, would equal to its transformation into a legislative public authority, competing with the Parliament *(JCC No. 11 of 13.05.2015, §57).*

Thus, the Court mentioned that by circumventing the principles and criteria for assuming the responsibility by the Government, the violation of constitutional norms may be determined *(JCC No. 11 of 13.05.2015, §58).*

Thus, in the absence of a detailed legal regulation, the Court will verify with discernment in every case if the principles describes in its case-law are followed when the Government assumes the responsibility for a draft law *(JCC No. 11 of 13.05.2015, §60).*

3.4. The Government

3.4.1. Legal Effects of Moldova's Prime Minister Resignation

Under Article 101 para. (3) of the Constitution, the resignation of the Prime Minister and, consequently, of the entire Government shall enter into force upon its communication: in case of a written request addressed to the Parliament - upon presentation; in case of a public announcement - upon the time of issue. The resignation of the Prime Minister entails a *de jure* resignation of the Government, without fulfilling any other formal or procedural conditions. The Parliament takes note of Prime Minister's resignation and, consequently, of the entire Government. The Parliament Decision whereby it takes note of Prime Minister's resignation and, consequently, of the entire Government, does not affect the act of resignation, the process of forming a new Government nor the constitutional limits inherent to this process *(JCC No. 16 of 17.06.2015[52], dispositive part).*

Under Article 101 para. (2) of the Constitution, the President is under constitutional duty to designate an *interim* Prime Minister until the formation of the new Government, in case of a final impossibility of the resigning Prime Minister to exercise his/her functional duties. The final impossibility of a Prime Minister to exercise his/her functional duties signifies the situation generated by any circumstance which prevents the conti-

[52] Judgment of the Constitutional Court No. 16 of 17.06.2015 *on the interpretation of Article 101 para.(2) and (3) of the Constitution (phase when the Prime-minister's resignation produces legal effects*

nuation of exercising his/her duties, other than decease, including the express refusal of the resigned Prime Minister to continue exercising office until the formation of the new Government *(JCC No. 16 of 17.06.2015, dispositive part).*

For the purpose of Article 85 of the Constitution, the deadline for setting up the Government is three months, including Prime Minister's resignation under Article 101.3 of the Constitution, this period commencing with the moment of communication of Prime Minister's resignation, in line with paragraph 1 of this operative part *(JCC No. 16 of 17.06.2015, dispositive part).*

For the purpose of Articles 101.3 and 101.2 of the Constitution, starting with the moment of communication of Prime Minister's resignation, in line with paragraph 1 of this operative part, the Government shall only fulfil the duties of administering public affairs, until the new Government is sworn in *(JCC No. 16 of 17.06.2015, dispositive part).*

3.4.2. Empowering the Government to regulate the circulation of narcotic drugs and psychotropic substances

The Court held that the legislature, based on the criminal law, can empower the Executive to regulate some normative aspects that interfere with primary criminal norm. In this sense, it is necessary to delimitate in the empowerment the possible facts that make the object of incrimination, pursuant to legal interpretation rules *(JCC No. 25 of 13.10.2015*[53]*, §§44, 45).*

The Court held that, under criminal law, illegal circulation of narcotic and psychotropic substances is criminalised. According to Article 134[1] para.(4) of the Criminal Code, the '*lists of narcotic drugs, psychotropic substances, and precursors shall be approved by the Government.*' At the same time, by Decision no. 79 of 23 January 2006 the Government approved both the list and the quantities of narcotic drugs, psychotropic substances and plants containing such substances discovered in illicit trafficking, as well as their quantities *(JCC No. 25 of 13.10.2015, §§52, 53).*

[53] Judgement of the Constitutional Court No.25 of 13.10.2015 *on constitutional review of some provisions Government Decision No. 79 of 23 January 2006 on approving the List of narcotic drugs, psychotropic substances and plants containing such substances discovered in illicit trafficking and their quantities*

The Court mentioned that the amount of narcotic drugs and psychotropic substances constitutes a criterion in distinguishing legal from illegal circulation and contributes to the classification of crimes *(JCC No. 25 of 13.10.2015, §57).*

The Court found that by Decision no. 79 of 23 January 2006 the Government approved both the list and the quantities of narcotic drugs, psychotropic substances and plants containing such substances discovered in illicit trafficking, as well as their quantities *(JCC No. 25 of 13.10.2015, §59).*

Thus, the Court held that by the content of the phrase "*lists of substances*", comprised in Article 134[1] of the Criminal Code, there shall be understood the competence of the Government to regulate both the categories of narcotic drugs and psychotropic substances and their quantities. Approving only the list of these substances, without a quantitative regulation, would deprive of substance the whole Government Decision, which would be unenforceable *(JCC No. 25 of 13.10.2015, §61).*

Also, the Court held that the notion of 'quantity' of narcotic drugs, psychotropic substances and plants containing such substances, under Art. 134[1] para. (5) of the Criminal Code and articles in the special part of the criminal law, should be interpreted systemically, including along with other provisions of Government Decision No. 79 of 23 January 2006 *(JCC No. 25 of 13.10.2015, §62).*

Regarding Art. 134[1] para. (4) of the Criminal Code, the existence of blank provisions in criminal norms is an expression of the objective process of normative regulation, being a special modality to formulate judicial and criminal regulations *(JCC No. 25 of 13.10.2015, §63).*

Given the field of narcotic drugs under examination is constantly evolving and does not cover only the criminal law, but also that the protection of public health, the legislature may delegate to the Executive power the competence to regulate, by subordinate legislation, the list of narcotic drugs, psychotropic substances and their quantity *(JCC No. 25 of 13.10.2015, §65).*

At the same time, given that the legislative process involves several lengthy stages, the reasoning of establishing this Government competence results from the need to promptly regulate the legal framework in this area, in case of new substances being emerged, with similar effects *(JCC No. 25 of 13.10.2015, §66).*

The Court held that the quantity of narcotic drugs, psychotropic substances and plants containing such substances forms a structural element of *sine qua non* of the list, hence, the Government Decision No. 79 of 23 January 2006 does not contravene Articles 72 para.(3) let. n) and 102 of the Constitution *(JCC No. 25 of 13.10.2015, §69).*

3.5. Judicial authority

3.5.1. Lack of competence of courts in applying disciplinary sanctions

The application of disciplinary sanction is not an attribute of the court; application of disciplinary sanctions is an attribute of the employer/disciplinary entity that has disciplinary prerogatives and the competence to individualise the disciplinary sanction applicable in relation to the severity of disciplinary misconduct, by taking into account the circumstances for committing the crime, degree of fault, and consequences of disciplinary misconduct *(JCC No.13 of 15.05.2015*[54]*, §85).*

Disciplinary sanctions are means of constraint stipulated by the law to protect the disciplinary order, develop the spirit of liability for conscious fulfilment of official duties, observe behavioural norms and prevent indiscipline *(JCC No.13 of 15.05.2015, §86).*

Settlement of disciplinary cases by non-judicial bodies by using the 'professional jurisdiction' term by the legislator as their responsibility does not represent a violation of Article 114 of the Constitution *(JCC No.13 of 15.05.2015, §87).*

According to the existing legal framework, the act of applying a disciplinary sanction is not exempted from judiciary control. At the request of interested party, the court shall rule regarding the legality of applied sanction *(JCC No.13 of 15.05.2015, §91).*

The European Court mentioned that the field of disciplinary actions is diverse and does not involve systematically civil rights, according to the European Convention. The case-law of the European Court, in general, does not tie the disciplinary action to the scope of Art. 6, unless based on determinant character that the decision is susceptible to have on professional behaviour *(JCC No.13 of 15.05.2015, §92).*

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[54] Judgement of the Constitutional Court No. 13 of 15.05.2015 *on constitutional review of Law No. 261 of 01.11.2013 on the College of Physicians of the Republic of Moldova*

3.5.2. *Matter of* res judicata

The Court held that any final and irrevocable judgement has the force of *res judicata* and implies the observance of *res judicata* principle. Thus, the Court cannot decide on the merits of evidence used in judiciary processes, respectively cannot revise irrevocable judgments. To do so would mean the substitution of courts by the Constitutional Court *(JCC No. 3 of 20.01.2015, §62).*

The Court mentioned that enforcement of judgements is the last phase of the judiciary process, where different procedural actions take places, which are envisaged by procedure law regarding the enforcement (*JCC No. 3 of 20.01.2015, §63).*

According to Art. 120 of the Constitution, it is mandatory to abide by the sentences and other final rulings delivered by courts of law and to cooperate with the latter at their request during trials and during the enforcement of sentences and of other final judgments *(JCC No.3 of 20.01.2015, §60).*

In this context, to enforce a judgement[55], the Parliament adopted Decision No. 169 of 21 July 2014 on dismissing the Director General of the Board of Directors of National Energy Regulatory Agency *(JCC No.3 of 20.01.2015, §9).*

The Director General of the Board of Directors of National Energy Regulatory Agency can be dismissed only by the authority that appointed him/her, and namely by the Parliament. In this sense, the competence of the Parliament, enshrined by law, is not discretional *(JCC No.3 of 20.01.2015, §66).*

Therefore, the judgement that refers to the sanctioning of the Director General of the Board of Directors of National Energy Regulatory Agency having the power of *res judicata* was enforced by the Parliament, in accordance with the law *(JCC No.3 of 20.01.2015, §67).*

In this sense, the Parliament, by adopting Decision No. 169 of 21 July 2014, exercised its attributes in accordance with the constitutional and legal provisions *(JCC No.3 of 20.01.2015, §68).*

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[55] *Based on which the Director General of the Board of Directors of the National Energy Regulatory Agency was sanctioned with deprivation of the right to hold public functions for a year.*

3.6.1. Guarantees for pension insurance of the Constitutional Court judges

Opinion No.1 (2001) of the Consultative Council of European Judges regarding the independence within the judiciary and irremovability of judges stipulates in its conclusions that the judges' remuneration should be commensurate with their role and responsibilities and should provide appropriately for sickness pay and retirement pay. It should be guaranteed by specific legal provision against reduction and there should be provision for increases in line with the cost of living *(JCC No.20 of 23.06.2015[56], §47).*

Although the Constitutional Court is not part of the judiciary system, its status and competences make applicable the principles of judicial independence *(JCC No.20 of 23.06.2015, §48).*

The Court held that the material guarantees of the judges represent one of the key components of his/her independence, serving as a counter-balance to the restrictions, interdictions and responsibilities imposed by the society *(JCC No.20 of 23.06.2015, §50).*

According to Art. 32 para. (1) of Law No.544-XIII on the Status of Judge, 'Judge who reached the age of 50 and has a professional experience of no less than 20 calendar years of which at least 12 years and 6 months as judge shall be entitled to retirement pension equal to 55% of his/her average salary, and for each complete year over the 20-year professional experience – to supplementary 3%. All in all, the pension should not exceed 80% of his/her average salary. The pension of judge shall be recalculated based on the amount of salary of an active judge.' *(JCC No.20 of 23.06.2015, §56).*

By corroborating the provisions of the Law on Constitutional Court and provisions of the Law on the Status of Judges, the Court established that the contribution period for the Constitutional Court judges is 12 years and 6 months. Hence, if the constitutional judge, who turned 50 years, has a professional experience of at least 20 calendar

[56] Judgement of the Constitutional Court No. 20 of 23.06.2015 *on constitutional review of some provisions of Article 32 para.(1) of Law No.544-XIII of 20 July 1995 on the Status of Judges* (pension for judges of Constitutional Court)

years, is entitled to retirement pension, if he/she served as a judge for at least 12 years and 6 months *(JCC No.20 of 23.06.2015, §57).*

The Court held that unlike the court judges, the judges of the Constitutional Court are appointed for a 6-year mandate. Concomitantly, according to Art. 5 of the Law on Constitutional Court, this position may be held for a period of two mandates *(JCC No.20 of 23.06.2015, §58).*

At the same time, even if holding two mandates, the constitutional judge cannot benefit from the special pension under the conditions when the Law institutes special contribution length of 12 years and 6 months. Or, according to a simple calculation, a person may hold the position of the judge of the Constitutional Court only for 12 years *(JCC No.20 of 23.06.2015, §59).*

Thus, the Court mentioned that the norm included in Art. 32 of the Law on the Status of Judges lacks effectiveness with regard to constitutional judges *(JCC No.20 of 23.06.2015, §60).*

Hence, the Court underlined that persons who meet the stated requirements (age, education, etc.) may become judges of the Court, without any obligation to have held previously the position of a court judge *(JCC No.20 of 23.06.2015, §66).*

The Court reiterated that a person may become a judge of the Constitutional Court during one mandate. The second mandate may not be determined by different benefits, including of material nature. This fact may lead to lack of effectiveness of independence in exercising the mandate. Or, based on the above-mentioned, both the Constitution and the Law on Constitutional Court regulate important principles and guarantees of the independence of judges of the Constitutional Court, which allows them to exercise objectively the justice *(JCC No.20 of 23.06.2015, §71).*

Hence, for the purpose of Article 137 of the Constitution, in order to ensure the independence of the judges of the Constitutional Court, no guarantee can be conditional on exercising the second mandate *(JCC No.20 of 23.06.2015, §72).*

The Court mentioned that taking into account the status of the Constitutional Court judges, which is the sole authority of constitutional jurisdiction in the Republic of Moldova, and the length of the mandate, it is necessary to lay down a special contribution period during one mandate *(JCC No.20 of 23.06.2015, §73).*

4 NATIONAL ECONOMY

4.1. Role of state budget in the state economy

The Court mentioned that the entire budget system is based on the state budget that includes all revenues and expenses necessary to implement economic, social and other types of strategies and objectives of the Government *(JCC No. 11 of 13.05.2015[57], §74).*

The Court reiterated that the state budget represents the most important intervention instrument of the state in economy, through its fiscal and budgetary policies. The state budget contributes to the balance between collective needs and their means of funding *(JCC No. 11 of 13.05.2015, §75).*

At the same time, the Court underlined that the national public budget is the central link of the financial and crediting system of the country, as well as the main financial balance with operative and mandatory character for a determined period of time. Generally, budgetary and fiscal solutions have considerable social and economic implications. These create conditions for economic growth and implicitly, of the standard of living of the population *(JCC No. 11 of 13.05.2015, §76).*

4.2. Adoption of the national public budget by assuming the responsibility

The Court held that the belated and deficient process of national public budget adoption may lead to economic shortcomings, unemployment and poverty *(JCC No. 11 of 13.05.2015, §83).*

At the same time, the Court stressed out the role of the Government in adopting the national public budget. According to Article 131 para. (4) of the Constitution, any legislative initiative or amendment, which entails the increase or decrease of the budgetary revenues or loans, as well as the increase or cut of budgetary expenditure shall be adopted following an approval of the Government *(JCC No. 11 of 13.05.2015, §84).*

Thus, the Court noted that the constitutional provisions provide for mandatory existence of a prior consent of the Government with respect to the amendments or legislative proposals involving any increase or reduction of expenses, revenues or borrowings

[57] Judgement of the Constitutional Court No. 11 of 13.05.2015 *on constitutional review of some legal acts adopted by assuming the responsibility*

as an imperative condition from which the legislature cannot derogate in the process of adopting the national public budget; the non-compliance with this requirement constitutes a violation of the procedure related to law-making in the budgetary area established by the Constitution. This constitutional principle is incidental to budgetary procedure *(JCC No. 11 of 13.05.2015, §85).*

The assumption of responsibility by the Government with regard to draft laws on national public budget is enshrined in Article 106^1 of the Constitution *(JCC No. 11 of 13.05.2015, §92).*

B | COURT FINDINGS

1 PROVISIONS RECOGNIZED CONSTITUTIONAL

The Court recognized as constitutional:

- Parliament Decision No. 169 of 21 July 2014 on dismissing the Director General of the Board of Directors of the National Energy Regulatory Agency (*JCC No.3 of 20.01.2015, complaint no. 59a/2014*);
- – Articles 98 para.(2) letter e), 106^1 and 330^2 of the Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002;
  – wording 'or extended confiscation' in Articles 202 paragraphs (1), (3) and (3^1) and 203 paragraph (2) and wording 'or extended confiscation' in Article 202 paragraph (3^2) of the Criminal Procedure Code of the Republic of Moldova No.122-XV of 14 March 2003 (*JCC No.6 of 20.01.2015, complaint no. 60a/2014*);
- Article 153 of the Education Code of the Republic of Moldova No. 152 of 17 July 2014 (*JCC No.8 of 11.05.2015, complaint no. 7a/2015*);
- Article 473 para. (1) para. 2) of the Code of Administrative Contraventions of the Republic of Moldova No. 218-XVI of 24 October 2008 (*JCC No.10 of 12.05.2015, complaint no. 6g/2015*);
- – Government Decision No. 155 of 8 April 2015 on assuming responsibility for draft law on amending and completing some legal acts;

– Government Decision No. 156 of 8 April 2015 on assuming responsibility for the draft 2015 state budget law;
– Government Decision No. 157 of 8 April 2015 on assuming responsibility for draft law on state social insurance budget for 2015;
– Government Decision No. 158 of 8 April 2015 on assuming responsibility for draft law on compulsory health insurance funds for 2015.
– *regarding the assumption of responsibility by the Government*:
– Law No. 71 of 12 April 2015 on amending and completing some legal acts; the 2015 State Budget Law No. 72 of 12 April 2015; Law No. 73 of 12 April 2015 on state social insurance budget for 2015; Law No. 74 of 12 April 2015 on compulsory health insurance funds for 2015, (*JCC No.11 of 13.05.2015, complaints no.16a/2015 and no.17a/2015*);

- Text 'based on preliminary registration of citizens voting abroad. The Regulation on preliminary registration shall be adopted by Central Electoral Commission' in Article 291 paragraph (3) of the Electoral Code (*JCC No.15 of 16.06.2015, complaint no. 12a/2015*);
- Article 49 paragraph (13) of Law No.1134-XIII of 2 April 1997 on Joint-Stock Companies (*JCC No.17 of 19.06.2015, complaint no. 22a/2015*);
- Paragraph 3 in Annex 2 to Law No. 1593-XV of 26 December 2002 on the Amount, Procedure and Terms of Payment of Mandatory Health Insurance Fees (*JCC No.18 of 19.06.2015, complaint no. 8a/2015*);
- words '12 years and 6 months' in Article 32 paragraph (1) of Law No. 544-XIII of 20 July 1995 on the Status of Judges, regarding the part that does not apply to judges of Constitutional Court (*JCC No.20 of 23.06.2015, complaint no.25a/2015*);
- Article 28 letter b) of Law No.1024-XIV of 2 June 2000 on Citizenship of the Republic of Moldova (*JCC No.24 of 06.10.2015, complaint no. 10a/2015*);
- Government Decision No. 79 of 23 January 2006 on approving the List of narcotic drugs, psychotropic substances and plants containing such substances discovered in illicit trafficking and their quantities (*JCC No.25 of 13.10.2015, complaint no. 30a/2015*);

- Parliament Decision No. 172 of 15 October 2015 on approving the lifting of parliamentary immunity of MP Vladimir Filat (*JCC No.27 of 17.11.2015, complaint no. 39a/2015*);
- Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointing a candidate for the position of Prime-minister (*JCC No.32 of 29.12.2015, complaint no.59a/2015*).

