REPORT

ON THE EXERCISE
OF CONSTITUTIONAL
JURISDICTION IN 2016

PROIECT UE
SUPORT PENTRU CURTEA
CONSTITUȚIONALĂ A REPUBLICII MOLDOVA

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REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2016

CHIȘINĂU 2017

Republic of Moldova
CONSTITUTIONAL COURT

JUDGEMENT

on approval of the Report
on the Exercise of Constitutional
Jurisdiction in 2016

Chisinau
19 January 2017

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

Mr. Alexandru TĂNASE, *President,*
Mr. Aurel BĂIEȘU,
Mr. Igor DOLEA,
Mr. Victor POPA,
Mr. Tudor PANȚÎRU,
Mr. Veaceslav ZAPOROJAN, *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 2016,

guided by the provisions of art.26 of the Law no.317-xIII of 13 December 1994 on Constitutional Court, art.61 para.(1) and art.62 p. f) of the Constitutional Jurisdiction Code no.502-xiii of 16 June 1995,

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

DECIDES:

1. To approve the Report on the Exercise of Constitutional Jurisdiction in 2016, according to the Annex.
2. This Judgment shall be published in the *Official Gazette of the Republic of Moldova.*

President Alexandru TĂNASE

Chisinau,
19 January 2017,
JCC No. 1

Approved
by the Judgment of the Constitutional Court
no. 1 of 19 January 2017

REPORT

ON THE EXERCISE OF CONSTITUTIONAL JURISDICTION IN 2016

TITLE I

CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

TITLE I

CONSTITUTIONAL SYSTEM OF THE REPUBLIC OF MOLDOVA

A | STATUS AND FUNCTIONS OF THE CONSTITUTIONAL COURT

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 govern, *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 the period October 2014 – July 2016 the Constitutional Court carried out its activity in a panel of five judges. By the Government Decision No. 840 of 06.07.2016 Mr. Veaceslav Zaporojan has been appointed to the position of Judge of the Constitutional Court and from that date on the Court has exercised its jurisdictional activity in full composition.

The structure of the Plenum of the Constitutional Court in 2016 was as follows *(in order of accession into office):*

1. Alexandru TĂNASE, President
2. Igor DOLEA
3. Tudor PANȚÎRU
4. Aurel BĂIEȘU
5. Victor POPA,
6. Veaceslav ZAPOROJAN, judges.
Since its foundation, the constitutional court has had 21 constitutional judges.

C | SUBMISSION OF COMPLAINTS TO 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 officio*. The Constitutional Court thus exercises constitutional jurisdiction based on complaints submitted by the following subjects entitled according to Art. 25 of the Law on the Constitutional Court, taking into account the amendments operated by the *Law no. 24 of 04.03.2016*, as well as Art. 38 para. (1) of the Code of Constitutional Jurisdiction:

- President of the Republic of Moldova;
- Government;
- Minister of Justice;
- Supreme Court of Justice;
- Prosecutor General;
- member of the Parliament;
- Parliamentary fraction;
- Ombudsman and Ombudsman for Children's Rights;
- Councils of territorial-administrative units of first or second level, People's Assembly of Găgăuzia (Gagauz-Yeri) – in cases exercising the review of constitutionality of laws, regulations and decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions, ordinances and orders of the Government, as well as of international treaties to which the Republic of Moldova is party to, which fail to comply with the provisions of Art. 109 and, correspondingly, of Art. 111 of the Constitution of the Republic of Moldova.

The complaints filed by the subjects entitled with this right shall be motivated and should meet the requirements of form and content set out in Art. 39 of the Code of Constitutional Jurisdiction and in the Rules on the examination of complaints submitted to the Constitutional Court, approved by the Decision of the Constitutional Court no. AG-3 of 3 June 2014. The Constitutional Court must rule on the complaint within 6 months of the receipt of the case materials, and this term may be extended by a decision of the President of the Court.

D | OUTSTANDING ELEMENTS OF CONSTITUTIONAL JURISPRUDENCE IN 2016

1 EXCEPTION OF UNCONSTITUTIONALITY

On 9 February 2016 the Constitutional Court adopted *Judgment no. 2 on the interpretation of Art. 135 para.(1) p.a) and g) of the Constitution of the Republic of Moldova*, according to which the Court ruled that not only the Supreme Court of Justice, rather the courts of all levels (first instance courts and the Courts of Appeal) are entitled to submit complaints to the Constitutional Court with a view to raise the exception of unconstitutionality of legal provisions which are to be applied while examining a case pending before that court.

By definition, the institution of raising the exception of unconstitutionality grants to the courts of all levels the opportunity to resolve the situations when, while trialing the case, the parties or the judge face an uncertainty in relation to the constitutionality of the legal provision which shall be applied.

The exception of unconstitutionality may be raised in front of the court bay **any of the** *parties* to the trial or by the representative thereof, as well as by the **court of law *ex officio.***

The complaint referring to the control of constitutionality of certain legal provisions that are to be applied while examining the case shall be submitted directly to the Constitutional Court by the judge/panel of judges from the Supreme Court of Justice, courts of appeal and first instance courts which are trialing the case.

The ordinary judge shall not rule on the grounds of the complaint or in respect of conformity with the Constitution of the challenged legal provisions **and shall limit itself to the verification of the compliance with the following criteria:**

(1) the object of the exception falls into the category of acts provided in Article 135 para.(1) p.a) of the Constitution;
(2) the exception is raised by a party or its representative, or it is indicated that it is raised by the trial court *ex officio*;
(3) the challenged provisions shall be applied while settling the case;
(4) there is no earlier judgment of the Court in respect to the challenged provisions.

According to its rationale, the exception of unconstitutionality is a constitutional guarantee of the rights and freedoms granted to citizens in order to protect themselves against eventual deviations of the legislature by adopting legal provisions that are contrary to the Constitution. Given the fact that the Supreme Law does not provide expressly the right of citizens to submit complaints to the Constitutional Court, the exception of constitutionality is thus a way granting indirect access of individuals to the Constitutional Court and this fact falls within the chain of actions taken with a view to guarantee the right to fair trial. Moreover, this indirect path offers the Constitutional Court the possibility, in its position as guarantor of the supremacy of the Constitution, to exercise control over the legislative power in terms of respect for the fundamental human rights and freedoms.

2 REVIEW OF CONSTITUTIONALITY OF CONSTITUTIONAL AMENDMENTS

On 4 March 2016, the Constitutional Court of Moldova delivered the *Judgment on the review of constitutionality of certain provisions of the Law no. 1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova* (the manner of electing the President).

The Court mentioned that constitutional provisions referring to the amendment of the Constitution are determined by the notion, nature and goal of the Constitution itself. In this regard, any amendment may only be operated upon complying with the principles of Constitution's supremacy, its stability, consistency of provisions and balance of the values enshrined by the Supreme Law, as well as the power of the Constitutional Court to deliver opinions on the initiatives to amend the Constitution within the shared competence of the Parliament and of the Court in the process of amending the Constitution.

The Court noted that the stability of the Constitution is a characteristic which, along with other characteristics (among which and, first of all, with special legal force, supreme of the Constitution), establishes a difference between the procedures of adopting amendments

to the Constitution and those concerning the adoption of other categories of law. Pursuing this goal, technical rigid means of protecting its stability are enshrined in the Constitution.

The Court also emphasized that no amendment to the Constitution may be adopted which would hinder the harmony of constitutional provisions or the harmony of the values enshrined in constitutional provision.

Therefore, when amending the Constitution, there shall be considered that it is an integral act, all the provisions of the Constitution being interconnected to the extent that the content of certain provisions of the Constitution determine the content of other provisions thereof. Provisions of the Constitution make up a harmonious system, so that none of the constitutional provisions may be contrary to other provisions thereof. Both the nature of the Constitution as an act with supreme legal force and the idea of constitutionality imply that there are any and there cannot exist any lacks or internal contradictions of the Constitution.

In this respect, no amendment to the Constitution can lead to a collision of Constitutional provisions or values enshrined in constitutional provision.

Given the abovementioned arguments, the Constitutional Court held that, within the meaning of article 135 para. (1) let. c), as corroborated with the provisions of Art. 141 para.(2) and 143 para.(1) of the Constitution:

a) Following the issue of the Opinion of the Constitutional Court, no interventions are admitted in the text of the draft law to revise the Constitution, and any disregard or exceeding of its limits may be regarded as grounds for the nullity of any such modifications.

b) If there are any amendments accepted by the MPs during the second reading of the draft law on the revision of the Constitution, a repeated Opinion of the Constitutional Court is needed.

c) If the Constitutional Court delivers a repeated Opinion over the draft law to revise the Constitution that has been substantially amended during the second reading in the Parliament, this draft law shall be subject to all the procedures provided in Art. 143 para.(1) of the Constitution.

In this context, the Court declared unconstitutional the provisions of the law on revising the Constitution regarding the procedure of electing the President of the Repu-

blic of Moldova by the vote of 3/5 of the MPs. As a consequence, the Court revived the provisions of Art. 78 and Art. 89 in force prior to the amendments operated by the Law no. 1115 of 5 July 2000 amending the Constitution of the Republic of Moldova.

E | REPORT ON THE ASSESSMENT OF THE CONSTITUTIONAL COURT WITHIN THE PEER ASSESSMENT MISSION OF LAW ENFORCEMENT BODIES IN THE REPUBLIC OF MOLDOVA *(PEER REVIEW)*

On 27 May the General Assessment Report of the EU Expert Assessment Mission on the structure and activity of law enforcement bodies was officially launched where the activity of the Constitutional Court was assessed in line with a number of other state institutions. The aim of the Peer Review was to assess the functioning and the level of independence of the Constitutional Court and the assessment has been carried out by *Mr Alexander Balthasar* (Austria), head of the Institute for State Orga-nisation and Administrative Reform in the Austrian Federal Chancellery (Prime Minister's Office); Member of the Bureau of the Steering Committee on Democracy and Governance of the Council of Europe; adjunct Professor (Priv.-Doz.) for Constitutional Law and General Political Theory at Karl-Franzens-University of Graz and Mr *Michael Groepper,* (Germany), former judge of the Supreme Administrative Court of Germany (Bundesverwaltungsgericht).

The Peer Review has been carried out following a request by the Parliament and the Government of the Republic of Moldova in the context of the Strategy on Justice Sector Reform for the years 2012-2016. The Assessment Mission took place between 30 November – 5 December 2015 and was carried out mainly by discussions with the Court judges, the staff of the Court Secretariat, as well as by interviews with the President of the Supreme Court of Justice, General Prosecutor, other persons within the prosecutor's office, representatives of the European Union and of the Council of Europe in Chișinău, representatives of the academia, of the Bar Association and of the civil society.

Conclusions and Recommendations of the Peer Review with regard to CCM

***General Performance of the Constitutional Court*:** The Constitutional Court operates quite efficiently, the Court is well organized and well equipped both with mate-

rial and human resources. The appointed judges and the staff seem to be well trained, performing their duties in a professional manner. The working method applied when elaborating its judgements – motivating its judgements at length, finding innovative arguments, not least by invoking general principles of law or making use of international documents, but on the same time basing its conclusions on clear-cut constitutional provisions – can be endorsed.

Independence of the Court. Sufficient independence of the Court being a core institutional issue, the experts have noted that both the constitutional framework as well as the implementing provisions as such seem, in principle, to meet western standards. Nevertheless, there are indications that this independence continues to need to be defended against adverse advances of other actors. The experts also had appreciated the existence of constitutional guarantees as well as the fact that the Court has its own budget.

CCM Judges. Based on the experts' conclusions, the option of reappointment obviously affects the needed independence and might undermine the confidence of the general public. In this view the experts recommend to extend the single term of office to a maximum of nine years, but at the same time to delete any option for renewal. Referring to the vacancy of constitutional judges, the expert mission stated that such a situation may easily affect the ability of a constitutional court to perform its functions. Therefore, the experts had positively appreciated the CCM decision on the extension of the mandate of the judge of the Constitutional Court and of the Supreme Court of Justice meant to avoid suchlike deadlocks.

Direct access to CCM with a view to challenge the constitutionality of legal provisions. According to the experts, when a dispute on the constitutionality of legislation arises during court of law proceedings – neither the court of the main proceedings nor the Supreme Court should exaggerate their respective "filtering function".

Subjects entitled to lodge complaints. The experts stated that the current catalogue is already a considerably large. Despite the fact that there is no direct access of individuals to the CCM there are, at least *de iure*, several options of indirect access at their disposal: the Ombudsman, the Prosecutor General, a (single) member of Parliament. In this context, the experts refrained from recommending the introduction of the "constitutional complaint", since it would trigger a complete change of the CC's current com-

position and working methods. There has been recommended to confer the competence to refer directly to the CC to every court of the main proceedings.

General conclusion. The experts emphasized lack of imminent need for major legal amendments to the current framework regulating the activity of the CCM, in general provides sufficient independence of the institution and of the judges as CC's judgements meet the quality standards of EU countries.

F | REFORM OF THE CONSTITUTIONAL COURT

Based on the recommendations outlined in the Peer Review Assessment of the Constitutional Court and on the conclusions identified in the Study on the role of the Constitutional Court elaborated within the Justice Sector Reform Strategy the Ministry of Justice, by its Order no. 550 of 18 May 2016 created the working group on the review of the current framework regulating the organization and functioning of the CCM. Members of Parliament, representatives of the CCM and of the academia, as well EU experts within the Project "Support for the Constitutional Court of the Republic of Moldova" are included in this working group.

At the first stage of its operation the working group elaborated the draft constitutional law by which it proposed amendments to Art. 135 and 136 of the Constitution. The proposals relate, in essence, to the identification of subjects entitled to submit complaints to the Constitutional Court in the context of the CCM Judgment no. 2 of 9 February 2016 by which the right to raise the exception of unconstitutionality is vested to all courts of law (courts of first instance, courts of appeal and the Supreme Court of Justice). Other amendments refer to the increase of the number of constitutional judges from six to seven, as well as to the extension of the mandate of the constitutional judge from six to nine years, the impossibility of prolongation thereof being clearly indicated.

The Constitutional Court exposed its view in relation to this draft law by the Opinion no. 7 of 6 December 2016 and on 22 December 2016 it was submitted to the Parliament for examination. Thus, according to the procedure regulating the revision of the Constitution, the draft constitutional law might be adopted not earlier than following six months following its presentation to the Parliament.