2 PROVISIONS DECLARED AS UNCONSTITUTIONAL

The Court declared unconstitutional the following provisions:

- – Article 2 letters b) and d);
  – text 'justified risk – a risk without which the socially useful goal to objectively fix the behaviour of the public agent during professional integrity testing cannot be achieved, and the professional integrity tester who risks took measures to prevent such harm caused to interests protected by law.' in Article 4;
  – Article 9 paragraph (5);
  – Article 10 paragraphs (2)-(3);
  – Article 11 paragraphs (1)-(2) and (4);
  – Article 12 paragraphs (3)-(6);
  – text 'without providing the name of tested public agent' in Article 14 paragraph (3);
  – Article 16 paragraph (2) of Law No. 325 of 23 December 2013 on Professional Integrity Testing (*JCC No.7 of 16.04.2015, complaint no. 43a/2014*);
- Article 287 paragraph (1) of the Criminal Procedure Code of the Republic of Moldova No. 122-XV of 14 March 2003 (*JCC No.12 of 14.05.2015, complaint no.15g/2015*);
- Law No. 261 of 1 November 2013 on the College of Physicians of the Republic of Moldova (*JCC No.13 of 15.05.2015, complaint no.16a/2014*);
- – wording 'and carries out his/her main activity in one of the PhD schools' in paragraph 25;

– paragraphs 55 and 58 of the Regulation on Organising PhD studies, Cycle III approved by Government Decision No. 1007 of 10 December 2014 (*JCC No.14 of 15.06.2015, complaint no.21a/2015*);

- Article 5 paragraph (2) of Law No.39-XIII of 7 April 1994 on the Status of a Member of Parliament (*JCC No.21 of 24.06.2015, complaint no.1b/2015*);
- Parliament Decision No. 140 of 3 July 2015 on the appointment of the Children's Rights Ombudsperson (*JCC No.22 of 16.07.2015, complaint no.31a/2015*);
- Paragraphs (6) and (7), as well as word 'secret' in Article 97 paragraph (8) of the Rules of Procedure of the Parliament, adopted by Law No. 797-XIII of 2 April 1996, and Article 10 paragraph (5) of Law No. 39-XIII of 7 April 1994 on the Status of Members of Parliament (*JCC No.27 of 17.11.2015, complaint no. 39a/2015*);
- Article 1 letter b) of Law No. 54 of 21 February 2003 on Combating Extremist Activity (*JCC No.28 of 23.11.2015, complaint no.29a/2015*);
- Parliament Decision No. 224 of 3 December 2015 on repealing the Decisions of the Parliament on Appointing the Board of Directors of the National Energy Regulatory Agency (*JCC No.30 of 08.12.2015, complaint no.53a/2015*).

3 INTERPRETATION OF CONSTITUTIONAL PROVISIONS

The Court has interpreted the following constitutional provisions:

- In the meaning of Article 70 para. (3) of the Constitution, the parliamentary immunity does not have incidence on the MP convicted by a final and irrevocable court judgement; the inviolability protection ends at the 'moment of indictment'.

  – In the meaning of Article 70 para. (3) of the Constitution, the parliamentary immunity does not have incidence on the MP when a foreign final criminal conviction is recognised by the national courts.

  – In the meaning of Articles 1 para. (3), 38 para. (2), 69 para. (1) and 70 para. (2) of the Constitution, in case of conviction for crimes committed intentionally

and/or imprisonment (deprivation of freedom) by final and irrevocable judgement, irrespective of the fact if it occurred before or after the validation of the mandate, the Member of the Parliament is not eligible for the position of the MP, being incompatible with the MP position.

– In the meaning of Articles 1 para. (3), 38 para. (2), 69 and 70 para. (2) of the Constitution, persons whose ineligibility is proved after the validation of elections results and expiry of appeal period, or which during the mandate faces one of the ineligibility cases stipulated in the Electoral Code shall be incompatible with the MP position, his/her mandate being terminated de jure (*JCC No.2 of 20.01.2015, complaint no. 6b/2014*);

- In the meaning of Article 101 para. (3) of the Constitution:

a) Dismissal of the Prime-minister and consecutively, of the entire Government shall enter into force at the moment of its communication:

– in case of a written request addressed to the Parliament - upon presentation;

– in case of a public announcement - upon the time of issue.

b) The dismissal of the Prime-minister results de jure in the dismissal of the Government without meeting any other formal or procedural condition.

c) The Parliament takes note of the dismissal of the Prime-minister and, respectively, of the entire Government. The Decision of the Parliament that takes note of the dismissal of the Prime-minister and, respectively of the entire Government, shall not influence the dismissal act, formation of the new Government, as well as inherent constitutional timeframes of this process.

– In the meaning of Article 101 para. (2) of the Constitution:

a) The President has the constitutional obligation to appoint an Acting Prime-minister until the new Government is formed, if the Prime-minister who have resigned cannot exercise his/her duties.

b) The final impossibility to carry out the duties of the Prime-minister represents the situation generated by any circumstance that impede exercising the duties, other than death, including express refusal of the dismissed Prime-minister to continue to hold the position until the formation of the new Government.

– In the meaning of Article 85 of the Constitution, the deadline to form a Government is three months, including in the case of dismissal of the Prime-minister under Article 101 para. (3) of the Constitution, and starts upon the communication of the dismissal of the Prime-minister, according to paragraph 1 of this operative part.

– In the meaning of Articles 101 para. (3) and 103 para. (2) of the Constitution, upon the communication of the dismissal of the Prime-minister, according to paragraph 1 of this operative part, the Government shall only administrate public affairs until the members of the new Government are sworn in (*JCC No.16 of 17.06.2015, complaint no. 26b/2015*)

- In the meaning of Article 34 para. (3) of the Constitution:
  a) the right to information may be limited only based on real and justified purpose to protect a legitimate interest regarding the protection of citizens or national security, and the public interest to find out information does not prevail;
  b) any limitation of the access to information, including categories of specific and limited information which cannot be revealed to protect the citizens or national safety should be stipulated by law and should be necessary in a democratic society for the protection of a legitimate interest;
  c) the justification of a legitimate interest shall be based on the gravity of prejudicing it if the information is published; the public authorities have to prove that the disclosure of information would threaten seriously the protection of citizens or national security (*JCC No.19 of 22.06.2015, complaint no. 23b/2015*);
- In the meaning of Article 137 of the Constitution, to ensure the principle of independence of judges of the Constitutional Court, no guarantee can be conditional on the second mandate (*JCC No.20 of 23.06.2015, complaint no. 25a/2015*);
- In the meaning of Articles 69 para. (1) and 70 para. (1) and (2) of the Constitution, the incompatibility of people elected as Members of Parliament arises:
  – for newly elected persons: from the moment of mandate validation by the Constitutional Court;
  – for current Members of Parliament: from the moment of accepting another remunerated position or appearance of incompatibilities, in accordance with the law.

– In the meaning of Articles 69 para. (2) and 70 para. (1) and (2) of the Constitution:

a) The right to choose between the MP mandate and the incompatible position by resigning should be exercised before the legal period expires. If a letter of resignation from the position of Member of Parliament is submitted by the MP who is in the incompatibility situation, the mandate will be terminated upon lodging the letter.

b) If the incompatibility still persists after the expiration of the legal period, the Member of Parliament shall be considered dismissed de jure from the MP position. The MP mandate shall be terminated de jure when the legal term to remove the incompatibility expires.

c) The resignation is submitted to the Parliament, which declares the mandate vacant.

– In the meaning of Articles 70 para. (1), 99, 100 and 103 of the Constitution, when a new Parliament is formed, in case of electing members acting in the resigned Government as Members of the Parliament, they may hold the positions until the new members of the Government are sworn in (*JCC No.21 of 24.06.2015, complaint no. 1b/2015*);

- In the meaning of Article 70 of the Constitution, in corroboration with Articles 1 para. (3) and 7 of the Constitution, the Parliament may not establish other decisional quorums than those expressly established by the Constitution.

  – In the meaning of Article 68 of the Constitution, in corroboration with Articles 2, 34, 39 and 65 of the Constitution, to ensure the constitutional principle of transparency and responsibility, the vote of every Member of the Parliament is open, unless expressly and exhaustively stipulated in the Constitution and when there are exceptional situations related to the protection of citizens or national security (*JCC No.27 of 17.11.2015, complaint no. 39a/2015*);
- In the meaning of Article 85 para. (1) and para. (4) and al Article 103 para. (2) of the Constitution, the impossibility to form the Government in 3 months may lead to dissolution of the Parliament, even if this period falls in the last 6 mon-

ths of the mandate of the President of the Republic of Moldova (*JCC No.29 of 24.11.2015, complaint no. 44b/2015*);

- In the meaning of Article 98 para. (1), in corroboration with Articles 98 para. (3) and 78 para. (1) of the Constitution:
  a) the responsibility of the President to propose a candidate for the position of the Prime-minister represents a constitutional obligation;
  b) to exercise his/her constitutional responsibility to propose a candidate for the position of Prime-minister, the President of the Republic of Moldova, who is elected with the majority votes of the parliamentarians, should ensure by consulting the parliamentary factions both the support of the parliamentary majority and possible constructive cooperation with the minority in opposition;

  – if there is no absolute majority in the Parliament, the President of the Republic of Moldova has the obligation, after consulting with the parliamentary factions, to appoint a candidate for the position of the Prime-minister, even if the parliamentary factions do not agree to the proposal of the President;

  – if an absolute majority exists in the Parliament, the President of the Republic of Moldova appoints the candidate supported by this majority;

  c) parliamentary majority should be formal not only declared by indicating the Members of Parliament that form it, by specifying the availability to support a certain candidate for the position of the Prime-minister and official notification addressed to the President of the Republic of Moldova;
  d) in constitutional sense, the notion 'consolidation of parliamentary factions' includes groups of non-affiliated Members of the Parliament (*JCC No.32 of 29.12.2015, complaint no.59a/2015*).

4 VALIDATION OF THE MANDATES OF THE MEMBERS OF PARLIAMENT

The plenary session have not established any circumstances impeding validation of the mandates of the Members of Parliament assigned by the Central Electoral Commission, as follows:

- Aliona Goța, Petru Știrbate, Maria Ciobanu, Ion Balan on the list of Liberal Democratic Party;

– Elena Gudumac on the list of Communist Party of the Republic of Moldova;
– Efrosinia Grețu, Eugeniu Nichiforciuc, Nicolae Molozea, Vladimir Andronachi on the list of Democratic Party of Moldova;
– Mihaela Iacob, Ion Casian, Vladimir Cernat on the list of Liberal Party *(JCC No. 4 of 23.02.2015, complaint no. 4e/2015);*

- – Corneliu Padnevici on the list of Democratic Party of Moldova *(JCC No. 5 of 09.04.2015, complaint no. 14e/2015);*
- – Inna Șupac on the list of Communist Party of the Republic of Moldova *(JCC No. 9 of 11.05.2015, complaint no. 19e/2015);*
- – Nae-Simion Pleșca, Octavian Grama on the list of Liberal Democratic Party of Moldova;
  – Elena Bacalu, Corneliu Dudnic on the list of Democratic Party of Moldova;
  – Roman Bodan, Ștefan Vlas, Petru Cosoi, Alina Zotea, Artur Gutium on the list of Liberal Party *(JCC No. 23 of 04.09.2015, complaint no. 34e/2015);*
- – Adrian Lebedinschi on the list of Socialist Party of the Republic of Moldova;
  – Iurie Cazacu on the list of Democratic Party of Moldova *(JCC No. 26 of 21.10.2015, complaint no. 40e/2015);*
- Valerian Bejan on the list of Liberal Party *(JCC No. 31 of 10.12.2015, complaint no. 54e/2015).*

5 COURT DECISIONS

Decisions on inadmissibility of complaints

In the process of exercising constitutional jurisdiction in 2015 the Court issued 12 decisions on **inadmissibility of complaints** based on the following reasons:

- The Court is not *ratione materie* competent to rule on the opportunity of appealed act (*DCC No.10 of 23.11.2015, complaint no. 27a/2015, § 32)*;
- The complaint does not meet the admissibility conditions to exercise the constitutional review (*DCC No.1 of 02.06.2015, complaint no. 5g/2015, § 20,21; DCC No.3 of 02.06.2015, complaint no. 18a/2015, §47; DCC No.12 of 15.12.2015, complaint no. 47a/2015, § 23);*

- Constitutional provisions that need to be interpreted are not ambiguous, do not have imprecisions or uncertainties, being described and detailed in the regulatory framework (*DCC No.4 of 04.09.2015, complaint no. 2b/2015,§ 39; DCC No. 9 of 09.11.2015);*
- The object of complaint cannot be assigned to constitutional jurisdiction and, hence, the appealed act should be exempted from the constitutional review without being examined on its merits in view of fundamental principles and rules enshrined in the Supreme Law (*DCC No.5 of 04.09.2015, complaint no. 28a/2015, § 38);*
- The author of complaint did not invoke any act of the Parliament, in accordance with Article 135 para. (1) let. a) of the Constitution, which should be constitutionally reviewed *(DCC No.2 of 02.06.2015, complaint no. 9a/2014, §22);*
- The appealed act was adopted to execute legal provisions and does not institute new regulatory rules (*DCC No.7 of 09.11.2015, complaint no. 36a/2015, §29*);
- Lack of causal link between the invoked rationale in the complaint, which is focused on the application of law and final requirements (*DCC No.6 of 13.10.2015, complaint no. 38a/2015, §30*);
- The author of the complaint did not justify the impact of constitutional norms on the appealed provisions *(DCC No.8 of 09.11.2015, complaint no. 41g/2015, §23,30);*
- The authors of the complaint did not present strong arguments that would determine the Court to evaluate the object of complaint as being distinct compared to the previous one, a fact that shows the repetitive character of the complaint *(DCC No.13 of 16.12.2015, complaint no. 58b/2015, §19).*

Decisions to suspend the challenged normative acts

In the process of constitutional jurisdiction in 2015, the Court issued 1 decision to suspend the appealed normative acts and banned any actions to enforce the suspended acts:

- The Parliament Decision No. 224 of 3 December 2015 on repealing the Parliament Decision on appointing the Board of Directors of the National Energy Regulatory Agency (DCC No. 11 of 04.12.2015, complaint no. 53a/2015).

6 COMPLAINTS RETURNED BY LETTERS

The Court has returned by letter 7 complaints, based on the provisions of the Code on Constitutional Jurisdiction no. 502-XIII of 16.06.1995 and of the Rules on the examination of the complaints submitted to the Constitutional Court, approved by the Court Decision no. AG-3 of 3 June 2014.

C | ADDRESSES

The Court has prepared the following addresses to the Parliament:

• Address PCC-01/6b of 20.01.2015, JCC No. 2 of 20.01.2015, complaint no.6b/2014

The Court mentioned that from Article 69 para. (2) of the Constitution clearly results that the Supreme Court makes a difference between two situations to terminate the mandate of the Member of Parliament: (a) lifting the mandate, a case in which the intervention of an authority is necessary; (b) incompatibility (other than death and lifting the mandate), a situation when 'lifting the mandate' is not necessary.

The Court held that the Parliament is responsible for forced termination of the mandate of the Member of Parliament, including lifting the MP mandate or incompatibility, based on the spirit and principles of the Constitution, democratic rules and standards and taking into account the practice of other states.

The Court established that until present, the Parliament has not adopted regulations regarding lifting or de jure termination of the mandate of the Member of Parliament. The Court reminds that the need to regulate the grounds for lifting the mandate of the Member of Parliament in the Law on the organisation and activity of the Parliament and the Law on the Status of Member of Parliament was addressed by the Constitutional Court also in Judgement No. 8 of 19 June 2012 on the interpretation of Articles 68 para. (1), (2) and 69 para.(2) of the Constitution, where it mentioned.

• Address PCC-01/60a of 16.04.2015, JCC No. 6 of 16.04.2015, complaint no. 60a/2014

The Court mentioned that according to criminal law, the 'illicit enrichment' is an offence, if a person in high position or another public person possesses assets, personally

or through third parties, which value *substantially* exceeds legal revenues and based on evidence, it has been established that these could not have been acquired legally.

The Court noted that in Article 330² of the Criminal Code the legislator used the notion 'value that *substantially* exceeds legal revenue'. At the same time, the Court noted that the legislator regulated the notion of especially large-scale, large scale, considerable damages, and essential damages in the Supreme Court (Art.126 of the CC), by indicating their sizes. Thus, estimation of assets as a value that 'substantially exceeds' the revenue acquired by the subject of offence is vague in *the absence of a quantification*.

Considering the above-mentioned, the Court mentioned that the deficiencies of the composition of the offence 'illegal enrichment' in Article 330² of the Criminal Code should be removed by the legislator.

• ***Address PCC-01/1b of 24.06.2015, JCC No. 21 of 24.06.2015, complaint no. 1b/2015***

The Court stated that the incompatibility situation for the persons elected for the position of the Member of Parliament arises for the newly elected persons from the moment of validation the mandate of the Member of Parliament by the Constitutional Court, and for the current Members of Parliament – from the moment of holding another paid position or appearance of other incompatibility situations, in accordance with the law.

The Court stated that the Member of Parliament should choose between the mandate and the other incompatible position by resigning from one before the expiry of deadline. If a letter of resignation from the position of the Member of Parliament is submitted by the MP in incompatible situation, the mandate of the Member of Parliament is terminated upon the presentation of the letter.

At the same time, the Court mentioned that if the incompatibility continues after the deadline expires, the Member of Parliament is considered dismissed de jure from the MP position. The resignation is notified to the Parliament, which declares the mandate vacant.

At the same time, the Court noted that the legislator regulated differently the termination of mandate for other elected public persons (the President, Vice-president of District, Deputy Mayor) in incompatibility situations.

Hence, to ensure the unity of legal regulations in the field, the Court considers necessary to revise all legal provisions that refer to elected public persons, taking into account the rationale expressed in the Decision.

• ***Address PCC-01/10a of 06.10.2015, JCC No. 24 of 06.10.2015, complaint no. 10a/2015***

Having examined the Law on Citizenship, the Court found out that its regulations contain many unclarified issues and inconsistencies.

Thus, the Court mentioned that Article 12 para.(2) of Law on Citizenship that stipulates who can request citizenship by recognition does not define exhaustively the line of descendants.

Also, the Court pointed out that Art. 10 of the Law regulates five reasons to acquire the citizenship (birth, recognition, adoption, recovery, naturalization), but some legal provisions list, besides the specific grounds, the generic notion of 'acquiring the citizenship', which creates a contradiction between the norms.

In this sense, the Court underlined that although the President of the Republic of Moldova examines only the applications regarding the acquiring of citizenship through *naturalization and recovery*, Article 33 stipulates that 'Application for **acquiring** or **recovery** of citizenship of the Republic of Moldova shall be addressed to the President of the Republic of Moldova'. By using erroneously the generic term of '*acquiring*' the citizenship, the legislator has created a confusion or in order to **acquire** the citizenship by '*birth', 'recognition' and 'adoption', it* is not necessary to address the President of the Republic of Moldova.

Also, Art. 27 of the law that regulates the responsibilities of the President in the field of citizenship includes generic terms. This article stipulates that the President issues Decrees to '**grant,** recover, renounce and withdrawal of citizenship of the Republic of Moldova'.

Respectively, it is not clear when to use the terms 'granting' and 'acquiring of the citizenship in Art. 27 and Art. 33 of the law.

Thus, the Court pointed the attention of the Parliament to the need to ensure unitary regulation of grounds for acquiring citizenship by reporting to the responsible institution.

Also, in the light of the above-mentioned, the provisions of the Regulation on acquiring and losing the citizenship of the Republic of Moldova, adopted by Government Decision No.197 of 12 March 2001, should be amended accordingly.

• ***Address PCC-01/30a of 13.10.2015, JCC No. 25 of 13.10.2015, complaint no. 30a/2015***

The Court held that the wording '*lists of substances',* included in Article 134/1 para. (4) of the Criminal Code means the competence of the Government to regulate both narcotic drugs and psychotropic substances and their quantities. Approving only the list of substances without a quantitative regulation would deny essence to the entire Government Decision, which would become inapplicable.

The Court mentioned that taking into account the fact that the legislative process involves more duration phases, the rationale to define the competence of the Government results from the need to promptly regulate the normative framework in this field, if new substances with similar effects appear.

At the same time, to exclude any erroneous interpretation, the Court considered necessary to amend Art. 134/1 para. (4) of the Criminal Code, so its provision could refer not only to the approval of the '*list'* of narcotic drugs, psychotropic substances and precursors by the Government, but as well as their *quantities.*

At the same time, the Court considered that additionally to 'narcotic drugs, psychotropic substances and precursors', the Criminal Code includes sanctioning regulations regarding '**analogue of a narcotic drug or of a psychotropic substance**' (Articles 134^1, 217, 217^1, 217^2, 217^3, 217^5, 217^6 of the Criminal Code). According to Art. 134/1 para. (2) of the Criminal Code, the analogue of a narcotic drug or of a psychotropic substance is the substance that by its composition and effect produced is similar to a narcotic drug or psychotropic substance.

The Court held that international conventions in the field do not define the notion of 'analogue' of a narcotic drug or of a psychotropic substance. These describe only the

categories of narcotic drugs or psychotropic substances, categories that are confirmed also in the Government Decision No. 1088 of 5 October 2004 and Government Decision No. 79 of 23 January 2006.

Hence, when a new substance that provokes psychical dysfunction and dependency due to excessive consumption appears on the market, it is included in the List of narcotic drugs, psychotropic substances and plats that contain such substances. If it is not included in the corresponding List, this substance cannot be *sub specie iuris*, nor narcotic dug or psychotropic substance (*tertium non datur).*

Thus, the Court found out that the norms of the Criminal Code that refer to 'analogue of a narcotic drug or of a psychotropic substance' do not have legal content and effect, which based on the above-mentioned, determine their exclusion from the criminal law.

• ***Address PCC-01/59a of 29.12.2015, JCC No. 32 of 29.12.2015, complaint no. 59a/2015***

The Court held that in order to exercise his constitutional duty to propose a candidate for the position of the Prime-minister, the President of the Republic of Moldova, who is elected by the majority of the Parliament should ensure by consulting the parliamentary factions both the support of parliamentary majority and possible constructive cooperation with minority in opposition. In the constitutional sense, the notion 'in consultation with parliamentary factions' includes groups of non-affiliated Members of Parliament.

The Court stated that in the situation when there is no absolute majority in the Parliament, the President of the Republic of Moldova has the obligation, after consulting with the parliamentary factions, to appoint a candidate for the position of the Prime-minister, even if parliamentary factions disagree with the proposal of the President. At the same time, when an absolute majority is instituted in the Parliament, the President of the Republic of Moldova proceeds with the appointment of the candidate supported by this majority.

In this context, the Court stressed out that the President of the Republic of Moldova is the reflection of the parliamentary majority, which does not allow the President to

ignore an eventual formation of an absolute majority from the Members of the Parliament. This rationale is more pertinent when the parliamentary majority fails to accept the candidate proposed by the President, which leads to the sanctioning of the Parliament in the form of its dissolution by the President (Art. 85 para. (1) and (2) of the Constitution).

At the same time, the Court underlined the need to form the parliamentary majority in a transparent way, so the voter could identify the political actors vested with political responsibility for governance. From these consideration, the parliamentary majority should be **formal** not just declared by indicating the Members of Parliament forming it and by specifying the availability to support a candidate for the position of the Prime-minister and by officially informing the President of the Republic of Moldova.

Based on the rationale expressed in the Judgement of the Constitutional Court No. 32 of 29 December 2015, the Court underlined the importance and need to formalize the parliamentary majority through express regulation by the Parliament, in order to support a certain candidate for the position of Prime-minister and President notification procedure in this regard.

D | DISSENTING OPINIONS

The judge *Tudor Pantiru* gave a dissenting opinion on Judgement No.32 of 29.12.2015 on constitutional review of the Decree of the President of the Republic of Moldova No.1877-VII of 21 December 2015 on appointing a candidate for the position of the Prime-minister (complaint no. 59a/2015).

TITLE III

ENFORCEMENT OF ACTS OF THE CONSTITUTIONAL COURT

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ENFORCEMENT OF ACTS OF THE CONSTITUTIONAL COURT

According to art. 28 of the Law no. 317-XIII of 13 December, 1994 on the Constitutional Court, the acts of the Court are official and binding throughout the country, for all public authorities and for all legal persons and individuals.. The legal consequences of the normative act or parts thereof be declared unconstitutional will be removed according to the legislation in force.

The acts of the Constitutional Court have erga omnes effect, being mandatory and binding on all subjects regardless of authority.

Acts adopted by the Court emphasize the consistent, objective and demanding nature of the constitutional jurisdiction to ensure the supremacy of the Constitution, respect for human rights and fundamental freedoms, while emphasizing the manner in which the idea of constitutionality and the role of the Constitution as a stabilizing factor in the society and a moderating factor between the branches of state powers are perceived. The impartial exercise of these powers envisages the status of the Constitutional Court as an essential component of the rule of law.

An analysis of legal solutions issued by the Court shows that they target the rights and fundamental freedoms enshrined in the Supreme Law and in international treaties, such as: free access to justice, the right to defence, equality, the right to education; the right to work and labour protection, restrictions on the exercise of certain rights or freedoms, etc.

The judgments of the Constitutional Court are intended primarily for the legislature, and to other subjects participating in the legislative process. The result of the work performed by the legislative and other subjects involved in legislative drafting is appreciated within the procedure of constitutional justice; moreover, the judgments of the Constitutional Court often impose the duty to undertake appropriate legislative measures. The judgments of the Constitutional Court are final, cannot be challenged, including by the legislator, and are binding. Given this reason, mainly the legal factors, and not political or emotive ones or other kind thereof, should determine the reactions to the Court's decisions, especially if they involve specific obligations for the relevant subjects.

Finding of a legislative inaction, i.e. of the legislative gap or of another legal act that is contrary to the Constitution, inevitably causes legal consequences. The judgment of the Constitutional Court involves obligation to fill this legislative gap by an appropriate regulation, to correct the faulty legal regulation. The absence of legislator's reaction to a judgment, a delay in eliminating the unconstitutional gap or partial elimination of such gaps are considered as anomalies of legal order and the existence thereof is being considered inadmissible and intolerable.

The legislator shall mandatorily eliminate the gaps reported. The unconstitutional vacuum that appears in a field of activity or the legal problem, toleration of an imperfect law or other normative act indicate that the Parliament, the political institution to which the Constitution has given the power to legislate, fails to properly fulfil its constitutional mission. The legislator's obligation to remove the legal regulation gap is established based on the principles of the rule of law and separation of powers[58].

Compliance with the principle of separation of powers involves not only the fact that none of the branches of power can intervene in the powers of other branches, but also that none of these branches will neglect the tasks it is required to perform in a specific area, particularly when such requirement is imposed by a judgment of the Constitutional Court.

[58] General Report of the XIVth Congress of the Conference of European Constitutional Courts on the issues of legislative inaction in constitutional case law (July 2008) http://www.venice.coe.int/files/Bulletin/SpecBull-legislative-omission-f.pdf

Lack of legislative intervention by the Parliament in the execution of the constitutional court acts may equal to the failure to exercise basic competences, namely *law-making*, duty assigned by the Constitution. This situation appears when certain judgments of the Constitutional Court declaring unconstitutional a legal provision or a legal act may generate legislative vacuum and existence of certain deficiencies and inconsistencies in the application of the law.

To exclude these negative consequences, art. 28^1 of the Law on the Constitutional Court provides that the Government within 3 months from the date of publishing the Judgment of the Constitutional Court, submits to the Parliament the draft law on amending and supplementing or repealing a regulatory act or parts thereof, which were declared unconstitutional. This draft law will be reviewed by the Parliament as a priority.

Notwithstanding these provisions the Court ascertains lack or a quick reaction within the time limit established by the law and this fact causes a delay in enforcement of many of its judgments, while failure to enforce the addresses issued creates situations that contributes to the maintenance of legislative gaps and negatively influences the quality of the implementation of laws.

Finally it should be mentioned that the judgments of the Constitutional Court represent a generally binding legal finding based on the elucidation of the essence of the constitutional issue following official interpretation of the relevant norms of the Constitution and explanation of the content of the challenged constitutional provisions. This implies that the enforcement of judgments of the Constitutional Court only in terms of legal consequences of the operative part of the judgment is insufficient and incomplete. Respect for the general binding effect of the Constitutional Court Judgments does not mean a mere appraisal of their operative part; it is rather an appreciation of the rationale and interpretation given by the Court in respect of the Constitutional text as the judgment is an aggregate, a unity made up of Court's considerations and the operative part.

Enforcement of the judgments of the Constitutional Court must bear a dual legal consequence. First, it should be a guarantee to protect the right of each objective, and secondly, to become a source of law for the legislature and the executive, playing a leading role in the development of the law. Only together these conditions can guarantee the supremacy of the Constitution by ensuring the constitutionality of legislative acts.

1. Level of enforcement of judgments of the Constitutional Court that declare certain normative acts unconstitutional

In 2015, the Court has delivered **8** judgments, where at least one provision was declared unconstitutional, and the Parliament and the Government were supposed to intervene on these issues in order to solve the legal gaps. Out of the mentioned judgments, only 1 has been enforced until the date of approving this Report.

Following a comparative analysis out of the **11** judgments delivered by the Court in 2013, in which at least one of the challenged provision was declared unconstitutional, all of them have been enforced during the period 2013-2014. Out of **15** judgments delivered in 2014 in which at least one of the challenged provision was declared unconstitutional, only 12 judgements were enforce in 2014-2015, as for the other 3 judgements, the Parliament has to finalize the procedure of adopting the draft legal acts amending and completing certain laws (*See Chart 16*).

In order to monitor the process of amending legislative acts, which provisions were declared unconstitutional based on the judgments of the Constitutional Court, the Court requested the Government and the Parliament to inform it about the level of enforcement of the adopted acts. Both the legislature and the executive reflected the situation on the enforcement of Court judgments and addresses, indicating the phase of the legislative procedure of the developed draft laws in their answers. According to the submitted information, lack of a timely response from the Government and the Parliament is attested, which delays the enforcement of the Court judgments and maintain the gaps, which affects the implementation quality of laws. This situation shows lack of responsibility of the Parliament and Government in fulfilling the duties laid down in Art. 28[1] of Law No. 317-XIII of 13 December 1994 on Constitutional Court

In this situation, in exercising its constitutional powers, the Constitutional Court is obliged to draw attention to the problem of delayed enforcement or non-enforcement of its acts.

2. Level of Enforcement of Addresses of the Constitutional Court

The address is the act by which the Constitutional Court, without replacing the legislative body, exercises, according to art. 79 para. (1) of the Constitutional Jurisdiction Code, its role of "passive legislator", insisting on the gaps or weaknesses in the legislation in force or on the need to make changes in legal regulations that have been subject to constitutionality control.

The judicial activity of the Constitutional Court is mainly oriented towards reviewing the complaints submitted and exercising constitutional competences regarding these complaints. The constitutional review of acts from the point of view of compliance with the Supreme Law, interpretation of constitutional norms, enforcement of judgements of the Constitutional Court, etc. are tools that have decisive influence on the improvement of the legislative framework. The addresses referring mainly to legal gaps also play an active role in the development of the law.

Therefore, when performing constitutional review and based on addresses delivered to public authorities on referred acts, the Court acted as a passive legislator. In 2015 the Court issued 6 addresses. According to the information available to the Court, on the day of approval of this Report, 2 addresses that were supposed to be enforced, were still pending. For comparison: in 2014 the Court has issued 8 addresses, of which only 2 have been enforced; in 2013 the Court issued 6 addresses, all of which have been enforced; in 2012 the Court issued 7 addresses: 6 being enforced, 1 is in the process of enforcement; in 2011 the Court issued 9 address: 5 were enforced, 1 is in the process of enforcement, 3 are still pending *(See Chart 17)*.

TITLE

IV

COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

TITLE IV

COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

1 INTERNATIONAL CONFERENCE ON THE OCCASION OF THE 20th ANNIVERSARY OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF MOLDOVA

2015 was an anniversary year for the Constitutional Court of the Republic of Moldova. On the occasion of its 20th anniversary, the Constitutional Court organised the International Conference on *'Relations of the Constitutional Court with other public authorities'* on 24-25 September 2015 in Chisinau.

The Conference was organised with the support of German Foundation for International Legal Cooperation (IRZ), European Union and the Council of Europe.

The Conference was held in three sessions. Their topics reflected current and essential subjects for the constitutional jurisdiction.

As a result, the debates of the 1st session referred to *Guarantees of the independence of the Constitutional Court compared to other public authorities.* The session was chaired by Mr. *Augustin Zegrean*, the President of the Constitutional Court of Romania.

During this session, Professor *Evgeni Tanchev*, Vice-president of the Venice Commission underlined that the interaction between constitutional courts and other authorities is based on separation of powers in the state. Thus, the Constitutional Court is the guardian of the legality in the State, having the executive duty to apply the Constitution. At the same time, the constitutional courts are the guardians of fundamental rights in a state, representing a way to secure self-destruction of governing systems, transforming,

thus the political conflict into a judicial conflict. It is well-known that the modern constitutionality, through the theory of Hans Kelsen, has assigned the role of a negative legislator to the Constitutional Court. Sometimes, the Constitutional Court may have the role of a positive legislator without replacing the Parliament, ensuring thus, the separation of powers.

Along the same line, the German Professor *Rainer Arnold* outlined that the control of public powers implies verification of conformity with the Constitution, which is expressed through the independence of the judge. In this sense, the constitutionality should be verified in the light of acts adopted by authorities. Modern constitutionality envisages the growing role of the Constitutional Court in the State because it has a specific status, without being a public actor, but a judicial actor.

At the same time, the Constitution should be a key framework for political power, while the Constitutional Court has the role to verify whether the actions of the political power are legal. If the political power is the foundation of legal framework, however, the first democratic actions of Constitution development differ fundamentally from the development of any other legal framework, or the Constitution is a democratic action

that has to be the people's will, while any other normative act is an expression of the representative will. The Constitution shall not be rigid, allowing for the adaptation to the daily evolution of the society.

The legality of the acts should not be examined separately from their constitutionality. The control of legality should be made within the legislation in general and the Constitution in particular. There is a question: how should the legislator act then? Should he/she act according to the legislation or in the spirit of the Constitution? The Constitutional Court has a very important role in this aspect. The evolution of fundamental rights does not allow anymore for the extension of the limit of interference of the political power in a number of acts that could alter the principle of separation of powers.

The constitutional courts have the role to ensure the supremacy of the constitution in an existing autonomy between the constitution and political processes in a state that evolves together with the society.

On a different note, the Judge of the Constitutional Court of Ukraine, *Igor Slidenko*, underlined that the State is the one who serves the society, based on the theory of law. The idea means that the constitutional review should not be limited politically. The authority of constitutional review should influence the evolution of political power starting with the position of independence of the state constitutional body. Democracy includes high moral standards, which form the authority of the state power. This is precisely why the constitutional review is vested with the verification of the power authority. In this sense it is important to verify the factors that may influence the constitutional review: the location of the institution of constitutional review in the state; its independence; its de-politicisation and external factors.

Another aspect is the values assumed by the state control institution. The states in transition are facing the fake setting that might influence the activity of the institution of constitutional review (for instance, the recognition of the constitutionality of the referendum on the attachment of Crimea). In this sense, a danger to a contemporary state is not only the loss of values, but also the formal character of the state institutions authority.

In conclusion, Mr. *Zegrean* mentioned that the reform has its purpose at each historical phase of humanity development, as well as of constitutional organisations, separation of powers or justice.

The experience of some constitutional courts in cooperation with state authorities was discussed in the 2nd session entitled *'Relations of the Constitutional Court with the Parliament and Government. Role of the Constitutional Court in 'settling conflict between authorities',* chaired by Mr. *Dainius Žalimas*, the President of the Constitutional Court of Lithuania, member of the Bureau of the World Conference on Constitutional Justice.

Mr. *Aldis Laviņš*, the President of the Constitutional Court of Latvia underlined the cooperation doctrine of the Constitutional Court of Latvia, according to which, the cooperation of constitutional courts with other authorities may be a cooperation within the framework of proceedings, and cooperation outside the framework of proceedings. Formal cooperation is the cooperation following from the obligations that are directly defined in regulations, being influenced including by the constitutional jurisprudence that settles the conflict between powers.

The Court of Latvia has decided on the discretion of the legislator in the process of law-making and cooperation between state institutions. There is a requirement that

all branches of power should be based on democracy enhancement through cooperation. The opinion of the judiciary should be treated with 'respect and proper understanding'. Hence, the cooperation doctrine should be considered in the process of legislative drafting.

On the other hand, informal cooperation is also important in the constitutional review through which the Constitutional Court might impose itself. In this sense, we commend the Latvian experience which sets systematic relations between the Court and the President, a fact that facilitates the fulfilment of duties and tasks of the constitutional court.

The President of the Constitutional Court of the Republic of Moldova, *Alexandru Tănase,* outlined that the Constitutional Court, as a guarantor of the principle of separation of state powers and of state's responsibility before the citizen, and based on its competence to exercise the constitutional review, intervenes in the braking and counter-balancing system of the state powers, ensuring, thus the dialogue between the state's powers.

The only sovereign in a rule of law state is the Constitution; the state powers have to abide by it as well.

The Constitutional Court has a major role in the institutional frame of the state. The Court represents the guarantor of the supremacy of the Constitution that is manifested as a veritable referee in solving certain conflict situations.

When the Constitutional Court declares some legal provisions unconstitutional, it does not only intervene into the legal framework by cancelling the problematic norm of the legislation, but intervenes in restoring the balance between state powers, ensuring the observance of human rights and fundamental freedoms, and observance of rule of law principles.

The 3rd working session was entitled *'Authority of judgements of the Constitutional Court and influence of its case-law'* and was chaired by *Aldis Laviņš,* the President of the Constitutional Court of Latvia.

During this session, the President of the Constitutional Court of Latvia, *Dainius Žalimas,* outlined that once a Constitutional Court and its case-law are established, a Constitution may be perceived as a live Constitution. The concept of a constitution reflected

through Court's case-law should express the central concept of the Constitution. The Constitutional Court is the one who offers official interpretation of the Constitution. Often the Constitution is accepted as an ideal law, but its interpretation by the Court should be alive and should ensure a dynamic interpretation that meets the challenges without intervening through constitutional amendments.

Mr. *Žalimas* recalled the practice of the Constitutional Court of Lithuania which wanted to change the vision about the Constitution: from positive to integrated perception of the Constitution. Or, the interpretation of some constitutional provisions should be made by taking into account all provisions of the Constitution. No amendment and no constitutional interpretation may prejudice human rights and fundamental freedoms, observing thus, the democratic principles, which represent thus the *'eternity clause'*.