TITLE

II

JURISDICTIONAL ACTIVITY

TITLE II
JURISDICTIONAL ACTIVITY

A | COURT'S ASSESSMENT

1 PROTECTION OF FUNDAMENTAL HUMAN RIGHTS

1.1. Principle of equality and non-discrimination

The right to non-discrimination protected by Article 14 of the European Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the Convention, however, according to the Court case-law, it is autonomous (*Eweida and others v. The United Kingdom,* 15 January 2013) *(JCC no. 14 of 16.05.2016*[1]*, §53).*

In this context, the European Court stated that the list of rights guaranteed by Article 14 of the European Convention is not being exhaustive, **any discrimination being prohibited irrespective of the underlying criterion** (*Rasmussen v. Denmark*, § 34, judgment of 28 November 1984, A.87) *(JCC no. 14 of 16.05.2016, §54).*

The European Court has established in its case-law that in order for an issue to arise under Article 14 there must be a difference in treatment of persons in relevantly similar situations. Such a difference of treatment is discriminatory if it has no **objective**

[1] Judgment no. 14 of 16.05.2016 on the exception of unconstitutionality of Art.1 para. (2) p.c) of the Law no. 121 of 25 May 2012 on equality (*non-discrimination based on religion*)

and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realized. The Contracting States enjoy a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see *Schalk and Kopf v. Austria, § 96, Burden v. the United Kingdom §60*) *(JCC no. 14 of 16.05.2016, §55).*

Moreover, Article 14 of the European Convention does not prohibit any member state to treat in a differentiated manner (religious) groups in order to correct "factual inequalities" between them; indeed, in certain circumstances, a failure in attempting to correct inequality through differentiated treatment may in itself give rise to a violation of the said article. Difference in treatment, however, is discriminatory if it has no objective and reasonable justification *(JCC no. 14 of 16.05.2016, § 56).*

In this context, the Court noted that for expression of religious opinions and beliefs it may legitimately be included an obligation to avoid as far as possible expressions that are gratuitously offensive to others and thus an infringement of their rights, and which therefore do not contribute to any form of public debate capable of furthering progress in human affairs (*Gündüz v. Turkey*, judgment of 4 December 2003, § 37) *(JCC no. 14 of 16.05.2016, §57).*

1.2. Free Access to justice

1.2.1. Access to justice of persons declared incapacitated and of persons with limited legal capacity

According to art. 20 para. (2) of the Constitution, no law may restrict access to justice. Any person may apply to the courts with a view to protect his/her rights, freedoms and legitimate interests *(JCC no. 33 of 17.11.2016[2], §125).*

Moreover, limitations imposed by the legislature shall not be likely to undermine the very substance of the right of access to justice *(JCC no. 33 of 17.11.2016, §126).*

[2] Judgment no. 33 of 17.11.2016 on the control of constitutionality of certain provisions of the Civil Code and Civil Procedure Code of the Republic of Moldova (*legal capacity of persons with mental disabilities*)

According to the UN Convention on the Rights of Persons with Disabilities, States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. (Art. 13 para. (1)) *(JCC no. 33 of 17.11.2016, §127).*

The Court held that decisions taken by legal representatives on behalf of incapable persons do not always reflect their will and preferences. As a matter of fact, after declaring the incapacity of a person, the latter becomes totally dependent on his guardian in all spheres of life, and this measure is often applied for an indefinite period of time, while the majority of acts affecting the rights of an incapable person cannot be challenged in a different way other than through the appointed guardian *(JCC no. 33 on 17.11.2016, §130).*

For these reasons, the Court concluded that despite the fact that the legal provisions grant to the persons declared as incapacitated the right to challenge the application of guardianship and to request the restoration of the legal capacity, it is still impossible for the adults declared incapacitated to protect in courts their rights, freedoms and legitimate interests. Therefore, granting such possibilities only to the legal representatives is inappropriate in cases where the interests of the latter diverge thus being created prerequisites for possible abuses *(JCC no. 33 of 17.11.2016, §131).*

In cases *D. D. v. Lithuania* (judgment of 14 February 2012, §118) and *M.S. v. Croatia* (no. 36337/10, 25 April 2013, §§80 and 107) the European Court held that in cases where the person is in conflict with the appointed guardian and "where this conflict can have a significant impact on the legal condition of the person", it is essential that the person has access to a tribunal *(JCC no. 33 of 17.11.2016, §132).*

With reference to persons declared incapacitated, the European Court, in its case-law, found that in seventeen of twenty law systems studies provide in certain cases direct access to the courts for any person declared incapable (*Stanev v. Bulgaria*, no. 36760/06, 17 January 2012, §§ 88-89) *(JCC no. 33 of 17.11.2016, §133).*

Moreover, the European Court noted that it would not be incompatible with Article 6 for national legislation to provide for certain restrictions on access to court in this

sphere, with the sole aim of ensuring that the courts are not overburdened with excessive and manifestly ill-founded applications *(JCC no. 33 of 17.11.2016, §134).*

Concurrently, the European Court found that the problem overburdening of courts may be solved by other, less restrictive means than automatic denial of direct access, for example by limiting the frequency with which applications may be made or introducing a system for prior examination of their admissibility on the basis of the file (see *Stanev,* cited above, § 242). As a matter of fact, since the mental condition is a prerequisite limiting a person to act on his/her own in the society, including in front of the authorities, the more that person should be guaranteed access to the simplest actions, such as, for example, filing a complaint to the court. This possibility granted to a person with mental disabilities is in full compliance with the inner subjective right to free choice, the essence of which is "freedom to act according to personal wishes and choices" *(JCC no. 33 of 17.11.2016, §135).*

The European Court observed that there are situations where the wishes of a person with impaired mental faculties may validly be replaced by those of another person acting in the context of a protective measure and that it is sometimes difficult to ascertain the true wishes or preferences of the person concerned. However, the Court has already held that the fact that a person lacks legal capacity does not necessarily mean that he is unable to comprehend his situation (see *Stanev* cited above, § 130). Despite this, the importance of exercising procedural rights varies depending on the scope of action that a person wished to bring before in court *(JCC no. 33 of 17.11.2016, §136).*

The Court noted that the Code of Civil Procedure establishes absolute nullity of procedural acts drawn up by persons declared incapable without offering to the court any opportunity to examine them and to decide on their validity depending on the circumstances *(JCC no. 33 of 17.11.2016, §137).*

The Court also held that applications filed by these persons are ignored by the court, being restituted or stroke out of the roll *(JCC no. 33 of 17.11.2016, §138).*

Under these circumstances, based on international standards, the Court pointed out that procedural documents drawn up by incapable persons cannot be subject to absolute nullity. Similarly, the courts must review these applications depending on the circumstances, even without compulsory involvement (consent) of the legal represen-

tative of the incapable person, if the problem submitted for settlement may be examined only with the direct participation of the person having submitted it *(JCC no. 33 of 17.11.2016, §142).*

For these reasons, the Court concluded that Articles 58 para. (2^1) and (6), 170 para. (1) p.c) and 267 p. b) of the Code of Civil Procedure unreasonably limits in a disproportionate manner direct access to the court of persons declared incapable with a view defend their legitimate rights and interests *(JCC no. 33 of 17.11.2016, §143).*

In light of the aforementioned findings relating to the need to ensure free access to justice for persons declared incapacitated, the Court found that the annulment of procedural acts drawn up by adults with limited legal capacity constitutes an even more disproportionate restriction since the adults addicted to certain substances can raise awareness and direct their actions in certain situations and/or within specific time limits *(JCC no. 33 of 17.11.2016, §145).*

However, the European Court has repeatedly stressed the importance of participation of persons with mental disorders in the proceedings on the examination of the issue of their legal capacity, since it has a dual role - an interested party, and, at the same time, the main object of the court's examination. The European Court mentioned, in particular, that such a participation of the person in respect of which there should be issued a decision relating to legal capacity was therefore necessary not only to enable him to present his own case, but also to allow the judge to form a personal opinion about the applicant's mental capacity (see *Shtukaturov*, § 72; *Kovalev v. Russia*, no. 78145/01, §§ 35-37) *(JCC no. 33 of 17.11.2016, §151).*

Moreover, the European Court considered that judges adopting decisions with serious consequences for a person's private life, such as those entailed by divesting someone of legal capacity, should in principle also have personal contact with those persons (*X and Y v. Croatia,* no. 5193/09, 3 November 2011, §84) *(JCC no. 33 of 17.11.2016, §152).*

In this cases, the European Court found that the decisions of judges to examine the case files solely on the basis of documentary evidence without questioning and hearing the applicants were not reasonable and thus violated the guarantees provided by Art. 6 § 1 of the Convention *(JCC no. 33 of 17.11.2016, §153).*