In the opinion of the President of the Constitutional Court of Lithuania, the judgements of the Constitutional Court have judicial power similar to the text of the Constitution, thus, preventing the transformation of the Constitution into a suicidal act.

During the session, Professor *Boguslav Banaszak* from Poland expressed his opinion on judiciary activism of the Supreme Court or of the Constitutional Court, which is recognised in general as an ability of these institutions to exceed the adjudication of an individual case, but as an implication in solving a major social issue or in shaping the state's concept. This ability belongs to the factors that influence the frequency of constitutional amendments. The more active is the Court in interpreting the constitutional amendments, the less is the need to amend the Constitution, because it is easier to amend the sense of the fundamental act.

The advantages of the activism showed by a court of constitutional jurisdiction consist in the fact that the Constitution does not represent an obstacle in democratic reforms, even if its structure was early designed. Thus, the reforms expected by the society could be implemented relatively quickly without revising the Constitution. It should be mentioned that such activity is very long-standing, and not only due to procedural reasons, but especially due to the need to establish an agreement between the emerging political formations.

The Judge of the Constitutional Court of Armenia, Mr. *Hrant Nazaryan* noted that the subject of authority of constitutional decisions is always actual. From the political

point of view, the constitutional review is difficult to exercise, if *de jure* the judicial power of the acts issued by the body that exercises them is not well defined; it is difficult to talk about the efficiency of this duty, if the adopted acts are not partly or integrally enforced.

The legal-normative duty of the judgements of the Constitutional Court should be mentioned, or, implicitly, after the decisions of the Court are delivered, the legislative drafting of public power that holds the regulatory competence of social relations shall follow.

We should not neglect the exercise of systematic analysis of the level of enforcement of the judgements of the Constitutional Court, or, its importance is expressed in the pursued goal – to develop a legal and constitutional culture, respect for fundamental rights and efficient achievement of constitutional objectives. The achievement of these objectives is also ensured through the publication of some information about how the judgements of the Constitutional Court are enforced, an experience of the Constitutional Court of Armenia shared also by the Constitutional Court of the Republic of Moldova.

It is important that the amendments or additions inserted into the law system to ensure the superiority of the Constitution, provided by the acts of the Constitutional Court, are systemic and normative, but not episodic; the civil society should play an important role in monitoring the entire process of adjusting the legal framework to the case-law of the constitutional court.

At the end of session, the Vice-president of the Academy of Sciences of Moldova, Mr. *Ion Guceac,* noted that the case-law of the Constitutional Court created legal standards and universal constitutional values, so the constitutional review bodies can avoid the arbitration and may act in a predictable way. At the same time, it was mentioned that the constitutional review of the laws represents a way to avoid the gaps in the text of the fundamental law.

2 STUDY ON THE STRENGTHENING OF THE ROLE OF THE CONSTITUTIONAL COURT OF MOLDOVA

An international event on the presentation of the study on "**Strengthening the role of the Constitutional Court of Moldova**" was held on 17 July 2015. The Roundtable was organized by the Constitutional Court in the context of the **Justice Sector Reform Strategy for the years 2011-2016** implementation, with the support of the United Na-

tions Development Programme in the Republic of Moldova (UNDP Moldova) within the "Strengthening Rule of Law and Human Rights Protection in Moldova" Project, funded by the Federal Ministry for Europe, Integration and Foreign Affairs of Austria, co-funded and implemented by UNDP Moldova in cooperation with the Office of the High Commissioner for Human Rights (OHCHR).

Participants of this Roundtable were the authors of the study, Mr. Evgeni Tanchev, Vice-President of the Venice Commission, Ex-President of the Constitutional Court of Bulgaria, Mr. Tudorel Toader, Member of the Venice Commission, Justice of the Constitutional Court of Romania, Mr. Mirosław Granat, Justice of the Constitutional Tribunal of Poland, Mr. Vladimir Grosu, Minister of Justice, Mr. Gerhard Schaumberger, Chief of the Austrian Bureau for the Coordination for Technical Cooperation, as well as representatives from the judicial and academic fields of the Republic of Moldova.

The subjects discussed within the roundtable were: (I) *Composition and criteria for selection of judges of the Constitutional Court;* (II) *Subjects entitled to lodge complaints with the Constitutional Court;* (III) *Examination process of complaints lodged with the Constitutional Court.*

In the *first compartment* of the Study, the authors underlined that the main criterion related to the **number of members of constitutional forums** should not be too large because their role is to solve legal problems and the main duty is to interpret the Constitution.

The pool of judges of the Court should consist of professionals, who are legal practitioners, selected based on criteria that ensure the guarantees of professionalism and integrity of judges.

In his analysis, Professor Tudorel Toader underlined that **guaranteeing the independence of the Constitutional Courts,** implicitly of their judges, is a fundamental condition in their role, undersigned to ensure the supremacy of the Constitution.

The independency of the judges of the Constitutional Court is essential not only for the best functioning of constitutional justice, but in the last instance, for the rule of law; the concern to remove any influences or suspicions related to exercising such impacts on jurisdictional activity of the constitutional court appears as justified.

The author revealed the importance of representation and balance between different legal and political trends within the Constitutional Court. Some of the main methods in

this sense are represented by the way the structure, appointment and selection criteria of judges of the constitutional courts are regulated.

As for **numeric structure of judges of the Constitutional Court**, the Professor E. Tanchev invokes as a recommendation the issue of revising the number of judges of the Court in the meaning of ensuring an odd number in order to avoid the lockout when the vote of judges is three to three.

At the same time, as for the **authorities entitled to appoint judges of the Constitutional Court**, the experts recommended to the involved authorities to establish some procedures and unique and transparent criteria to appoint the judges of the Court, to remove the discrepancies in selection of candidates.

As for the **duration of the mandate of the constitutional judge**, the Constitution of the Republic of Moldova is among few states that ensures a 6-year mandate with the possibility for a second term.

Based on the abovementioned reflections, the recommendation of experts consist in assimilation of general practice by the Republic of Moldova, according to which, a constitutional judge may be elected for only one 9-year mandate.

Regarding the **status of judges**, the authors noted that the Law on the Constitutional Court of the Republic of Moldova stipulates fundamental guarantees that protect the mandate of constitutional judge: immovability, immunity and incompatibility regime.

The formulated conclusions insist on this aspect in the context when there were attempts to amend the Law to prejudice the immovability of judges by regulating the revocation of judges of the Constitutional Court for 'loss of confidence/trust' by the Parliament and limitation of constitutional jurisdiction competences.

In the 2nd session '***Subjects entitled to lodge complaints with the Constitutional Court***', Professor E. Tanchev drew the attention to the fact that when the unconstitutionality of a decision of the Supreme Court of Justice is invoked before the Constitutional Court, the legal security should be observed in accordance with the principle of *res judicata*, in order not to undermine the authority of the law.

Also, special attention should be granted to the screening mechanism in the process of admitting a direct complaint to keep within the rational limits the workload of the judges of the Constitutional Court and to maintain the capacity to examine the causes within reasonable time limits, by observing the principle of celerity.

In this context, the author Miroslav Granat noted that the unconstitutionality of a law may be invoked by the Supreme Court of Justice when the case is examined in court by the person who is a participant in the process. The authors considered inappropriate for the Republic of Moldova the idea to regulate at this phase the appeal directly before the Constitutional Court which would have as an object an individual right protected by the Constitution

In conclusion, the regulation of individual complaint would mean a radical reform of the Constitutional Court of the Republic of Moldova, a fact that refers to other context than we are today. The institution of individual complaint may be taken into account from a further perspective, after a wider analysis of its effectiveness and after accumulating a concluding practice on the application of the exeption of unconstitutionality.

As for the 3rd chapter '***Examination process of complaints lodged with the Constitutional Court***' of the Study, the authors established that the first measure would be the abrogation of the Constitutional Jurisdiction Code No. 502-XIII of 16.06.95, because it

repeats in part the provisions of Law No. 317 of 13.12.1994 on the Constitutional Court and makes the law redundant and confusing. At the same time, this Law regulates a procedure before the Court that lost its actuality and has to be amended.

Considering the fact that the Court examines law issues, and not litigations regarding individual rights, the procedure should be written. The parties can be invited to plead only when the Court deems it necessary.

The Court should establish own priority criteria in examining the cases, which means that the constitutional forum will decide on the timelines for complaints examination based on reasonable term concept accepted by most constitutional courts, as well as by the European Court of Human Rights.

Another recommendation regarding the complaints examination procedure is the limitation of the possibility to withdraw the complaint before Court at any phase of the process. The proposal resides in the idea that the complaint addressed to the Court is a serious and useful act that engages the responsibility of the complainant. The Court cannot be subject to the frivolity of some subjects having the right to lodge a complaint. Hence, in the situation when there is an application to withdraw a complaint, the Law should regulate the right of the Court to decide on the reason for keeping the complaint for examination, if it is imposed by the general interest.

The findings of the Study express the need to enshrine the role of the Constitutional Court of the Republic of Moldova to solve legal conflicts of constitutional nature.

3 EXTERNAL COOPERATION OF THE COURT IN 2015

3.1. CCM activity in regional, European and international organisations

• **Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ)**

At the initiative of the Constitutional Court of Lithuania, the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (hereinafter-the Association) has been established. It thus launches a new-quality cooperation between constitutional courts.

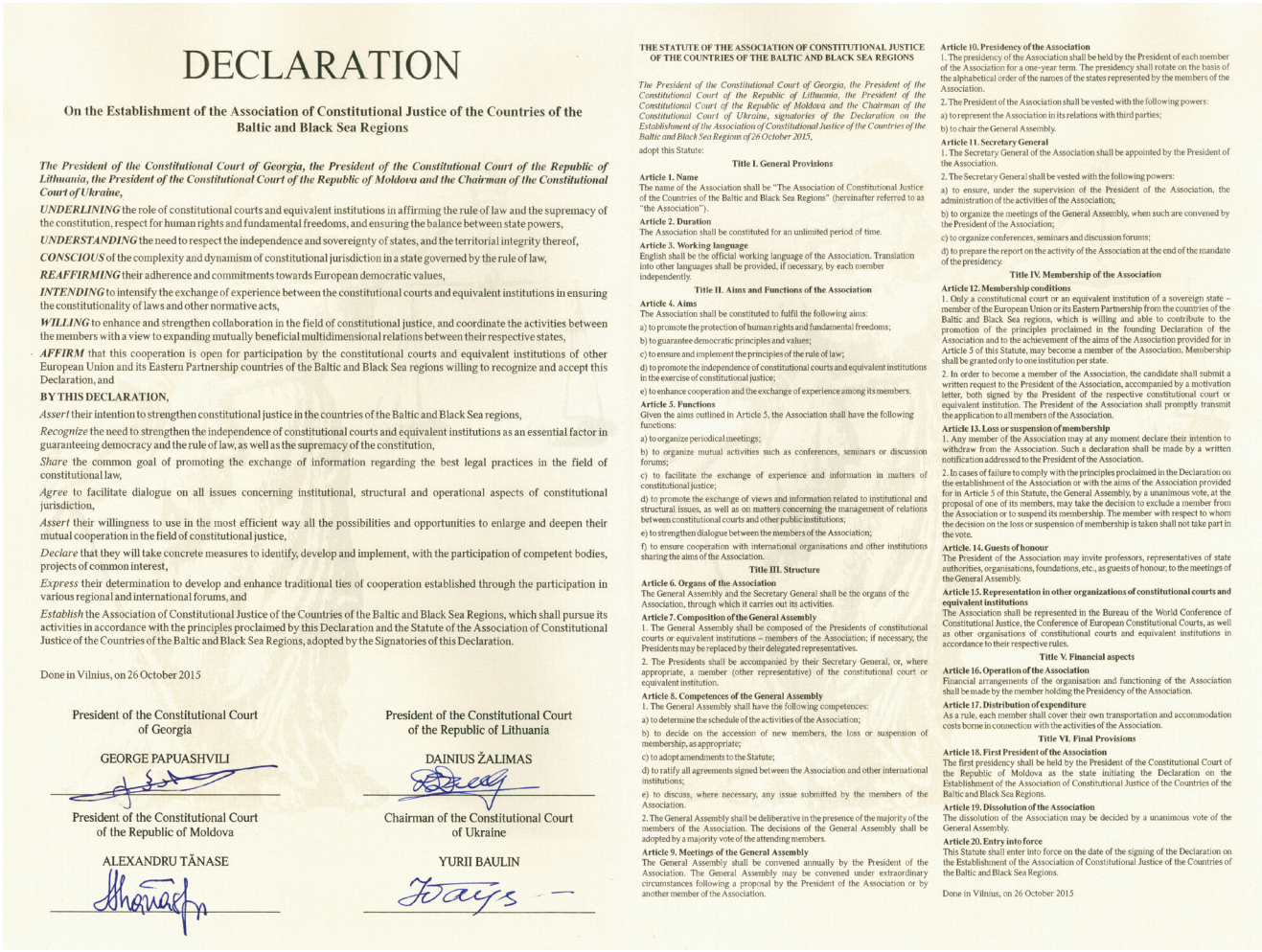
The Declaration on the establishment of the Association has been signed on **26 October 2015**, in Vilnius, by the **Presidents of Constitutional Courts of the Republic of Moldova, Lithuania, Georgia, and Ukraine.**

During the signing ceremony of the Declaration, Alexandru Tănase, President of the Constitutional Court of the Republic of Moldova, emphasised that the 'countries joining the Association are united by the obligation to respect and protect the same European democratic values, by similar history, and by comparable current issues, that determined the appearance of new regional cooperation. He stated that our countries have many things in common. The similar historical challenges, which we faced in the past, revealed the true value of freedom and democracy. Today, in the face of new threats to security and constitutional values, we stand united. We share the same values, have the same aspirations and I am confident that we will have the same future - a European future.'

The President of the Constitutional Court of Lithuania, Dainius Žalimas, noted that the Association has been established in order to take the long-standing cooperation between constitutional courts to a new level, to institutionalise it, as well as to promote and strengthen the motivation of the countries partners to participate in joint activities. Dainius Žalimas expressed his hope that the new regional cooperation of constitutional

courts will open opportunities for the legal communities of Lithuania and other Baltic countries to even more actively contribute to the strengthening of democracy, the rule of law, and respect for human rights in the Eastern Partnership countries, that such cooperation will help generate new initiatives which will ensure a firm and consistent support for Eastern partners that have chosen the European integration.

'These states now need total support in efforts to preserve their European choice and territorial integrity. The geopolitical challenges and attempts to make these countries turn



DECLARATION

On the Establishment of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions

The President of the Constitutional Court of Georgia, the President of the Constitutional Court of the Republic of Lithuania, the President of the Constitutional Court of the Republic of Moldova and the Chairman of the Constitutional Court of Ukraine,

UNDERLINING the role of constitutional courts and equivalent institutions in affirming the rule of law and the supremacy of the constitution, respect for human rights and fundamental freedoms, and ensuring the balance between state powers,

UNDERSTANDING the need to respect the independence and sovereignty of states, and the territorial integrity thereof,

CONSCIOUS of the complexity and dynamism of constitutional jurisdiction in a state governed by the rule of law,

REAFFIRMING their adherence and commitments towards European democratic values,

INTENDING to intensify the exchange of experience between the constitutional courts and equivalent institutions in ensuring the constitutionality of laws and other normative acts,

WILLING to enhance and strengthen collaboration in the field of constitutional justice, and coordinate the activities between the members with a view to expanding mutually beneficial multidimensional relations between their respective states,

AFFIRM that this cooperation is open for participation by the constitutional courts and equivalent institutions of other European Union and its Eastern Partnership countries of the Baltic and Black Sea regions willing to recognize and accept this Declaration, and

BY THIS DECLARATION,

Assert their intention to strengthen constitutional justice in the countries of the Baltic and Black Sea regions,

Recognize the need to strengthen the independence of constitutional courts and equivalent institutions as an essential factor in guaranteeing democracy and the rule of law, as well as the supremacy of the constitution,

Share the common goal of promoting the exchange of information regarding the best legal practices in the field of constitutional law,

Agree to facilitate dialogue on all issues concerning institutional, structural and operational aspects of constitutional jurisdiction,

Assert their willingness to use in the most efficient way all the possibilities and opportunities to enlarge and deepen their mutual cooperation in the field of constitutional justice,

Declare that they will take concrete measures to identify, develop and implement, with the participation of competent bodies, projects of common interest,

Express their determination to develop and enhance traditional ties of cooperation established through the participation in various regional and international forums, and

Establish the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions, which shall pursue its activities in accordance with the principles proclaimed by this Declaration and the Statute of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions, adopted by the Signatories of this Declaration.

Done in Vilnius, on 26 October 2015

President of the Constitutional Court of Georgia
GEORGE PAPUASHVILI

President of the Constitutional Court of the Republic of Lithuania
DAINIUS ŽALIMAS

President of the Constitutional Court of the Republic of Moldova
ALEXANDRU TĂNASE

Chairman of the Constitutional Court of Ukraine
YURII BAULIN

THE STATUTE OF THE ASSOCIATION OF CONSTITUTIONAL JUSTICE OF THE COUNTRIES OF THE BALTIC AND BLACK SEA REGIONS

The President of the Constitutional Court of Georgia, the President of the Constitutional Court of the Republic of Lithuania, the President of the Constitutional Court of the Republic of Moldova and the Chairman of the Constitutional Court of Ukraine, signatories of the Declaration on the Establishment of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions of 26 October 2015,

adopt this Statute:

Title I. General Provisions

Article 1. Name
The name of the Association shall be "The Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions" (hereinafter referred to as "the Association").

Article 2. Duration
The Association shall be constituted for an unlimited period of time.

Article 3. Working language
English shall be the official working language of the Association. Translation into other languages shall be provided, if necessary, by each member independently.

Title II. Aims and Functions of the Association

Article 4. Aims
The Association shall be constituted to fulfil the following aims:

a) to promote the protection of human rights and fundamental freedoms;

b) to guarantee democratic principles and values;

c) to ensure and implement the principles of the rule of law;

d) to promote the independence of constitutional courts and equivalent institutions in the exercise of constitutional justice;

e) to enhance cooperation and the exchange of experience among its members.

Article 5. Functions
Given the aims outlined in Article 5, the Association shall have the following functions:

a) to organize periodical meetings;

b) to organize mutual activities such as conferences, seminars or discussion forums;

c) to facilitate the exchange of experience and information in matters of constitutional justice;

d) to promote the exchange of views and information related to institutional and structural issues, as well as on matters concerning the management of relations between constitutional courts and other public institutions;

e) to strengthen dialogue between the members of the Association;

f) to ensure cooperation with international organisations and other institutions sharing the aims of the Association.

Title III. Structure

Article 6. Organs of the Association
The General Assembly and the Secretary General shall be the organs of the Association, through which it carries out its activities.

Article 7. Composition of the General Assembly
1. The General Assembly shall be composed of the Presidents of constitutional courts or equivalent institutions – members of the Association; if necessary, the Presidents may be replaced by their delegated representatives.

2. The Presidents shall be accompanied by their Secretary General, or, where appropriate, a member (other representative) of the constitutional court or equivalent institution.