In light of the above, the Court pointed out the need to ensure effective participation of the person concerned in the process of examining of the application by which it is requested to declare the incapacitation thereof. The Court noted that, in case the participation of the person is not possible for objective reasons, the court shall ensure his/her hearing at the place of that person's presence, noting, as appropriate, the impossibility of communication with the latter *(JCC no. 33 of 17.11.2016, §154).*

The Court held that the condition of the person with mental disorders should not impede its effective participation in the process of examining the declaration of legal incapacity, at least not before this impossibility is ascertained by the court (judge) following the undertaking of all necessary measures *(JCC no. 33 of 17.11.2016, §155).*

1.2.2. Access to justice of publically appointed office-holders

According to the Law No. 199 of 16 July 2010 on Status of Publically Appointed Office-Holders, the Head and the Deputy of the Territorial Office of the State Chancellery are publically appointed office-holders. At the same time, the Court established that the normative framework does not set **appointment and dismissal criteria** for these positions *(JCC no. 22 of 22.07.2016[3], §58).*

The Court mentioned that the Territorial Offices of the State Chancellery are subdivisions of the State Chancellery meant to perform in the territory the administrative control over legality of the local public administration authorities' acts *(JCC no. 22 of 22.07.2016, §59).*

According to the Law on Local Public Administration, the activity of the local public administration authorities of the first and second levels is subject to administrative control, which includes the legality control and suitability control, carried out by the State Chancellery through its territorial offices *(JCC no. 22 of 22.07.2016, §60).*

Hence, taking into account the functional competences, the Court mentioned that the respective positions **do not fit the category of political positions,** which would

[3] Judgment no. 22 of 22.07.2016 on the exception of unconstitutionality of certain provisions of the Annex to the Law No. 793 of 10 February 2000 on administrative litigation *(access to justice of the head and deputy of the territorial office of the State Chancellery)*

justify the exclusion of the persons holding such office from protection of special labor rights *(JCC no. 22 of 22.07.2016, §61).*

The Court mentioned that the respective persons **are involved in special labor relations.** As a result, although these persons are appointed and dismissed based on a Government Decision without any strictly determined criteria, they **benefit from special labor rights and guarantees,** which derive from the general rules of labor legislation and take into consideration the peculiarities of administrative contracts *(JCC no. 22 of 22.07.2016, §62).*

The Court hold that unlike the acts for appointing and dismissing other state officials, the Government Decision related to the Head and Deputy Head of the Territorial Office of the State Chancellery cannot be subject to constitutionality review. The Court mentioned in its case-law that the constitutionality review shall be used for acts of appointment or dismissal of persons - exponents of special public interest, appointed in office for the duration of one mandate, for whom the law sets **clear criteria for appointment and dismissal.** At the same time, the Court underlined that this position is not enshrined at the constitutional level *(JCC no. 22 of 22.07.2016, §63).*

Taking into account the above mentioned, the Court held that exemption of the acts for appointing and dismissing from office the Head and Deputy of the Territorial Office of the State Chancellery from contestation in the administrative court deprives these persons from their right of free access to justice and, finally, from the right to a fair trial, which is contrary to article 20 of the Constitution *(JCC no. 22 of 22.07.2016, §64).*

1.2.3. Disciplinary liability cumulated with criminal liability

Disciplinary liability intervenes whenever a disciplinary deviation occurs, defined as culpable violation by a person of the duties corresponding to the held office and professional and civil conduct rules provided in the law *(JCC no. 24 of 14.09.2016[4], §73).*

[4] Judgment no. 24 of 14.09.2016 on the exception of unconstitutionality of Articles 55 para.(2) and 55 para.(8) of the Law No. 320 of 27 December 2012 Police and the Statute of Police Officer and section 59 para.5) and section 65 of the Disciplinary Statute of the Police Officer, approved by Government Decision no. 502 of 9 July 2013 *(hearings within disciplinary proceedings)*

At the same time, criminal liability intervenes when an injurious act (action or inaction) is committed, provided in the criminal law as culpably perpetrated offence and subject to criminal punishment *(JCC no. 24 of 14.09.2016, §74).*

The Court held that every form of legal liability fulfills cumulatively an educational and prevention function, but the modality in which the social behavior of people is influenced is different, depending on the importance of the social values protected from legal viewpoint and the consequences deriving from their violation *(JCC no. 24 of 14.09.2016, §75).*

Criminal liability is based on the principle of certainty in criminal law, according to which the liability occurs only for the acts which are expressly provided as offences, unlike the disciplinary liability, when the legal liability occurs after the disciplinary deviation *(JCC no. 24 of 14.09.2016, §76).*

Both, the disciplinary deviation and the offence are acts which are not permitted, with anti-social consequences, culpably committed, but which differ by the aspect of their object, the level of their social danger and competence in establishing the act and the guilt *(JCC no. 24 of 14.09.2016, §77).*

Hence, the acts of the same nature may represent either disciplinary deviations or offences depending on a series of elements, such as the importance of protection object at a given moment, the specific circumstance in which the act has been committed, the type and intensity of guilt, the consequences of the act, possibilities for preventing the acts – these elements alongside the features of the act are competing when establishing in a differentiated way the level of social danger, determining at the end the form of liability to be initiated, as well as the dosing of the sanction within the respective liability form *(JCC no. 24 of 14.09.2016, §78).*

The Court held that the European Court expressed its position in its case-law regarding the scope of article 4 of Protocol 7 to the European Convention. Thus, the provisions set in art. 4 from Protocol 7 do not apply in the situation of the ideal concurrency of offences, meaning when one and the same act represents two distinct offences (*case Oliveira v. Switzerland,* Judgment of 30 July 1998, §27; case *Goktan v. France,* Judgment of 2 July 2002, §50), as the text **does not impede the situation for the same person**

to be the object for the same act, both – of the criminal proceeding, as well as of another action of different nature, for instance of a disciplinary procedure. This opinion was also provided in the Explanatory Report for Protocol No. 7 *(JCC no. 24 of 14.09.2016, §80).*

It is possible to cumulate disciplinary liability and criminal liability only if the act which was culpably committed by the employee represents a disciplinary deviation, but also an offence. At the same time, this cumulating type is possible without violating through it the non bis in idem principle, as each of the concerned legal norms protect different social relations, and the principle prohibits only the application for the same illicit act of two or more sanctions of the same nature *(JCC no. 24 of 14.09.2016, §81).*

1.2.4. Ensuring the right to fair trial through individualization of sanctions

a) Principle of individualization of sanction for a contravention

The constitutional principle of legality imposes the differentiation of the sanctions set for violation of the law. In this respect, the legislative individualization is not sufficient for achieving the aim of the contravention law as long as it is not possible to have judiciary individualization *(JCC no. 10 of 10.05.2016[5], § 51).*

Through the legal individualization, the legislator should offer the judge the competence to set the sanction within certain predetermined limits – special minimum and maximum of the sanction, and should provide for the judge the tools which would allow him/her to choose and determine a concrete sanction, in correlation with the peculiarities of the act and the person who has committed the contravention or the offence *(JCC no. 10 of 10.05.2016, § 52).*

The Court mentioned that the sanction in the contravention law is a consequence of the contravention liability and should be strictly individualized and adjusted from quantity and quality of view to the seriousness of the act and the person who has committed it *(JCC no. 10 of 10.05.2016, § 53).*

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[5] Judgment no.10 of 10.05.2016 on the exception of unconstitutionality of certain provisions of Article 345 para. (2) of the Contravention Code *(individualization of sanctions)*

Art. 9 of the Contravention Code determines the criteria to be applied for individualization of the sanction. Hence, when applying the contravention law, it is important to ***take into account the nature and the injurious degree of the contravention, the person of the offender and the liability attenuating or aggravating circumstances*** *(JCC no. 10 of 10.05.2016, §54).*