Article 8. Competences of the General Assembly
1. The General Assembly shall have the following competences:

a) to determine the schedule of the activities of the Association;

b) to decide on the accession of new members, the loss or suspension of membership, as appropriate;

c) to adopt amendments to the Statute;

d) to ratify all agreements signed between the Association and other international institutions;

e) to discuss, where necessary, any issue submitted by the members of the Association.

2. The General Assembly shall be deliberative in the presence of the majority of the members of the Association. The decisions of the General Assembly shall be adopted by a majority vote of the attending members.

Article 9. Meetings of the General Assembly
The General Assembly shall be convened annually by the President of the Association. The General Assembly may be convened under extraordinary circumstances following a proposal by the President of the Association or by another member of the Association.

Article 10. Presidency of the Association
1. The presidency of the Association shall be held by the President of each member of the Association for a one-year term. The presidency shall rotate on the basis of the alphabetical order of the names of the states represented by the members of the Association.

2. The President of the Association shall be vested with the following powers:

a) to represent the Association in its relations with third parties;

b) to chair the General Assembly.

Article 11. Secretary General
1. The Secretary General of the Association shall be appointed by the President of the Association.

2. The Secretary General shall be vested with the following powers:

a) to ensure, under the supervision of the President of the Association, the administration of the activities of the Association;

b) to organize the meetings of the General Assembly, when such are convened by the President of the Association;

c) to organize conferences, seminars and discussion forums;

d) to prepare the report on the activity of the Association at the end of the mandate of the presidency.

Title IV. Membership of the Association

Article 12. Membership conditions
1. Only a constitutional court or an equivalent institution of a sovereign state – member of the European Union or its Eastern Partnership from the countries of the Baltic and Black Sea regions, which is willing and able to contribute to the promotion of the principles proclaimed in the founding Declaration of the Association and to the achievement of the aims of the Association provided for in Article 5 of this Statute, may become a member of the Association. Membership shall be granted only to one institution per state.

2. In order to become a member of the Association, the candidate shall submit a written request to the President of the Association, accompanied by a motivation letter, both signed by the President of the respective constitutional court or equivalent institution. The President of the Association shall promptly transmit the application to all members of the Association.

Article 13. Loss or suspension of membership
1. Any member of the Association may at any moment declare their intention to withdraw from the Association. Such a declaration shall be made by a written notification addressed to the President of the Association.

2. In cases of failure to comply with the principles proclaimed in the Declaration on the establishment of the Association or with the aims of the Association provided for in Article 5 of this Statute, the General Assembly, by a unanimous vote, at the proposal of one of its members, may take the decision to exclude a member from the Association or to suspend its membership. The member with respect to whom the decision on the loss or suspension of membership is taken shall not take part in the vote.

Article. 14. Guests of honour
The President of the Association may invite professors, representatives of state authorities, organisations, foundations, etc., as guests of honour, to the meetings of the General Assembly.

Article 15. Representation in other organizations of constitutional courts and equivalent institutions
The Association shall be represented in the Bureau of the World Conference of Constitutional Justice, the Conference of European Constitutional Courts, as well as other organisations of constitutional courts and equivalent institutions in accordance to their respective rules.

Title V. Financial aspects

Article 16. Operation of the Association
Financial arrangements of the organisation and functioning of the Association shall be made by the member holding the Presidency of the Association.

Article 17. Distribution of expenditure
As a rule, each member shall cover their own transportation and accommodation costs borne in connection with the activities of the Association.

Title VI. Final Provisions

Article 18. First President of the Association
The first presidency shall be held by the President of the Constitutional Court of the Republic of Moldova as the state initiating the Declaration on the Establishment of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions.

Article 19. Dissolution of the Association
The dissolution of the Association may be decided by a unanimous vote of the General Assembly.

Article 20. Entry into force
This Statute shall enter into force on the date of the signing of the Declaration on the Establishment of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions.

Done in Vilnius, on 26 October 2015

away from European political and value space shows that there is a big need to strengthen the independent Constitutional Courts of Georgia, Republic of Moldova, and Ukraine as well as the European dimension in the activity of these courts,' said the President of the Constitutional Court D. Žalimas. In addition, he noted that the new regional cooperation will provide the constitutional courts with more opportunities to share their good experience more effectively and more frequently, and to put such experience into practice.

The President of the Constitutional Court of Georgia, George Papuashvili, expressed his confidence that the Association would prompt an even more intensive and meaningful dialogue between constitutional courts. According to him, 'this Association means a new-quality cooperation between our courts.'

The Chairman of the Constitutional Court of Ukraine, Yurii Baulin, noted that it is important and useful for the countries which have chosen the European integration to learn from those countries that have already successfully implemented complex reforms in the sphere of justice.

The Declaration on the establishment of the Association underlines the role of utmost importance of constitutional courts in affirming the supremacy of the constitution and constitutional justice, respect for human rights and fundamental freedoms, and expresses the need to respect the independence and sovereignty of states, and the territorial integrity thereof.

The Association also affirms the desire of the partners to jointly represent the interests of the regional constitutional courts in the constitutional-justice world and European forums. It is worth mentioning that all the constitutional courts that have joined the Association supported the initiative the Constitutional Court of Ukraine to condemn the decision of the Constitutional Court of the Russian Federation of 19 March 2014 that paved the way to the annexation by Russia of a part of the territory of Ukraine - the Crimea.

On **17 December 2015**, the Constitutional Court of Ukraine held the preparatory meeting of the Presidents of the Constitutional Courts of Ukraine, Georgia, Lithuania, and the Republic of Moldova – members of BBCJ.

The Presidents of Constitutional Courts, founders of BBCJ, met to discuss matters related to the future cooperation and actions to be implemented. The parties discussed aspects regarding the communication of the members of the Association, joint projects and the action plan for the next year.

They also discussed matters regarding future extension of the Association. The Association is open to include institutions that exercise constitutional justice in the future.

At the same time, it has been agreed on the organisation of a Conference in Chisinau at the end of June 2016, its format and number of participants. The Constitutional Court of Moldova holds the BBCJ Presidency in 2016.

• In the context of its membership in the **International Conference of the Black Sea Basin,** which Presidency is held by the Georgian Constitutional Court, the **5th Conference** took place on 27-28 June under the heading 'Freedom and Security: enhancing the efficiency of constitutional complaints'. The workshops of the reunion focused on the following subjects: standards and practices regarding the right to freedom and security applied by the constitutional courts, the European Court of Human Rights, the UN Committee for Human Rights, mechanisms to protect freedom and security and their legal and practical results.

The event was attended by presidents and judges of constitutional courts from the Black Sea region, justices of ECHR, members of the Venice Commission, members of the Georgian Parliament and Government, as well as representatives of academia and non-governmental organisations.

A delegation of the Constitutional Court took part in the Conference, and discussed the problems and perspectives of access of citizens to constitutional justice in the Republic of Moldova in a work session.

• During 9-11 September, the President of the Constitutional Court of the Republic of Moldova took part in the **meeting of the Circle of Presidents during the Conference of European Constitutional Courts** (**CECC**), held in Batumi, Georgia and which discussed issues related to the preparation and organisation of the XVIIth Congress of the CECC. The Presidents of member constitutional courts of the Conference discus-

sed problems regarding the application of international treaties in the practice of constitutional courts.

During this Conference, the Constitutional Court of the Republic of Moldova supported the initiative of the Ukrainian Constitutional Court to discuss and condemn the decision of 19 March 2014 of the Constitutional Court of the Russian Federation, which paved the way for Russia to enclose a portion of the Ukrainian territory - Crimea.

The Presidents of Constitutional Courts of Ukraine, Georgia, Lithuania, Moldova, Poland, Cyprus, Azerbaijan and other European states signed a Joint Declaration on the observance of territorial integrity and international law in administration of constitutional justice. This document has been opened for signature by members of CECC since 10 September 2015; it urges the constitutional courts to stop being indifferent in a period when the imperatives of the rule of law that impose observance of general principles of the law, fundamental principles of the international law and other democratic values are violated flagrantly.

The President Alexandru Tănase noted that this precedent regarding the use of constitutional justice as an instrument in enclosing a territory of another state is extremely

dangerous, considering other similar claims of territories under Russian military occupation on the left bank of the River Nistru, which compromises the fundamental values of the CECC – rule of law, democracy, observance of human rights and independence of judiciary system.

• On 10-13 June 2015, the **14th meeting of the Joint Council on Constitutional Justice** took place in Bucharest. The event was organised by the Constitutional Court of Romania in cooperation with the European Commission for Democracy through Law of the Council of Europe (Venice Commission).

The Joint Council on Constitutional Justice was established by the Venice Commission in 2002, by establishing a documentation centre to promote mutual exchange of ideas and relevant case-law of constitutional courts. For this purpose, the Commission established a network of correspondents (liaison officers) with constitutional courts. Annual meetings of the liaison officers of the constitutional courts of the member states, associated courts, having the status of observers or special status within the Venice Commission, facilitate the exchange of information regarding the specific issues of constitutional justice and ensures the dissemination of this case-law, knowledge about settling specific issues. At this event, the liaison officer of the Constitutional Court of the Republic of Moldova was the Secretary General, Rodica Secrieru.

During the meetings, thematic mini conferences are organized traditionally. This year it referred to *Blasphemy and other limitations of freedom of expression*.

• On 4-5 June 2015, the Federal Tribunal of Switzerland hosted the **7th Three Year Congress of the Association of Constitutional Courts using the French Language** (**ACCPUF**) in Lausanne, Switzerland. It included over 30 courts and constitutional councils represented by about 100 participants.

The three-year congresses are thematic, and the general topic to be discussed is described and presented in advance in a National Report by each court-member of the ACCPUF, based on the questionnaire developed by the Secretary of the Association. All the answers to the questionnaire are synthetized in a general report which is delivered

during the event, then published on the official webpage of the ACCPUF also in the form of a thematic publication.

The topic referred to during this Congress was the Supremacy of the Constitution, approaching in more details the subjects regarding the status of the Constitution and status of international law in the hierarchy of norms; size and effectiveness of constitutional review in internal judicial order; conflict situations or competition between the Constitution and international norms. The interventions and debates allowed the participants to exchange practices and to share experiences.

During the General Assembly of the ACCPUF, the presidency of the Association was moved to the President of the Swiss Federal Tribunal for 2015-2018.

The ACCPUF Bureau accepted the invitation of the Constitutional Court of the Republic of Moldova and decided to organise the 8th Conference of Heads of ACCPUF in Chisinau during 26-30 September 2016.

• The Constitutional Court, as a member of the **Conference of Constitutional Control Organs of the Countries of Young Democracy**, took part in the **20th annual Conference** in Yerevan. The annual Conference coincided with the 20th anniversary of the Constitution and Constitutional Court of Armenia.

The event was attended by the representatives of Constitutional Courts of Algeria, Belarus, Croatia, Kazakhstan, Kyrgyzstan, Israel, Latvia, Lithuania, Macedonia, Mongolia, Poland, Romania, Slovakia, Thailand and by the President of Venice Commission. The discussed subject was 'Role of Constitutional Courts in strengthening the independence of judiciary power: doctrine approach and current challenges'.

The President of the Constitutional Court, Alexandru Tănase, mentioned in his presentation that the 'Constitutional Court of the Republic of Moldova in its wide case law exercised constitutional review of legal provisions regarding the immunity of the judge, disciplinary sanctioning as well as financial support to the judiciary. Good functioning of the judiciary has an important role in the state mechanism for the protection of rights and fundamental freedoms. Effective and complete judiciary protection may be achieved only in the conditions of true independence of the judiciary, especially of the judge – exponent of the judiciary.'

• International Association of Constitutional Law (IACL)

The main objective of the IACL is to establish and develop a constitutionality forum dedicated to the exchange of knowledge and information in the field, examination of mutual constitutional problems and phenomena through comparison, keeping a university and scientific approach.

The IACL Secretariat carries out the activity of the Centre for Human Rights, University of Pretoria, South Africa. Members of the IACL meet during biannual roundtables and World Congress organised every 4 years.

On 6 March 2014, as a result of accession application submitted a few months earlier and its acceptance by the Executive Committee of the Association, the **Constitutional Court of Moldova became institutional member of the IACL.**

The first participation of the Constitutional Court, as member of IACL, took place **on 28-29 May 2015,** at the invitation of the South African Institute for Advanced Constitutional Law of the University of Johannesburg, host of the IACL roundtable with the topic *'New Separation of Powers: doctrine evolution in the 21st century'*. The Conference included well-known constitutionalists from Universities of Harvard, Melbourne, Boston, Florida, Aix-en-Provence, Paris-Sorbonne, Regensburg, as well as other important specialists in the field.

3.2. Bilateral cooperation

• On the basis of cooperation relations and reciprocity established with Polish constitutional judges in the recent years, the **official visit of the delegation of the Constitutional Court of Moldova to the Polish Constitutional Tribunal took place on** 18-20 March 2015. This visit of the extended delegation of the Court, led by the President Alexandru Tănase, is part of ongoing bilateral working sessions of the judges. The last one took place in Chisinau in the fall of 2012.

The meeting discussed aspects of recent case-law of the both courts, with a special focus on provisions on citizenship included in the constitutions of both states.

The agenda of the visit included a meeting with the First President of the Supreme Court of the Republic of Poland.

• In order to expand special collaboration and traditional dialogue of the **Constitutional Court of the Republic of Moldova with the Constitutional Court of Romania and Constitutional Court of Lithuania**, as well as following prior understanding between presidents of constitutional courts of the three states, a **trilateral official meeting** of constitutional judges of the three constitutional courts took place in Suceava during 19 - 22 April 2015.

Bilateral traditional cooperation relations between courts served as model of trilateral cooperation, institutionalizing thus the relations between the Constitutional Courts of the Republic of Moldova, Lithuania and Romania. The first trilateral meeting focused on discussions about current challenges of the three courts, recent case-law, and confirmation of joint goal to promote European constitutional values.

On 21 April, at the University 'Ștefan cel Mare' of Suceava – Law and Public Administration Department, the members of official delegations took part in the International Conference 'Constitutional Jurisdiction', and the presidents of courts were invited to speak before the audience, academic environment and students about aspects related to the jurisdiction of each court, analysis of examined cases and important judgements.

• In the context of cooperation intensification between the Constitutional Court of the Republic of Moldova and the Constitutional Court of Lithuania, a delegation of the Republic of Moldova, including the President Alexandru Tănase, took part in the **International Legal Forum of Lithuania - Republic of Moldova - Ukraine**, which was also attended by representatives of institutions of justice system, academic institutions and non-governmental organisations. The main topic discussed at the Forum was the judiciary sector reform. The Forum took place during 21-25 July 2015 in Moletai. The meeting discussed issues related to the independence of justice, implementation of complex judicial reforms that refer to strengthening the rule of law and protection of human rights.

On 22 July 2015, Alexandru Tănase, the President of the Constitutional Court of the Republic of Moldova, met Dainius Žalimas, the President of the Constitutional Court of the Republic of Lithuania. The meeting took place at the Constitutional Court of Lithuania. The two presidents talked about current issues in the field of constitutional justice and cooperation perspectives.

3.3. Cooperation programmes with external partners

• The Council of Europe is one of the most important external partners of the Constitutional Court in the institution consolidation process. In 2015 two activities were implemented by the **Council of Europe Project 'Support for coherent implementation of European Convention on Human Rights at national level' in the Republic of Moldova.**

During 7-9 July, for training purposes regarding the implementation of European Convention, the judges and Court staff had a study visit at the Council of Europe and European Court of Human Rights in Strasbourg. The agenda included working meetings with representatives of sub-divisions of the General Human Rights and Rule of Law Directorate; the participants having had the opportunity to find out more details about the activity of the Commissioner for Human Rights, Department of the execution of ECHR Judgements, European Committee for the Prevention of Torture (CPT), the European Programme on Human Rights Education for Legal Professionals (HELP),

European Commission for the Efficiency of Justice (CEPEJ), Group of States against Corruption (GRECO) and attended a session of the Grand Chamber of the ECHR.

The second initiative organised with the support of the Council of Europe took place on 19-20 November 2015 and joined representatives of the Constitutional Court, courts, prosecutors and lawyers in a training seminar, who improved their knowledge about the access to constitutional justice in the light of ECHR case-law and the unconstitutionality exception.

The expert – University Professor Toma Birmontienė – former judge of the Constitutional Court of Lithuania, presented the experience of the Baltic States regarding this indirect remedy of access to the constitutional court. This is the first seminar from the set of seminars planned for the beginning of 2016 within this project.

The goal of the seminar was to disseminate the good practice among all actors authorised with the right to question the constitutionality in a judicial process, mainly in the case of judges and lawyers.

• Other cooperation activities with the Court took place with the financial support of the **United Nations Development Program (UNDP) through the Strengthening the Rule of Law and Protection of Human Rights in Moldova Project**.

Since sharing experience, good practice and knowledge between judges and staff of the institutions is exceptionally important for the aspiration of the Constitutional Court of the Republic of Moldova to implement reforms and European standards in the constitutional jurisdiction system, a group of officials from the Legal Directorate – Record Office, Research and Analysis Division, and Division of Foreign Relations headed by the Secretary General had two successive **study visits and exchange of experience at the Constitutional Courts of Latvia and Lithuania,** respectively.

The working meeting of the staff at the Constitutional Court of Latvia took place during 17-19 May 2015. The Latvian peers, representatives of different structural subdivisions presented detailed information about the organisation, structure, competence and status of Latvian Court, process of preparation of the files for examination, complaints examination procedure in public session, database of Court's case-law and other technical details. Also, on the second working day, the participants had the pos-

sibility to attend a public session and make a working visit to the Supreme Court of Justice of Latvia.

The study visit to the Constitutional Court of Lithuania took place on 20-22 May 2015, which included presentations about the activity of the institution, structure and functional duties of subdivisions, participation in public session. The working agenda included visits to the Supreme Administrative Court and meeting with its Vice-President, national Administration of Courts, District Court of Trakai, and Seimas (Parliament) of Lithuania.

The participants involved actively in discussions and identified a number of good practices and models worth implementing in their own activity.

3.4. Participation in other international events

• Beginning of every judicial year is marked by the European Court of Human Rights in Strasbourg by an official inauguration, solemn session, which ends with a thematic seminar. The subject discussed during the seminar this year referred to the dual character of the principle of subsidiarity.

The President and Secretary General of the Constitutional Court took part in traditional activities organised by the ECHR on 30 January 2015.

• The seminar on the CODICES database of constitutional case-law took place on 26-27 March 2015 in Strasbourg organised by Venice Commission for ACCPUF correspondents. The instructive seminar was attended by officials from Legal Expertise Division and Research and Analysis Division.

• At the end of April, the Constitutional Court of Turkey celebtared the 53rd anniversary organising with this occasion an International Symposium under the heading 'Analysis of Judgements related to Individual Complaints: Challenges and Remedies.

• Another event, with the participation of the President of the Constitutional Court, was organised by the University of Pitești, Faculty of Law and Administrative Sciences (Romania) on 8-9 May 2015. The presentations and discussions of distinct academia and university professors treated the subject of history, culture and citizenship of the European Union during the international conference.

• The XVIIth edition of the Annual International Congress took place on 16-17 October in Regensburg under the aegis of the University of Regensburg and the Professor Rainer Arnold, with the support of German Foundation IRZ. The Congress brought together over 50 foreign participants, representatives of academia and constitutional courts of Albania, Bosnia and Herzegovina, Bulgaria, Italia, Georgia, Latvia, Montenegro, Poland, Romania, Slovakia, Slovenia, Turkey, Ukraine, and Hungary. The subject discussed in two workshops related to the relations, cooperation and conflicts between the constitutional and ordinary courts. The intervention of the President of the Court focused on the relation between the Constitutional Court and courts of the Republic of Moldova, forms of dialogue, application by courts when making justice of the Constitutional Court judgements. He concluded that 'the relation of the Constitutional Court with courts and their competencies to ensure the constitutionality of laws and legality of issued acts to enforce laws is materialised under a single purpose to ensure the observance of human rights and fundamental freedoms, respectively, observing the rule of law principle'.

• On 26 October 2015, at the initiative of the Constitutional Court of Lithuania, the President and Secretary General took part in the official ceremony related to the Constitution Day of Lithuania, marking the 23rd anniversary as well as discussions in roundtables regarding the dialogue between the Constitutional Courts – preconditions, objectives, and perspectives. The solemn ceremony was attended by the President of the Republic of Lithuania, the President of Seimas, Prime Minister and Minister of Justice, who congratulated the participants.

In the same event, the presidents of the Constitutional Courts of Moldova, Lithuania, Georgia and Ukraine signed the Declaration of Establishment of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ).

• On 12-17 November 2015, the President of the Constitutional Court, Alexandru Tănase, took part in the Federalist Society's 2015 National Lawyers Convention, in Washington (the USA), attended traditionally by Justices of European Court of Human Rights, as well as Presidents and representatives of constitutional courts from Europe.

The members of recently established Association BBCJ had a working meeting in Washington. The Presidents and representatives of Constitutional Courts of Georgia, Moldova, Lithuania and Ukraine discussed future activities and new joint initiatives.

• At the end of 2015, between 17-19 December, the President of the Constitutional Court and Secretary General were invited to participate at the International Research and Practical Conference to introduce individual complaints in Ukraine, organised by the Constitutional Court of Ukraine in cooperation with OSCE Mission to Ukraine.

The objective of the Conference was to find out about theoretical and practical experience of other courts, including amending the Constitution and legislation in this regard, structural reform of the Court necessary when an individual complaint is being lodged, other possible problems faced by courts in their activity.

The President Alexandru Tănase moderated one of the sessions and had an intervention on the topic *'Aspects on competence and procedure of the Constitutional Court of RM'* in particular, the examination method of unconstitutionality exception – an indirect recourse of the citizen to the constitutional court.

3.5. Official and courtesy meetings

In 2015, the President of the Constitutional Court, Alexandru Tănase, received official and documentation visits from high officials of the European institutions – co-rapporteurs of the Monitoring Committee of the Parliamentary Assembly of the Council of Europe. Members of the delegation Lise Christoffersen, Piotr Wach, Sylvie Affholder and Luis Herrero, Head of Council of Europe Office in Chisinau; members of OSCE/ODIHR Observation Mission in Moldova to monitor local elections on 14 June 2015; a delegation consisting of Director General of Directorate General Human Rights and Rule of Law of the Council of Europe, Philippe Boillat, and Head of Division, Directorate General for Human Rights and Rule of Law, on the enforcement of judgments of the European Court of Human Rights.

The President received courtesy visits from the accredited Ambassadors in the Republic of Moldova – H.E. Marius Gabriel Lazurca, Ambassador Extraordinary and Plenipotentiary of Romania in Chisinau, H.E. Matyas Szilagyi, Ambassador Extraordinary and Plenipotentiary of the Republic of Hungary in the RM, H.E. James D. Pettit,

Ambassador Extraordinary and Plenipotentiary of the USA in the RM, H.E. Igor Mussalimov, General Consul of the Republic of Kazakhstan in the RM.

Traditionally, the President of the Constitutional Court in the course of the year with the directors and representatives of partner project foundations and external donors, with which the Court has implemented or is in the process of identification or implementation of activities and joint projects – UNDP Moldova, Council of Europe Office in Chisinau, IRZ Foundation.

The President of the Constitutional Court, Alexandru Tănase, took part as a Speaker in the 3rd edition of the Annual Forum for Debates on European Integration of the Republic of Moldova. The event was organised by the Foreign Policy Association (APE) and Friedrich-Ebert Foundation (FES), in partnership with the Ministry of External Affairs and European Integration of the Republic of Moldova.

The objective of the Forum was to provide a platform for comprehensive discussions on the main challenges in the implementation process of the Association Agreement EU-RM and problems that refer to the reform agenda, such as economic integration, independence of justice and fight against corruption, independence of the mass-media and fighting propaganda.

The Constitutional Court has hosted meetings with students and pupils from local and international education institutions in the last years. In 2015 the Court was visited by a group of students from a German summer school, organised by Moldova - Leipzig Institute, Hans-Böckler Foundation and State University of Moldova; groups of pupils from Vasile Alecsandri Lyceum from Ungheni, Lucian Blaga Lyceum from Tiraspol, and Theoretical Lyceum 'Orizont' from Chisinau.

4 BOOK DONATIONS TO THE LIBRARY OF THE COURT

ACCPUF Donation

Thanks to generous support of the Association of Constitutional Courts using the French language (ACCPUF), the Library of the Constitutional Court received a substantial donation of book titles (47 books) in the legal field (constitutional law, electoral law, criminal law, European law, etc.).

The book titles come from well-known French publishing houses in the legal field, for instance, LexisNexis, Dalloz, PUF, etc.

UNDP donation

The Strengthening Rule of Law and Human Rights Protection in Moldova Project funded by the Federal Ministry for Europe, Integration and Foreign Affairs of Austria, co-funded and implemented by the UNDP Moldova, in cooperation with the Office of the United Nations High Commissioner for Human Rights, donated a generous collection of books to the Library of the Constitutional Court in Romanian, English and French languages.

The donation is part of the effort of the Constitutional Court to develop research activities, being a catalyser of new researches and analysis perspectives in law matters, as well as a support in ongoing development.

TITLE V

THE ACTIVITY OF THE CONSTITUTIONAL COURT IN FIGURES

TITLUL V

THE ACTIVITY OF THE CONSTITUTIONAL COURT IN FIGURES

In 2015 there were 59 complaints lodged with the Constitutional Court, 7 complaints were taken over from 2014, so the task of the Court for 2015 implied 66 pending complaints *(see Charts 1, 2, 4 and 6)*

Of the total 66 pending complaints, 53 complaints were examined in 2015 and namely: 32 complaints followed by 31 judgements *(2 files were joined);* 2 complaints followed by 2 Opinions; 12 complaints were declared inadmissible, and 7 complaints were returned to authors by letters. 13 complaints have been transferred to 2016 *(see Charts 3, 11).*

Pending complaints of the Court in 2015 were lodged by the following subjects, in accordance with provisions of Art. 25 of the Law on Constitutional Court No. 317-XIII of 13.12.1994:

- President of the Republic of Moldova – 1 complaint;
- Members of Parliament and Parliamentary factions – 47 complaints *(6 complaints were transferred from 2014, 41 complaints were lodged in 2015 and 10 complaints were transferred to 2016);*
- Supreme Court of Justice – 7 complaints *(7 complaints were lodged in 2015 and 3 complaints were transferred to 2016);*
- People's Advocate – 3 complaints (*1 complaint was transferred from 2014, 2 complaints were lodged in 2015*);
- Central Electoral Commission - 7 complaints *(See Chart 6).*

Of the 47 pending complaints (including 6 transferred from 2014) lodged by Members of Parliament and parliamentary factions, 21 complaints were reviewed on the merits, 10 complaints were declared inadmissible, 6 complaints were returned by letters, and 10 complaints were transferred to 2016. At the same time, of 7 complaints lodged by the Supreme Court of Justice, 2 complaints were reviewed on the merits, 2 complaints were declared inadmissible and 3 complaints were transferred to 2016. Of 3 complaints lodged by the People's Advocate, 2 complaints were reviewed on the merits, and 1 complaint was returned by letter. Also, in 2015 the President of the Republic of Moldova lodged a complaint reviewed on the merits (*see Charts 5, 9, 10, 14, and 15*).

Also, in 2015 the Court received two complaints requesting the opinion on the initiative to revise the Constitution *(see Charts 4, 7 and 11).*

After examining pending complaints in 2015, the Court delivered 32 judgements, and namely:

– 18 judgements on constitutional review of normative acts;
– 5 judgements on interpretation of certain provisions of the Constitution;
– 2 judgements related to the exception of unconstitutionality;
– 6 judgements concerning the validation of MP mandates;
– 1 judgment on the approval of 2014 Report *(see Charts No.8, No.12).*

In *18 judgements* on constitutional review of normative acts and *2 judgements* on the unconstitutionality exception, the Court delivered on the constitutionality or unconstitutionality of challenged legal provisions, as follows:

– in *13 judgements* at least one legal provision of the total provisions challenged was recognized as constitutional;
– in *5 judgements* at least one legal provision of the total provisions challenged was recognized as unconstitutional;
– in *2 judgements* the Court ruled on constitutionality of some legal provisions and non-constitutionality of other legal provisions (*see Chart 13*).

A | STATISTICS FOR 2015

Chart 1

Jurisdiction of the Constitutional Court in 2015

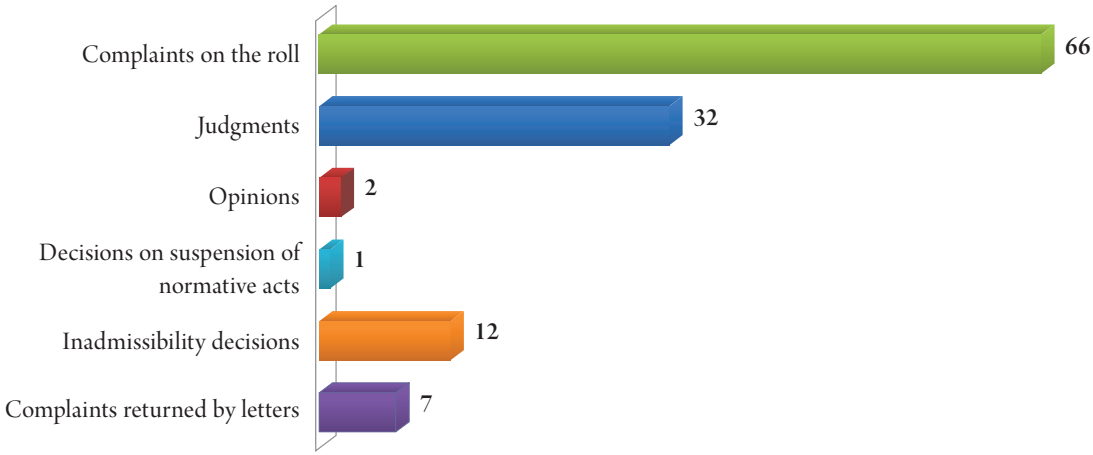


Chart 2

Complaints examined by the Constitutional Court in 2015

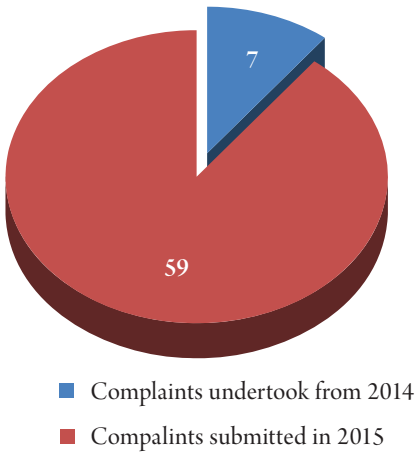


Chart 3

Complaints settled in 2015 and transferred for 2016

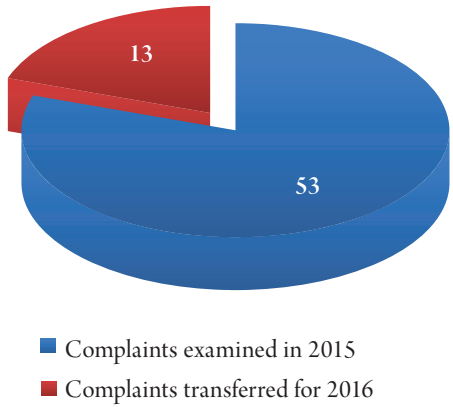


Chart 4

Object of complaints examined by the Constitutional Court in 2015

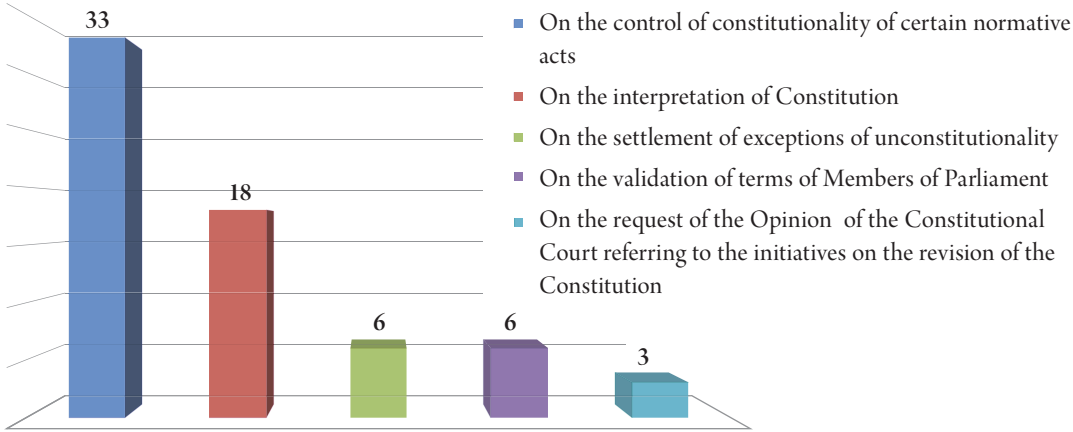


Chart 5

Subjects having submitted complaints to the Constitutional Court in 2015

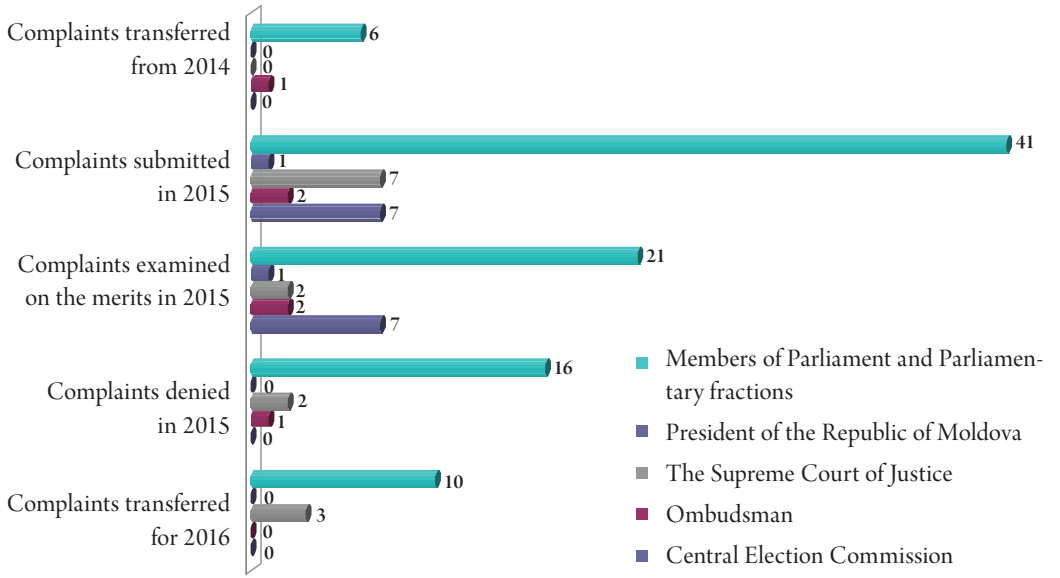


Chart 6

Complaints settled by the Constitutional Court in 2015, including those undertook from 2014 and those transfered for 2016 *(per subiect)*

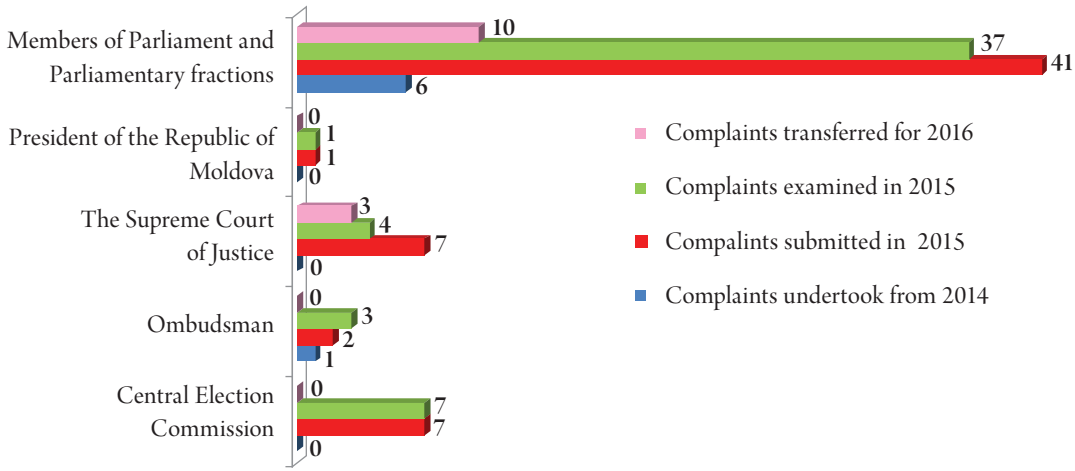


Chart 7

Complaints settled by the Constitutional Court in 2015, including those undertook from 2014 and those transfered for 2016 *(per obiect)*

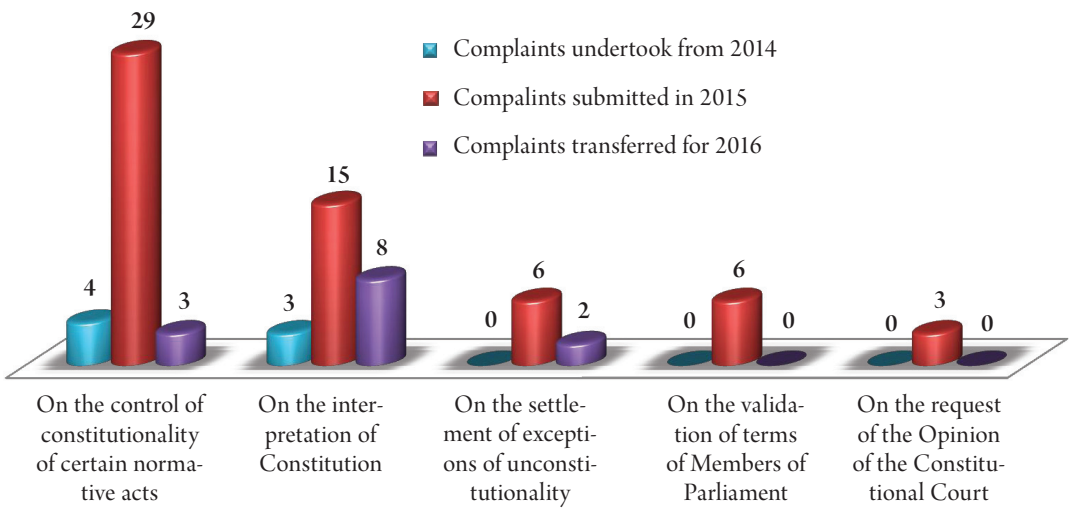


Chart 8

Complaints settled by the Constitutional Court in 2015 by judgments *(per obiect)*