The Court held that ***the injurious degree of the contravention*** is determined by the protected legal object, being the qualitative sign of the contravention, while the ***injurious degree*** depends on the seriousness of the committed act (the value of the damage, the form of guilt, the reason, aim, etc.), being a quantitative sign *(JCC no. 10 of 10.05.2016, §56).*

Thus, the act is qualified only by the court and cannot be predetermined by the legislator for all the addressees of the legal contravention norm *(JCC no. 10 of 10.05.2016, §57).*

The legislator cannot determine the sanction for every de-facto possible situation in future, being able to set only certain criteria in the limits of which the court sets and applies a concrete sanction. The application of the sanction by the court will be deficient, if when developing the law and setting the sanction, the legislator does not take into account the possibility to determine the sanction depending on the individualization criteria cited above *(JCC no. 10 of 10.05.2016, § 58).*

Thus, the judicial individualization may be carried out only based on some assessment mechanisms regulated by law, being thus an expression of the principle of legality *(JCC no. 10 of 10.05.2016, §59).*

The Court held that according to article 345 of the Contravention Code, a contravention is "the violation of the rules in the metrology area", and the violation of the rules set in paragraph (2) of this article is sanctioned with a fine of 300 conventional units applied to the legal entity and to the person with position of responsibility *(JCC no. 10 of 10.05.2016, §73).*

For the contravention covered in art. 345 para. (2) of the Contravention Code, the law established the sanction as a fine of a fixed amount *(JCC no. 10 of 10.05.2016, §74).*

The Court established that the court of law is lacking the possibility of applying the sanction in line with the principle of individualization of the contravention sanction set forth in art. 9 in the General Part of the Contravention Code – a principle which governs all the regulations in the Special Part and is based on the following criteria: ***the nature and the injurious degree of the contravention, the person of the offender and the liability attenuating or aggravating circumstances*** *(JCC no. 10 of 10.05.2016, § 75).*

Hence, **free access to justice**, covering more relations and fundamental rights, also expressed the right to benefit from adequate means for protection of the violated right, taking into account as well the principle of individualization of the contravention sanction and its criteria *(JCC no. 10 of 10.05.2016, §76).*

The Court mentions that according to the constitutional principle of legality, the legislator cannot regulate a sanction in such a way so as to deprive the court of law from the possibility to individualize the sanction, taking into account the circumstances of the case. In such a situation, the competences of the court would be limited, thus creating preconditions for violation of the constitutional rights of the subjects, *inter alia,* of the constitutional right to a fair trial *(JCC no. 10 of 10.05.2016, §77).*

Thus, as there are no mechanisms for individualization of the sanction in the specific case, the court is lacking the possibility to perform an efficient judiciary control and the litigants cannot benefit from the right to a fair trial *(JCC no. 10 of 10.05.2016, §78).*

As well, a sanction cannot be exactly determined invoking the interest of social defense, as it has to be subordinated to the right and principles of the contravention policy and fundamental rights. The setting of sanctions in the criminal or contravention law should be guided by the existence of a proportionality between the individual interests and rights, on one side, and those of the society, on the other side *(JCC no. 10 of 10.05.2016, §82).*

The constitutional principle of legality imposes the differentiation of sanctions set for violation of the law, so as to have **a balance between the aim of the contravention law and the means**, and for the used means not to restrain the rights of the person more than it is necessary for achieving these aims *(JCC no. 10 of 10.05.2016, §83).*

Hence, the lack of mechanisms which would make it possible to have judiciary individualization, **distorts the effective, proportional and dissuasive nature of the contravention sanction, does not allow the courts to perform an effective judiciary control and violates the right of the litigants of access to justice** *(JCC no. 10 of 10.05.2016, §84).*

b) Principle of proportionality of sanctions

In the absence of a relatively determined sanction and of other mechanisms for individualization of sanction in the contravention law, the person does not have a real and adequate possibility to benefit through a judiciary way from protection of his/her rights, including from a fair sanction *(JCC no. 10 din 10.05.2016, §60).*

The Court held that the individualization of the sanction should reflect the relation between the sanction (proportion and its nature) and the level of the act's social danger *(JCC no. 10 of 10.05.2016, §61).*

In the absence of criteria for individualization of sanctions, which would be clearly stated in the legal framework, the judicial individualization cannot be effectively provided to the offender so as to ensure his complete rights and freedoms *(JCC no. 10 of 10.05.2016, §62).*

The principle of individualization of contravention sanctions, just like in case of the criminal sanctions, should get affirmed within a framework of **completeness of fundamental rights** *(JCC no. 10 of 10.05.2016, §63).*

The Court held that it is the legislator's right to establish the contravention sanctions, but respecting *strictly the proportionality between the circumstances of the act, its nature and the level of danger (JCC no. 10 of 10.05.2016, §65).*

Hence, the lack of the court's possibility to apply the criteria for individualization of sanction in the specific case and the application of an absolutely determined sanction do not ensure **its fair nature** *(JCC no. 10 of 10.05.2016, §66).*

Hence, this fact may lead to violation of Engel assessment criteria deduced from the European Court's case-law (*Engel and others v. Holland, Judgement of 8 June 1976*), in case when the person declared to be guilty of committing a contravention is applied a sancti-

on, which through its nature and degree of severity, is not proportional to the legal nature of the violation *(JCC no. 10 of 10.05.2016, §67).*

In this respect, the Court pointed out the rationale of the European Court, expressed in the case *Cumpănă and Mazăre v. Romania*, according to which, when assessing the proportionality of the sanction, it is important to take into account its deterrent effect. In the presence of some concurrent interests between the victim of a contravention and the offender, the application of an absolutely determined sanction without the possibility to individualize it cannot justify the reestablishment of the balance between the rights of the victim and those of the offender, ensured within a trial *(JCC no. 10 of 10.05.2016, §68).*

Hence, the application of such a sanction in all the circumstances, regardless of the subject, **does not achieve the legitimate goal pursued through sanctioning** *(JCC no. 10 of 10.05.2016, §69).*

In this context, the legislative individualization should be exercised at the extent in which it does not hinder or limit the possibility for individualization of the sanction in relation to the contravention act, so as to ensure a fair balance between the guaranteed rights *(JCC no. 10 of 10.05.2016, §70).*

1.2.5. Term of enforcement of claims against the state

According to the Law on public finances and budgetary-fiscal responsibility no. 181 of 25 July 2014, the enforcement of judgments against the state, including those relating to the payment by the state of compensations for damages caused by violation of the right to trial within a reasonable time or the right to the enforcement of judgments within a reasonable time, is possible only after the expiry of 6 months from the date of the final *judgment (JCC no. 32 of 17.11.2016*[6]*, §70).*

Thus, the state legislature granted a period of grace of 6 months for voluntary enforcement of such judgments. Only after this period, the creditor may request the bailiff to initiate forced enforcement *(JCC no. 32 of 17.11.2016, §71).*

[6] Judgment no.32 of 17.11.2016 on the exception of unconstitutionality of certain legal provisions referring to the enforcement of claims against the state (*enforcement of claims against the state*)

Certain measures may be necessary with a view to maintain budgetary balance between expenditures and revenues, which can be considered as pursuing a public interest aim (*Mihăieș and Sentes v. Romania* (dec.), no. 44232/11 and 44605/11, 6 December 2011). These measures are aimed at protecting the heritage of blic institutions as a precondition for their activity in optimal conditions, thereby fulfilling their duties as part of the state mechanism. Thus, even if it affects the rapidity of procedures, these measures are aimed at identifying the resources needed for performance of functional competences *(JCC no. 32 of 17.11.2016, §72).*