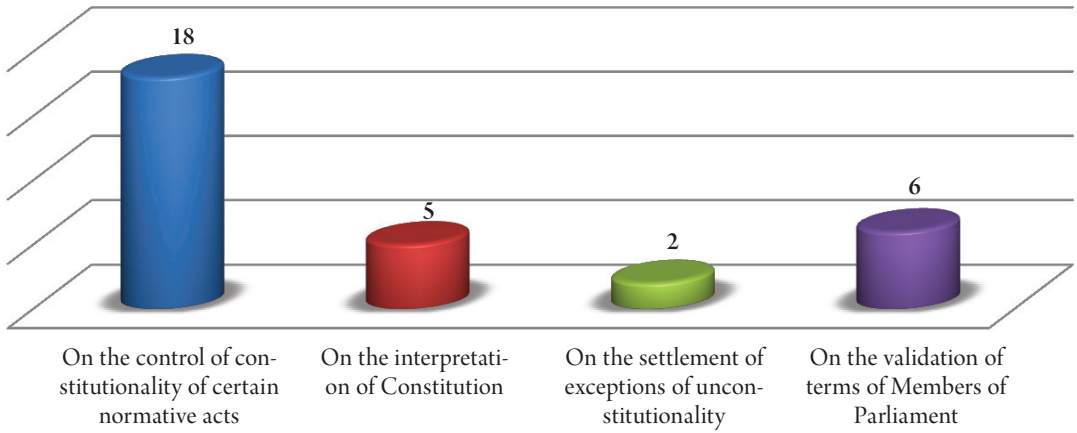


Chart 9

Complaints submitted by Parliamentary fractions, including those undertook from 2014 and those transferred for 2016

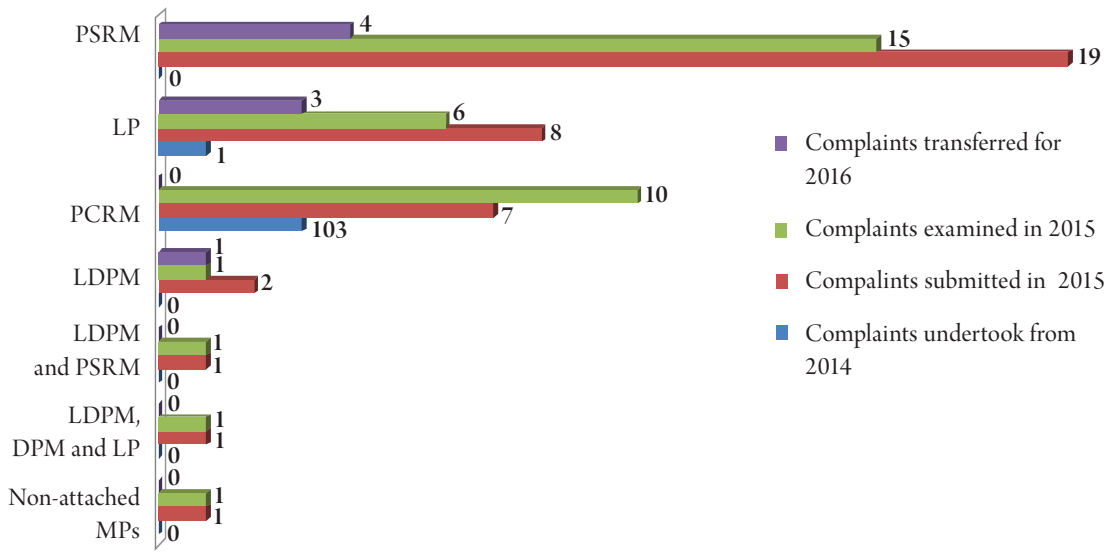


Chart 10

Complaints submitted by members of Parliament and Parliamentary fractions, denied or examined on the merits in 2015

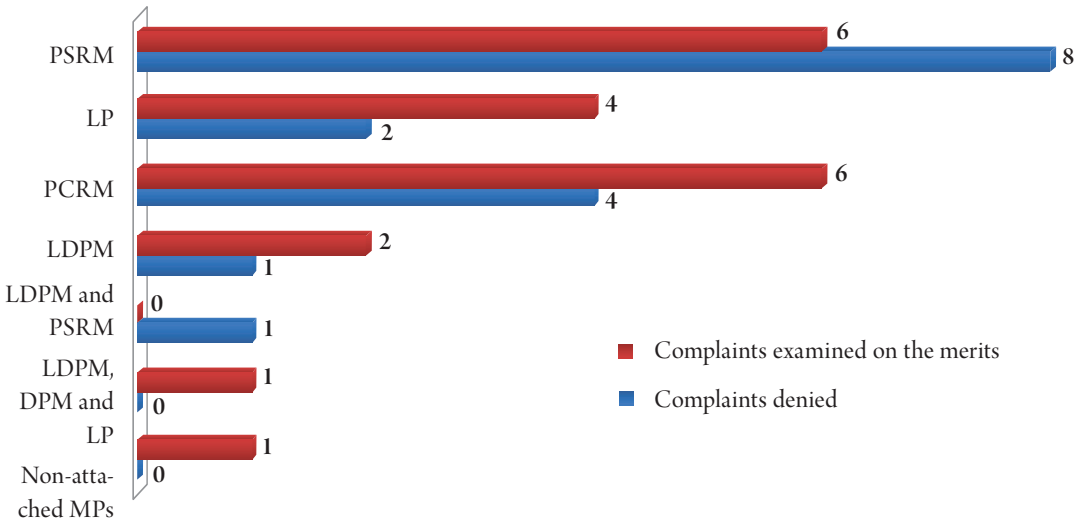


Chart 11

Acts rendered by the Constitutional Court in 2015

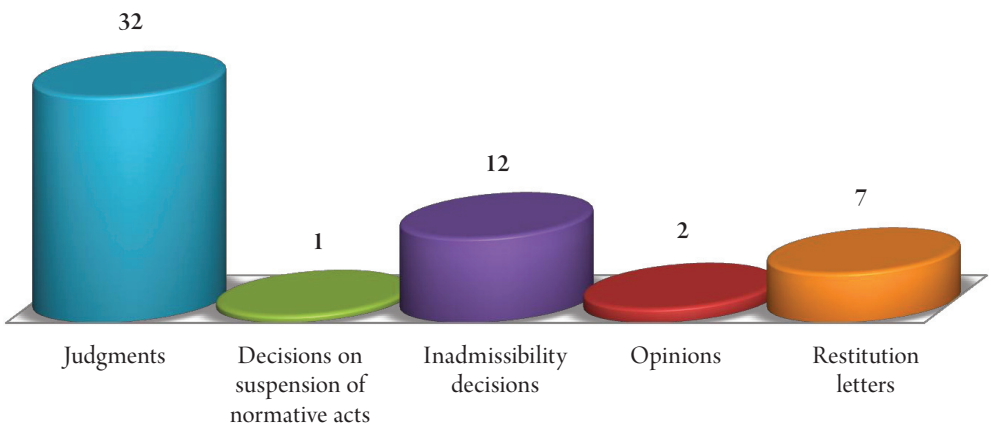


Chart 12

Judgments delivered by the Constitutional Court in 2015 *(per obiect)*

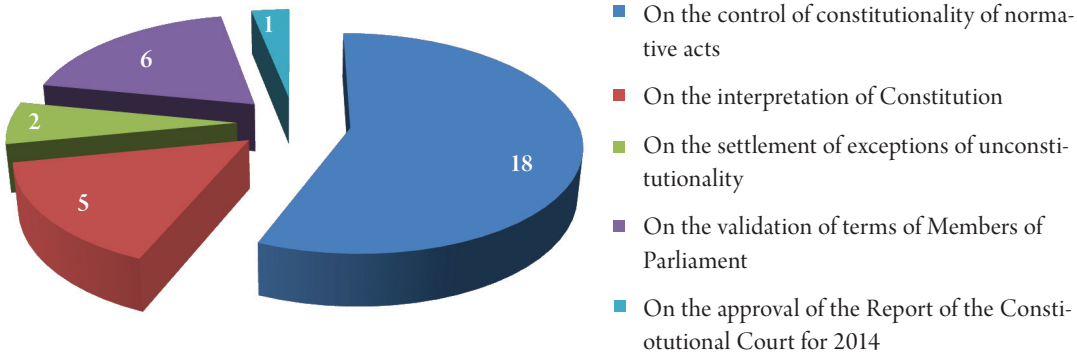


Chart 13

Ascertainments of the Constitutional Court in the decisions delivered

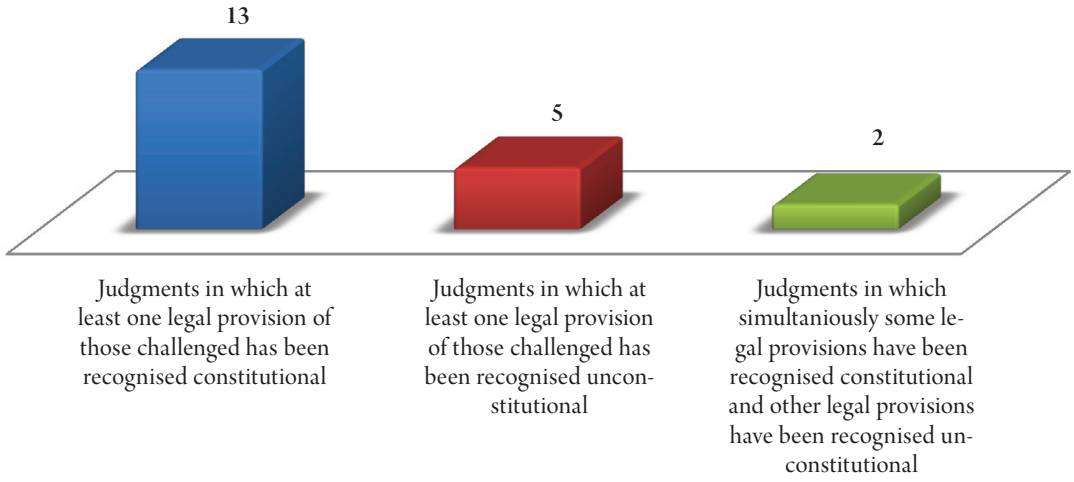


Chart 14

Solutions delivered in respect of the complaints examined on the merits *(per subject)*

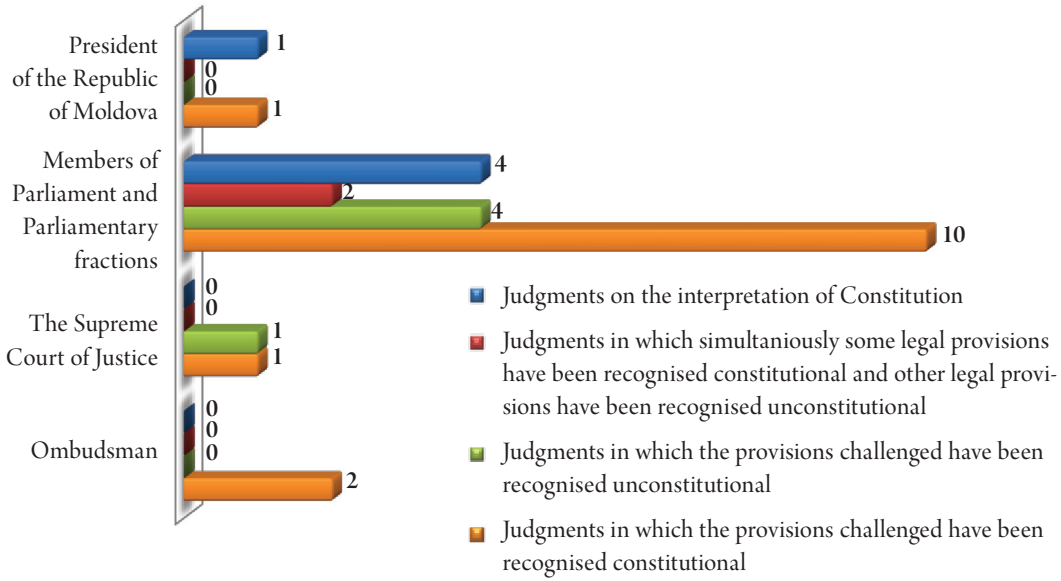


Chart 15

Solutions delivered by the Constitutional Court on the complaints submitted by Members of Parliament and Parliamentary fractions

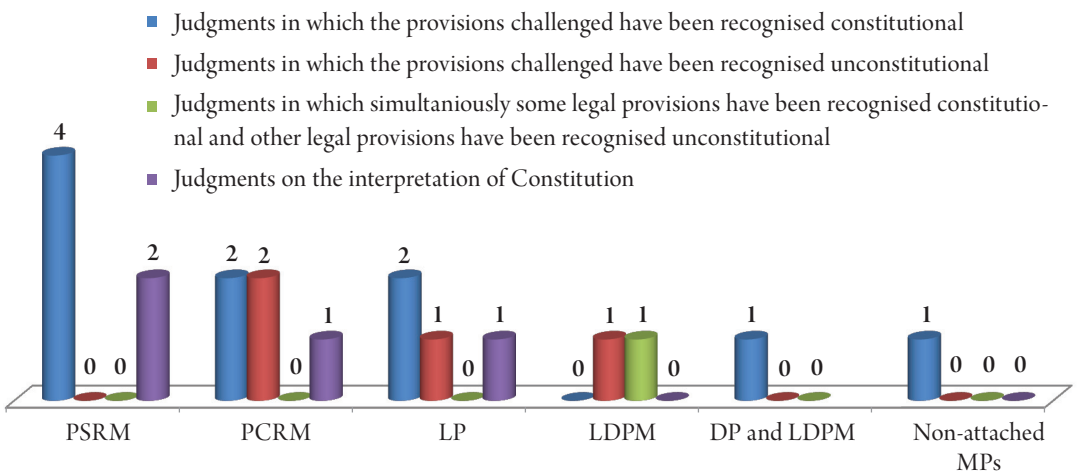
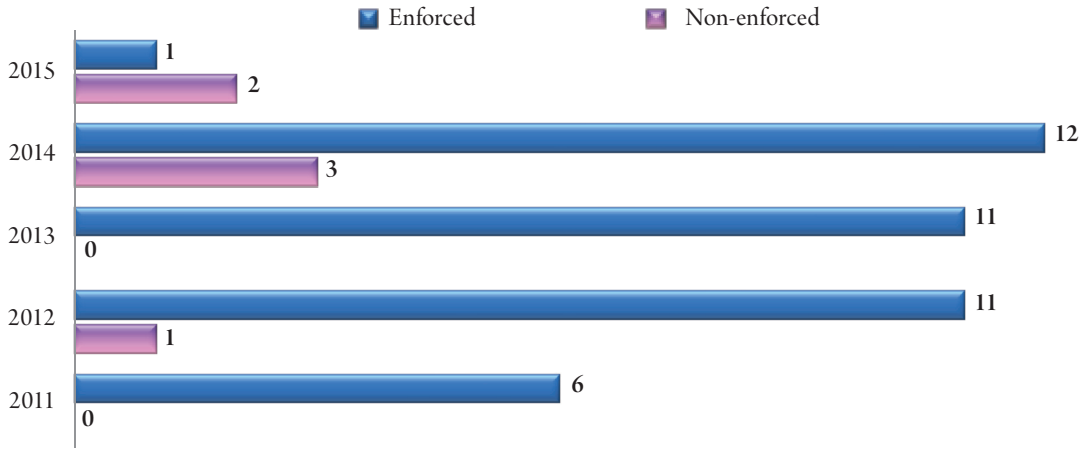


Chart 16

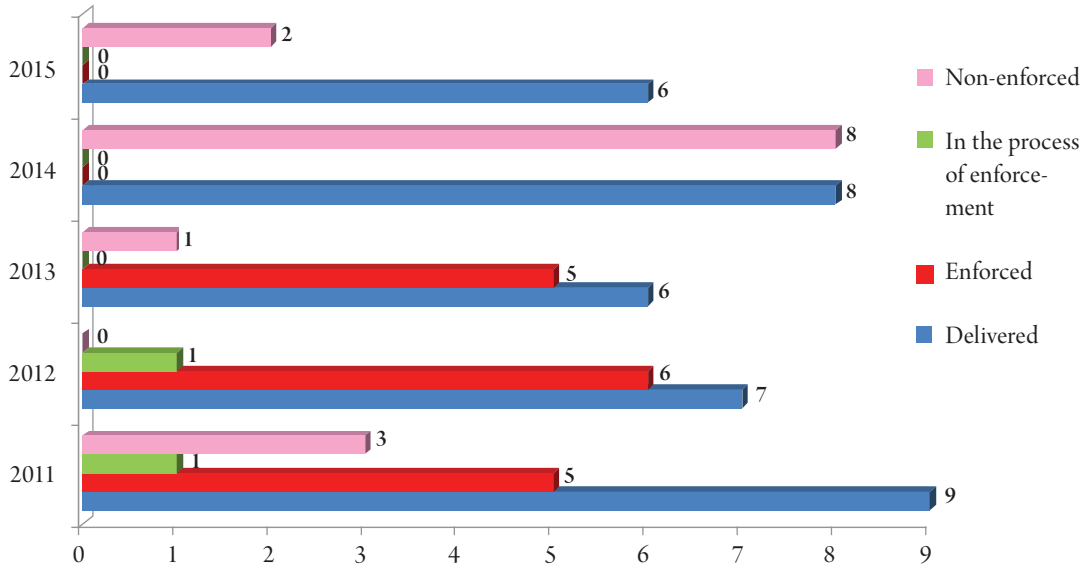
Enforcement of the Judgments delivered by the Constitutional Court in 2011-2015*



* Judgements to be enforced by 31.12.2015

Chart 17

Enforcement of the addresses delivered by the Constitutional Court in 2011-2015*



* Addresses to be enforced by 31.12.2015

B | EVOLUTION OF EXCEPTIONS OF UNCONSTITUTIONALITY IN 1995-2015

Chart 18a

Complaints on the exception of unconstitutionality out of the total number of complaints submitted in 1995 - 2015

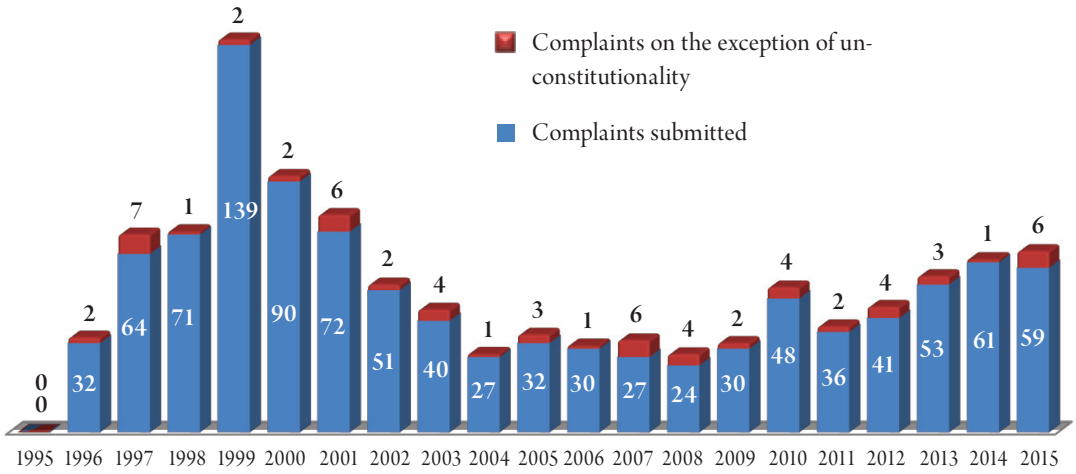


Chart 18b

Share of exceptions of unconstitutionality within the total number of complaints submitted in 1995 - 2015

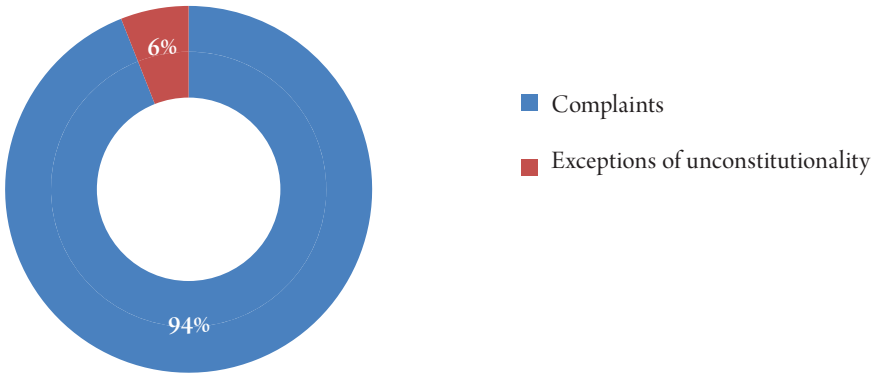


Chart 19a

Solutions delivered on the exceptions of unconstitutionality

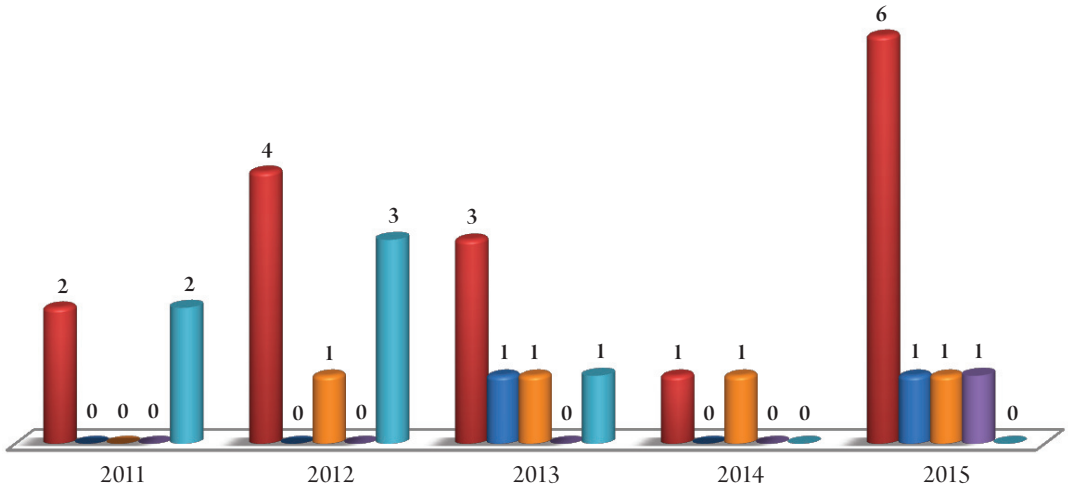
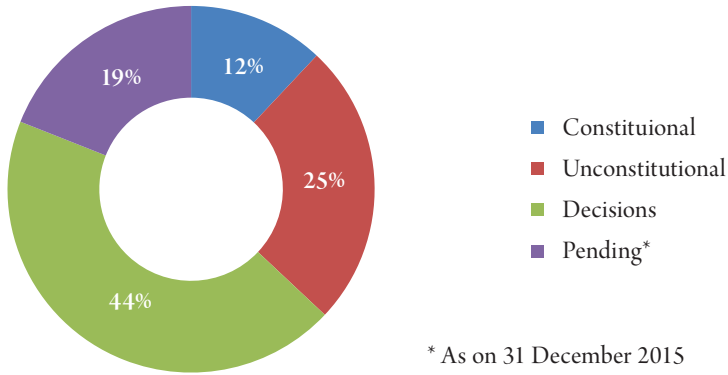


Chart 19b

Solutions delivered in respect of the exceptions of unconstitutionality during 1995-2015



* As on 31 December 2015

C | EVOLUTION OF CONSTITUTIONAL COURT ACTIVITY IN 1995-2015

Chart 20

Exercise of constitutional jurisdiction within the period 1995-2015

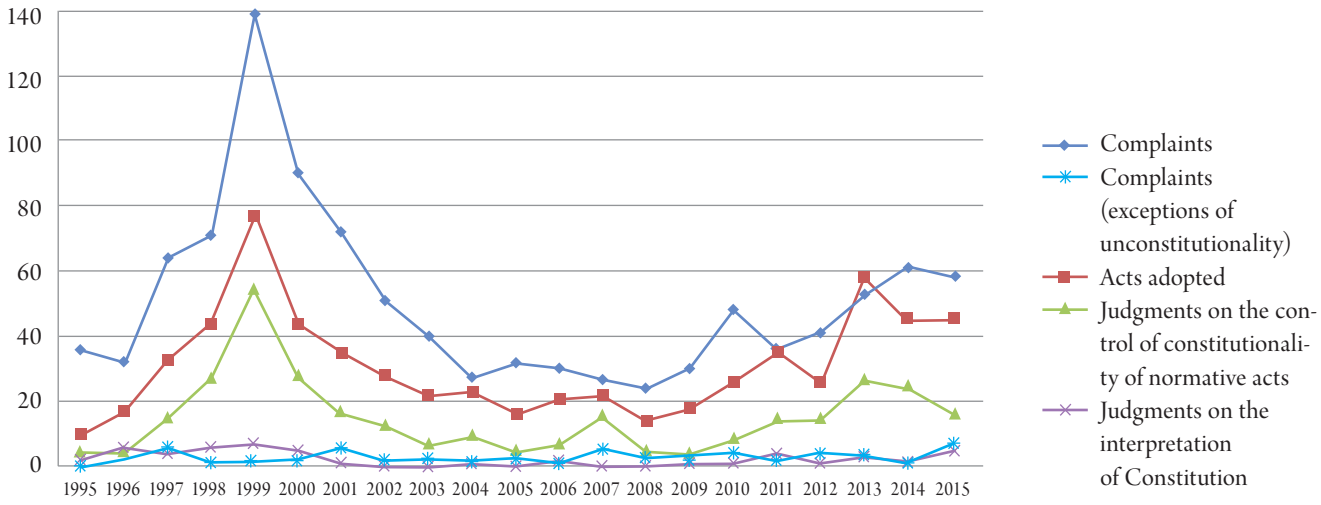


Chart 21

Complaints submitted in 1995 - 2015

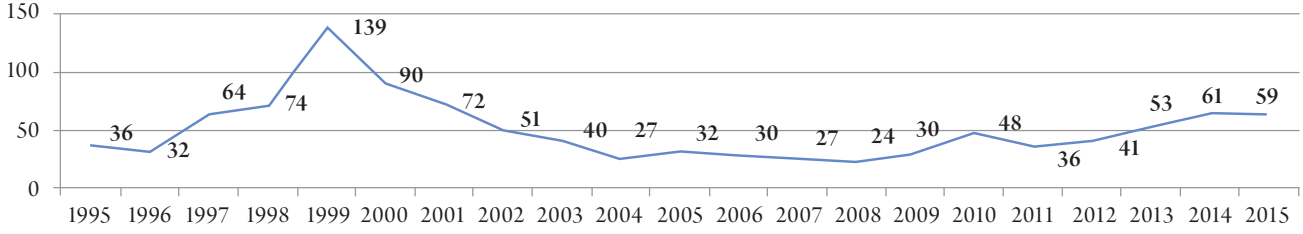


Chart 22

Complaints *(exceptions of unconstitutionality)* in 1995 - 2015

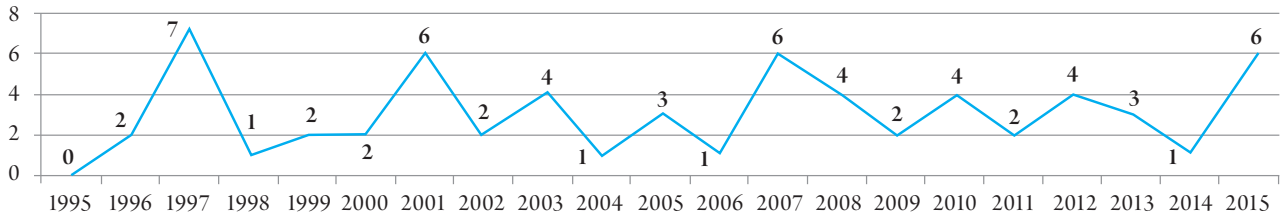


Chart 23

Acts adopted in 1995 - 2015

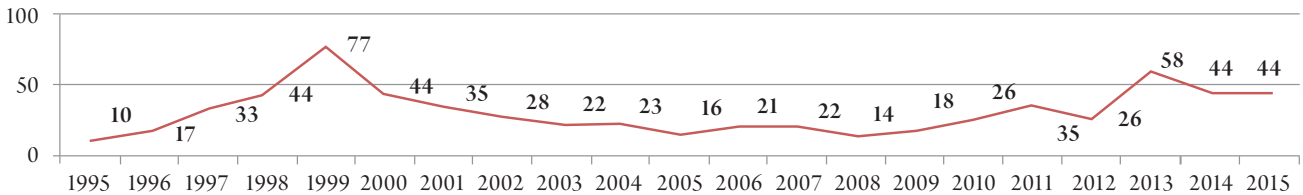


Chart 24

Judgments on the control of constitutionality of normative acts adopted in 1995 - 2015

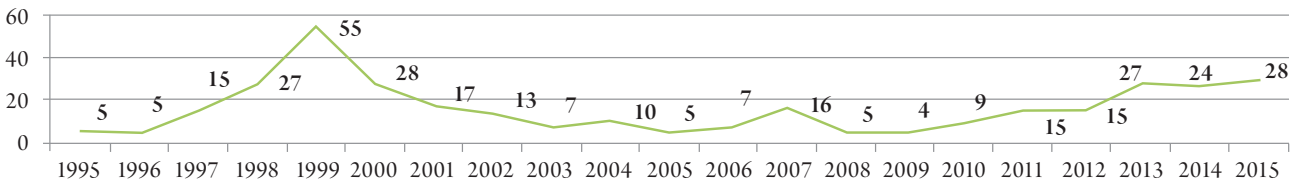
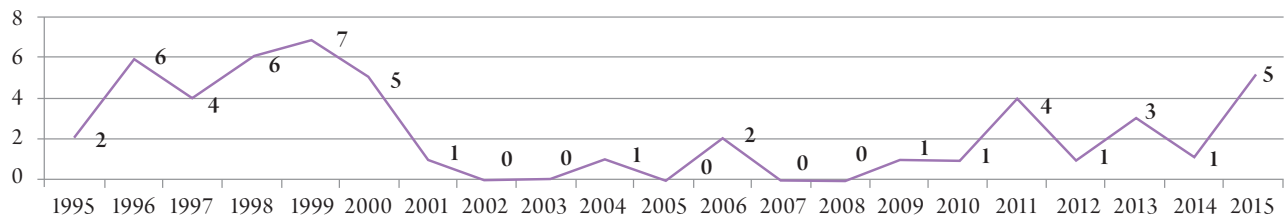


Chart 25

Judgments on the interpretation of Constitution in 1995 - 2015



D | LIST OF ACTS DELIVERED BY THE CONSTITUTIONAL COURT IN 2015

No.	Number and title of judgement	No. of complaint
1.	Judgement No. 1 of 15.01.2015 on Approving the Report on Constitutional Jurisdiction in 2014	
2.	Judgement No.2 of 20.01.2015 to interpret Article 1 para. (3) combined with Articles 69 and 70 of the Constitution of the Republic of Moldova *(immunity and termination of mandate)*	Complaint No. 6b of 06.02.2014
3.	Judgement No.3 of 20.01.2015 on constitutional review of Parliament's Decision No.169 of 21 July 2014 on Dismissing Director General of the Board of Directors of National Energy Regulatory Agency (2)	Complaint No. 59a of 27.11.2014
4.	Judgement No. 4 of 23.02.2015 on validation of mandates of Members of Parliament of the Republic of Moldova	Complaint No. 4e of 23.02.2015
5.	Judgement No. 5 of 09.04.2015 on validation of one mandate of Member of Parliament of the Republic of Moldova	Complaint No. 14e of 08.04.2015
6.	Judgement No. 6 of 16.04.2015 on constitutional review of some provisions of the Criminal Code and Criminal Procedure Code *(extended confiscation and illicit enrichment)*	Complaint No. 60a of 03.12.2014
7.	Judgement No. 7 of 16.04.2015 on constitutional review of some provisions of Law No. 325 of 23 December 2013 on Professional Integrity Testing	Complaint No. 43a of 20.06.2014
8.	Judgement No. 8 of 11.05.2015 on constitutional review of Article 153 of the Education Code *(termination of individual labour contract of principals of some public education institutions)*	Complaint No. 7a of 04.03.2015

9.	Judgement No. 9 of 11.05.2015 on validation of one mandate of Member of Parliament of the Republic of Moldova (Complaint 19e/2015-05-07)	Complaint No. 19e of 07.05.2015
10.	Judgement No. 10 of 12.05.2015 on exception of unconstitutionality of Article 473 para. (1) para. 2) of the Code of Administrative Contraventions *(examination of appeal in contravention procedure)*	Complaint No. 6g of 26.02.2014
11.	Judgement No. 11 of 13.05.2015 on constitutional review of some Government Decisions on assuming the responsibility for some draft laws and laws adopted by assuming the responsibility	Complaint No.16 a of 10.04.2015 and complaint No. 17 a of 10.04.2015
12.	Judgement No.12 of 14.05.2015 on exception of unconstitutionality of Article 287 para. (1) of the Criminal Procedure Code *(resuming criminal prosecution)*	Complaint No.15g of 09.04.2015
13.	Judgement No.13 of 15.05.2015 on constitutional review of Law No. 261 of 1 November 2013 on College of Physicians of the Republic of Moldova	Complaint No.16a of 05.03.2014
14.	Judgement No.14 of 15.06.2015 on constitutional review of some provisions of para. 25, 55 and 58 of the Regulation on Organising PhD Studies, Cycle III, approved by Government Decision No. 1007 of 10 December 2014 *(regulating the activity of PhD supervisor)*	Complaint No.21a of 11.05.2015
15.	Judgement No.15 of 16.06.2015 on constitutional review of some provisions of Article 291 para. (3) of the Electoral Code *(organisation of voting stations abroad)*	Complaint No. 12a of 01.04.2015
16.	Judgement No. 16 of 17.06.2015 on interpretation of Article 101 paragraphs (2) and (3) of the Constitution (Effects of the Prime-minister dismissal)	Complaint No. 26b of 16.06.2015

17.	Judgement No.17 of 19.06.2015 on constitutional review of provisions of Art. 49 para. (13) of Law No. 1134 – XIII of 2 April 1997 on Joint-Stock Companies *(payment of dividends)*	Complaint No. 22a of 20.05.2015
18.	Judgement No. 18 of 19.06.2015 on constitutional review of paragraph 3 of Annex 2 to Law No. 1593–XV of 26 December 2002 on Amount, Procedure and Terms of Payments of Mandatory Medical Insurance Fees	Complaint No. 8a of 04.03.2015
19.	Judgement No.19 of 22.06.2015 on the interpretation of Article 34 para. (3) of the Constitution of the Republic of Moldova *(access to information)*	Complaint No.23b of 27.05.2015
20.	Judgement No. 20 of 23.06.2015 on constitutional review of some provisions of Article 32 para.(1) of Law No.544-XIII of 20 July 1995 on Status of Judge (pension for judges of the Constitutional Court)	Complaint No. 25a of 12.06.2015
21.	Judgement No. 21 of 24.06.2015 on interpretation of Article 69 para. (2), 70 para. (1), 99 and 100 of the Constitution of the Republic of Moldova *(Effects of incompatibility situations for the Member of Parliament)*	Complaint No. 1b of 26.01.2015
22.	Judgement No.22 of 16.07.2015 on constitutional review of the Parliament's Decision No. 140 of 3 July 2015 on appointing the People's Advocate for the Rights of the Child	Complaint No. 31a of 10.07.2015
23.	Judgement No.23 of 04.09.2015 on validation of mandates of Members of Parliament of the Republic of Moldova	Complaint No. 34e of 19.08.2015
24.	Judgement No. 24 of 06.10.2015 on constitutional review of Article 28 let. b) of Law on Citizenship of the Republic of Moldova No. 1024-XIV of 2 June 2000 *(procedure of recognising the citizenship)*	Complaint No. 10a of 31.03.2015

25.	Judgement No. 25 of 13.10.2015 on constitutional review of some provisions of Government Decision No. 79 of 23 January 2006 on the approval of List of narcotic drugs, psychotropic substances and plants containing such substances in illicit traffic as well as their quantities *(delimitation of narcotic drugs and psychotropic substances)*	Complaint No.30a of 10.07.2015
26.	Judgement No. 26 of 21.10.2015 on validation of mandates of Members of Parliament of the Republic of Moldova	Complaint No. 40e of 21.10.2015
27.	Judgement No. 27 of 17.11.2015 on constitutional review of Parliament's Decision No. 172 of 15.10.2015 on lifting Parliamentary immunity *(secret vote in Parliament)*	Complaint No. 39a of 19.10.2015
28.	Judgement No. 28 of 23.11.2015 on constitutional review of some provisions of Law No. 54 of 21.02.2003 on fighting against extremist activity *(Nazi symbols or similar to confusion)*	Complaint No.29a of 29.06.2015
29.	Judgement No. 29 of 24.11.2015 on interpretation of Art. 85 of the Constitution *(dissolution of the Parliament in the last 6 months of the mandate of the President of the RM)*	Complaint No. 44b of 06.11.2015
30.	Judgement No. 30 of 08.12.2015 on constitutional review of Parliament's Decision No. 224 of 3 December 2015 on repealing the Parliament's Decisions on appointing Directors of the Board of the National energy Regulatory Agency *(dismissal of ANRE Directors)*	Complaint No. 53a of 04.12.2015
31.	Judgement No.31 of 10.12.2015 on validation one mandate of Members of Parliament of the Republic of Moldova	Complaint No. 54e of 08.12.2015

32.	Judgement No. 32 of 29.12.2015 on constitutional review of Decree of the President of the Republic of Moldova No. 1877-VII of 21 December 2015 on appointing the candidate for the position of the Prime-minister and interpretation of Article 98 para. (1) of the Constitution of the Republic of Moldova	Complaint No. 59a of 28.12.2015
33.	Opinion No. 1 of 24.07.2015 on initiative to revise Article 78 paragraph (3) of the Constitution of the Republic of Moldova	Complaint No. 33c of 23 July 2015
34.	Opinion No. 2 of 10.11.2015 on civic initiative to revise Articles 60, 70, 78 and 89 of the Constitution of the Republic of Moldova through Republican Referendum	Complaint No. 45c of 06.11.2015

Summary