In this context, in its case law the European Court held that although state authority could not invoke lack of liquidity to justify its refusal to enforce a conviction, in an exceptional manner it shall be admitted that a delay in enforcement is justified by special circumstances, even if the rule provides enforcement within a reasonable time (*Burdov v.Russia*, judgment of 7 May 2002). This delay should not be permanent, so that to affect the very substance of the right protected by Art. 6 § 1 of the European Convention *(JCC no. 32 of 17.11.2016, §73).*

In the view of the European Court, the execution of binding and enforceable judgments involving payment of monetary damages by the state authorities is not considered to be a complex procedure *(JCC no. 32 of 17.11.2016, §74).*

The Constitutional Court noted that the person having obtained a judgment against the State should not necessarily initiate an enforcement procedure to get satisfaction. In this regard, the Court stressed that the state, given its positive obligation, shall the judgments in which it has the quality of debtor without any interference with a view to forced enforcement *(JCC no. 32 of 17.11.2016, §75).*

The Court noted that according to the current legal framework the period of grace of 6 months is applicable to all categories of claims against the state, including claims resulting following the application of the Law no. 87/2011[7] (*JCC no. 32 of 17.11.2016, §76).*

[7] Law no. 87 of 21 April 2011 on the state repairing of damages caused by the violation of the right to trial within a reasonable time, or the right to cause the enforcement of the judgment within a reasonable time

The rationale of the Law no. 87/2011 was to establish an effective domestic remedy against excessive length of judicial or enforcement proceedings *(JCC no. 32 of 17.11.2016, §78).*

Thus, even if extension of the enforcement period with 6 months due to lack of funds, in itself, does not automatically causes infringement of enforcement within a reasonable time, however this extension could raise a problem when it overlaps with other delays, that the Law no. 87/2011 is, in fact, intended to remedy *(JCC no. 32 of 17.11.2016, §81).*

The court ruled that the judgments issued under the Law no. 87/2011 shall be enforceable immediately following the date when the judgment becomes final and shall be enforced not later than within three months from that date, similarly to the period of enforcement of final judgments delivered by the European Court of Human Rights *(JCC no. 32 of 17.11.2016, dispositive part).*

1.2.6. Revision of a court ruling

The Court held that the right of access to justice may involve limitations, including procedural ones, as long as they are reasonable and proportionate to the aim pursued (*JCC no. 4 of 01.03.2016*[8]*, §57).*

The right to access to a court covers also the right to file an appeal or recourse to the extent that such appeal remedies are regulated by national law. This does not mean that free access to justice should be ensured to all courts and to all appeal remedies due to the fact that both jurisdiction and appeal remedies are determined exclusively by the legislature, which can establish special rules given particular circumstances *(JCC no. 4 of 01.03.2016, §58).*

In this context one of the fundamental aspects of the rule of law is the principle of legal certainty. This principle which requires, *inter alia,* that where the courts have finally determined an issue, their ruling should not be called into question. The principle of

[8] Judgment no.4 of 01.03.2016 on the exception of unconstitutionality of certain provisions of paragraph 118 of Article I of the Law no. 155 of 5 July 2012 on amending and supplementing the Code of Civil Procedure of Moldova *(grounds for the review of court rulings)*

legal certainty implies the respect of the principle of *res judecata*, i.e. of the principle of irrevocable nature of a court judgment *(JCC no. 4 of 01.03.2016, §61).*

This principle requires that no party to trial is entitled to request the review of a final and binding judgment merely for the purpose of obtaining a rehearing and a new consideration of the case. The competence of the reviewing courts should be exercised with a view to correct judicial errors and miscarriages of justice, and not to conduct new examinations. Judicial review should not be treated as a disguised appeal, and the mere existence of two different points of view in respect of the same issue is not sufficient ground for review. A derogation from this principle is justified only when it is needed, given substantial and compelling circumstances (*Brumărescu v. Romania*, no. 28342/95, §§ 61-62 and *Rosca v. Moldova*, no. 6267/02, §§24-25, *Riabyk v. Russia*, §52) *(JCC no. 4 of 01.03.2016, §62).*

The aforementioned principle precludes parties, aiming at reopening new judiciary proceedings referring to the same matter and at reconsideration of the case and, as a consequence, at delivering a new judgment, from transforming the review of the case into a hidden judicial control *(JCC no. 4 of 01.03.2016, §63).*

In this manner the principle of legal certainty requires that the State endeavors efforts to identify related judicial proceedings and to prohibit the reopening of new legal proceedings in respect of the same issue *(JCC no. 4 of 01.03.2016, §64).*

Procedural law governs the mechanisms allowing the dismissal of final and irrevocable court judgments when it is necessary to correct judicial errors and miscarriages of justice *(JCC no. 4 of 01.03.2016, §66).*

According to the Code of Civil Procedure, the review of a judicial ruling may be requested only if the judgment, the sentence of the decision of the court which review is requested was canceled or modified. Cancellation or modification of the decision delivered by another body cannot serve as basis for the review of a court judgment *(JCC no. 4 of 01.03.2016, §72).*

In this context, the review of a court judgment may be based only on irrevocable acts. As a matter of fact, the act of a non-judicial authority, that is not definitive, cannot determine the modification of a final and definitive judgment, which in most cases has been executed at the stage of requesting a review, this might involve a violation of legal certainty *(JCC no. 4 of 01.03.2016, §73).*

1.3. Presumption of innocence

1.3.1. Compulsory hearing in the disciplinary investigation

The duty investigation in case of a disciplinary deviation represents a stage of the disciplinary procedure. It is a prerogative of the employer to establish the perpetration of the disciplinary deviation by the employees and to apply the corresponding sanctions. Under the sanction of the absolute nullity, no disciplinary sanction will be able to be provided before the carrying out of the prior disciplinary investigation *(JCC no. 24 of 14.09.2016[9], §53).*

The aim for carrying out the duty investigation before taking the decision to apply or not a disciplinary sanction falls under the idea of protecting the employee in front of the dominant position of the employer, so as to limit any element of arbitrariness and abuse *(JCC no. 24 of 14.09.2016, §54).*

The Court held that in a democratic state, the protection of a person represents one of the main duties of the state *(JCC no. 24 of 14.09.2016, §55).*

The Court noted that the tasks of a duty investigation are: 1) to examine from all the aspects, completely and objectively the circumstances of the causes leading to the committed disciplinary deviations; 2) to establish the causes and the conditions which have led to the perpetration of the disciplinary deviations; 3) to identify the guilty persons and to ensure the correct application of the legislation in force, as every person who has committed disciplinary deviations to be sanctioned according to the person's guilt and for no innocent person to be held liable *(JCC no. 24 of 14.09.2016, §57).*

The essential element for carrying out the duty investigation is the **hearing of the employee.** During the duty investigation, the employee is entitled to formulate and to support all the defense in his/her favor and to provide to the commission empowered to perform the duty investigation all the evidence and motivations considered to be necessary *(JCC no. 24 of 14.09.2016, §59).*

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[9] Judgment no. 24 of 14.09.2016 on the exception of unconstitutionality of Articles 55 para.(2) and 55 para.(8) of the Law No. 320 of 27 December 2012 Police and the Statute of Police Officer and section 59 para.5) and section 65 of the Disciplinary Statute of the Police Officer, approved by Government Decision no. 502 of 9 July 2013 *(hearings within disciplinary proceedings)*

At the same time, the Court underlined that article 7 of the ILO Convention No. 158 of 22 June 1982 on Termination of Employment, which refers to termination of the labor relations upon the initiative of the employer, sets forth that the employment of a worker shall not be terminated for reasons related to the worker's conduct or performance **before he is provided an opportunity to defend himself against the allegations made,** unless the employer cannot reasonably be expected to provide this opportunity *(JCC no. 24 of 14.09.2016, §61).*

The Court mentioned that the hearing and recording of the policeman's statement is the task of the employer, who has the obligation to provide the policeman the possibility to defend himself against the allegations made *(JCC no. 24 of 14.09.2016, §62).*

The legal provisions offer the person subject to a disciplinary investigation the right to benefit from a contradictory trial and to have the possibility to present the evidence elements and to defend freely the case *(JCC no. 24 of 14.09.2016, §65).*

Actually the European Court itself has shown that the right to a contradictory trial implies the possibility for the parties **of a trial to get to know all the elements** which might influence the decision of the authority and **to discuss them.** The European Court decided that the national legislation may fulfill this exigency in different ways, and the adopted method should guarantee that the ***"adverse part" is informed about the provision of observations and to have the possibility to comment on them*** (case *Pellegrini v. Italy,* Judgement of 20 October 2001, §44; *case Meftah and others v. France,* Judgement of 26 July 2002, §51) *(JCC no. 24 of 14.09.2016, §66).*

The Court held that the legal provisions which provide for the compulsoriness to hear the policeman within the duty investigation (disciplinary procedure) aim to ensure an effective investigation and to contribute to the defense of the position of the person subject to duty investigation *(JCC no. 24 of 14.09.2016, §67).*

At the same time, the Court established that the provisions of p. 59 subp. 2) of the Disciplinary Status of the Policeman, approved via the Government Decision No. 502 of 9 July 2013, contrary to the provisions in art. 55 para. (2) of the law, imply as a task for the employee the compulsory submission of written explanations regarding the committed violation, and in case of the refusal to provide explanations, the provisions of the subp. 3) oblige the person to motivate the refusal in written form *(JCC no.24 of 14.09.2016, §68).*

The Court held that these provisions clearly affect the right of the employee to silence. Hence the Court considers it necessary to reiterate that the right to silence implies the right of the person not to be forced to witness against himself/herself or to recognize his/her guilt (JCC no. 24 of 14.09.2016, §69).

1.4. The right of every person to know his/her rights and duties

1.4.1. Clarity of the norms regulating the provisional release under judiciary control

Being designed as a reasoning for a judicial procedural-criminal institution, which should reconcile two social values**, the provisional release under judiciary control** is a measure meant to reconcile individual freedom (by avoiding detention) with social protection, imposing a control over the released person (by setting certain obligations or restrictions) *(JCC no. 17 of 19.05.2016[10], §50).*

The Court held that the legal norms regulating the measure of provisional release under judiciary control should observe certain exigencies of stability, predictability and clarity, and the non-indication of the period for which it can be applied determines a situation of legal uncertainty. This fact generate a situation of uncertainty for the persons who are provisionally released under judiciary control, as they do not have the possibility to adjust their conduct and to defend their procedural rights *(JCC no. 17 of 19.05.2016, §56).*

The right of every person to know his/her rights and duties, enshrined in art. 23 of the Fundamental Law, implies, among others, the adoption by the legislator of some clear procedural rules which would prescribe with accuracy the conditions and the deadlines within which the litigants may exercise their rights. Actually, the European Court has reiterated in its case-law that the person in whose respect a criminal proceeding is carried out shall be entitled to benefit from diligence, especially in the part related to the examination of his/her case. Thus, the predictability of the normative act is closely correlated with the guarantees of a fair trial, which are designed for avoiding the placement of a person for a long period of time in a situation of uncertainty regarding the result of

[10] Judgment no.17 of 19.05.2016 on the exception of unconstitutionality of Article 191 of the Code of Criminal Procedure *(provisional release pending trial)*

the case review (case *Nakhmanovich v. Russia,* Judgement of 2 March 2006, § 89, case *Hajibeyli v. Azerbaijan,* Judgement of 10 July 2008, § 51) *(JCC no. 17 of 19.05.2016, §62).*

The use by the judiciary authorities of the preventive non-custodial measure, the measure which represents a limitation of the person's freedom should observe the proportionality relation between the envisaged measure and the aim pursued through it *(JCC no. 17 of 19.05.2016, §63).*

In this context, the Court held the unconstitutionality critic of article 191 of the Criminal Procedure Code, in the part related to the non-regulation of a reasonable period for which the preventive measure of provisional release under judiciary control may be used, because the legislative omission and imprecision are generating the violation of the fundamental right which is allegedly violated *(JCC no. 17 of 19.05.2016, §72).*

Thus, based on the systematic interpretation of the procedural-criminal norms, which set deadlines for applying other preventive measures, the need is imposed to regulate in art. 191 of the Criminal Procedural Code the period for which such a measure may be used – provisional release under judiciary control *(JCC no. 17 of 19.05.2016, §73).*

The Court has revealed that this procedural remedy will ensure a fair balance between the public and individual interests. The preventive measured have an exceptional nature, inherent to the restrictions for the exercise of rights and fundamental freedoms, and this implies as well their temporary nature, which is limited in time *(JCC no. 17 of 19.05.2016, §74).*

1.5. Individual freedom and personal security

1.5.1. Principle of proportionality and reasonability in applying the preventive arrest

Article 25 of the Constitution guarantees the principle of inviolability of individual freedom and personal safety, according to which, nobody may be detained and arrested unless in cases and procedures stipulated by law *(JCC no. 3 of 23.02.2016[11], §50).*

This assessment will depend on all circumstances of a particular case, and also, the facts that outline a reasonable doubt should not be at the same level as those necessary

[11] Judgment no. 3 of 23.02.2016 on the exception of unconstitutionality of paras.(3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code of the Republic of Moldova (*term of the preventive arrest*)

to justify a conviction, or the formulation of conviction at the following phase of criminal investigation (*Erdagöz v. Turkey; Fox, Campbell and Hartley*; *Murray and Brogan v. United Kingdom*) *(JCC no. 3 of 23.02.2016, §67).*

The legislation of the Republic of Moldova, similarly to Article 5 § 1 let. c) of the Convention allows the liberty of a person only if there is 'reasonable doubt' that this person committed an offence. **The reasonable doubt implies the existence of facts or information that might convince an objective observer that the person might have committed an offence** *(JCC no. 3 of 23.02.2016, §66).*

The arrest is a temporary measure, because it is ordered for a determined period of time. Also, it is a temporary measure, because it lasts as long as the circumstances stand and is revoked as soon as the circumstances are removed *(JCC no. 3 of 23.02.2016, §80).*

As far as temporary detention is concerned, the rules that enshrine the reasonable term are as follows:

- prompt information of the arrested person (art. 5 § 2 of the Convention): about the reasons of the arrest and charges brought; it should be done promptly;
- prompt bringing before court (art. 5 § 3 of the Convention): immediately and in a reasonable time; by a judge or other officer authorised by law;
- speedy proceedings to decide the lawfulness of his arrest or detention (art. 5 § 4 of the Convention): is done is a short time;
- reasonable term of arrest (art. 5 § 3 of the Convention): any arrested person is entitled to be tried in a reasonable time or released pending the proceedings *(JCC no. 3 of 23.02.2016, §81).*

Hence, a person may be deprived of the right to liberty and safety only in exceptional circumstances, and is consolidated by means of two exigencies:

1) liberty deprivation may not be extended by exceeding the necessary duration;
2) speedy release of person when the deprivation of liberty proves unjustified *(JCC no. 3 of 23.02.2016, §82).*

Thus, the Court mentioned that the preventive arrest **should be applied only in strictly necessary cases, when there are no alternatives and as an ultimate measure,** and not as a measure of punishment *(JCC no. 3 of 23.02.2016, §92).*

In this sense, the Court revealed that there are four grounds that justify the application or extension of preventive arrest:

1) the risk that the person flees from criminal accountability;
2) the risk to hinder the good delivery of justice;
3) to prevent the person to commit a new offence;
4) the risk that releasing a person might cause public disorder *(JCC no. 3 of 23.02.2016, §93).*

These grounds may not be cumulatively present; one ground is sufficient to apply the preventive arrest *(JCC no. 3 of 23.02.2016, §94).*

The existence of substantial grounds that would legitimate the suspicion that a person has committed an offence for which he/she is prosecuted, should be seen as a **general condition and independent from the grounds of preventive arrest**, which may be the danger of preventing the act of justice, danger to commit another severe offence, danger to hinder the justice, a serious danger for public order. Hence, **a person may be placed in custody only when the suspicions of a committed offence are corroborated with the existence of justified grounds.** A directive in this regard is expressly stipulated in Recommendation No. (2006) 13 on the use of preventive arrest, the conditions in which it takes place and the provision of safeguards against abuse, adopted by the Cabinet of Ministers of the Council of Europe on 27 September 2006, at the 974th reunion of delegations of ministers *(JCC no. 3 of 23.02.2016, §95).*

1.5.2. Maximum validity of the arrest warrant

The arrest shall be made based on a warrant signed by a judge. The warrant is the legal ground for an arrest *(JCC no. 3 of 23.02.2016*[12]*, §97).*

The Court underlined the fact that the arrest validity should be reasonable and the estimation of reasonable limits should be done *in concreto*, by analysing the circumstances of each case in part *(JCC no. 3 of 23.02.2016, §98).*

When the arrest duration is set and especially, when it is requested to extend the arrest, the judge should follow the requirement that this duration does not exceed a rea-

[12] Judgment no. 3 of 23.02.2016 on the exception of unconstitutionality of paras.(3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code of the Republic of Moldova (*term of the preventive arrest*)

sonable limit (*Wemhoff v. Germany,* Judgement of 27 June 1968). During the appreciation of the reasonable duration of detention, the complexity of the case and the right of the accused for speedy settlement of the case with the need to explain it under all aspects should be taken into account *(JCC no. 3 of 23.02.2016, §99).*

In this context, the Court held, as a principle, that the gravity of facts alleged does not justify the application of preventive arrest *(JCC no. 3 of 23.02.2016, §100).*

The Court held that Article 25 para. (4) of the Constitution **stipulates clearly that the detention is possible only based on a warrant of up to 30 days.** Any interpretation that would allow for longer terms for the arrest warrant in the national legislation would be in contradiction with the Constitution. Hence, such approach is supported by the European Court as well *(JCC no. 3 of 23.02.2016, §109).*

The Court noted that the application and extension of arrest period by a judge or court under the challenged legal provisions exceed the constitutional limit of Article 25 para. (4), which is in contradiction with the constitutional guarantees of individual liberty. Hence, the provisions of Article 186 para. (9) of the Code of Criminal Procedure, in the part of issuing an arrest warrant exceeding 30 days, are in contradiction with Article 25 para. (4) of the Constitution *(JCC no. 3 of 23.02.2016, §110).*

1.5.3. Total duration of preventive arrest

The Court held that according to Article 25 para. (4) of the Constitution, the arrest may be extended, under law, up to not more than 12 months *(JCC no. 3 of 23.02.2016*[13]*, §112).*

Also, the Court revealed that the beginning of preventive arrest should correspond with the moment of retaining the person and should end in delivery of judgement which either releases the person from arrest or convicts the person by the court *(Solmaz v. Turkey, §§ 23-24, Kalashnikov v. Russia, §100, Wemhoff v. Germany § 9) (JCC no. 3 of 23.02.2016, §113).*

According to Article 25 paragraph (4) of the Constitution, the 12-month term combined with other procedural guarantees represents a warranty against abusive depriva-

[13] Judgment no. 3 of 23.02.2016 on the exception of unconstitutionality of paras.(3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code of the Republic of Moldova (*term of the preventive arrest*)

tion of liberty. Pending the conviction sentence, the deprivation of liberty of a person is justified only based on the 'reasonable doubt' that the person is guilty. Hence, the Constitution sets a specific period for preventive arrest, which cannot be extended after it elapses *(JCC no. 3 of 23.02.2016, §117).*

The Court could not accept the position of the Government, according to which, under certain circumstances, the maximum 12-month term of arrest may be too short in some cases. The Court underlined that the seriousness or complexity of the case should not justify the application of preventive arrest. Or, the measure of preventive arrest may be applied **only when the suspicions of committed offence are correlated with the four grounds,** which may justify its application *(JCC no. 3 of 23.02.2016, §118).*

The Court held that the European Convention does not oblige the states to fix a maximum duration of arrest. However, **if these are stipulated in the national legislation, these should be observed.** At the same time, neither the Constitution nor the European Convention allow for the extensive interpretation of constitutional provisions regarding limitation of rights and fundamental freedoms, these having a strict interpretation. Hence, any interpretation of admissible restriction of rights and fundamental freedoms should be made in favour of a person *(JCC no. 3 of 23.02.2016, §119).*

1.5.4. Court conclusion

In the meaning of Article 25 para. (4) of the Constitution:

a) The preventive arrest may be applied for a total period not exceeding 12 months at criminal investigation and trial phases until the delivery of judgement that either releases the person from detention or convicts the person to imprisonment by the court. The term of preventive arrest shall include the time when the person:
- was arrested and was held under preventive arrest;
- was under home arrest;
- was in a medical institution, based on court judgement for in-patient forensics as well as had prescribed treatment, as a result of medical constraints.

b) The term of preventive arrest starts from the moment of retention, and in the case when the person was not retained, from the moment of effective application of preventive arrest.

c) The 12-month period refers to the same criminal fact(s) for which the person was placed in preventive custody, irrespective of eventual requalification of offence. Any detention that exceeds the total 12-month period applied for committing the same offence, irrespective of eventual requalification of offence, shall be in contradiction with the Constitution and, hence, illegal.

d) The arrest warrant shall be issued for up to 30 days. Every extension of preventive arrest may not exceed 30 days at criminal investigation and trial phase *(JCC no. 3 of 23.02.2016[14], dispositive part).*

1.5.5. Explaining the manner of enforcement of the Constitutional Court Judgment no. 3 of 23 February 2016

The Court noted that during the investigation of a criminal case, a criminal offense, following the assessment of the evidence, may be legally re-classified, and this fact shall not generate the calculation of new period of detention in custody of the person; as a matter of fact, repeated legal classification of the offense or of several offenses provided by the criminal law does not modify in a retroactive manner the originally committed offence (s) *(JCC no. 9 of 29.04.2016[15], §20).*

Moreover, following the modification of legal classification of the same facts, the judicial body determines only the legal text applicable to the committed offence, which should not affect the freedom of the individual *(JCC no. 9 of 29.04.2016, §21).*

Therefore, it is the prerogative of the judge to determine whether various criminal acts may be subject of either the same or of different criminal cases, or if several criminal cases refer to the same facts *(JCC no. 9 of 29.04.2016, §22).*

The offence represents a real basis for criminal liability, it possesses an injurious character which justifies application of custody detention in order to prevent *inter alia* commission of other harmful acts which will then be legally classified (qualified) as cri-

[14] Judgment no. 3 of 23.02.2016 on the exception of unconstitutionality of paras.(3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code of the Republic of Moldova (*term of the preventive arrest*)

[15] Judgment no. 9 of 29.04.2016 on the manner of enforcement of the Constitutional Court Judgment no. 3 of 23.02.2016 on the exception of unconstitutionality of paras.(3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code of the Republic of Moldova (*term of the preventive arrest*)

mes. However, according to art. 176 par. (3) sect. 1) of the Code of Criminal Procedure, while applying detention in custody it is necessary to the take into consideration a number of additional criteria, including "the nature and degree of harm caused by the offense" *(JCC no. 9 of 29.04.2016, §25).*

Thus, when analyzing the content of a criminal offense it must be considered: the actual (de facto) content which represents the commission of the offense in objective reality by a person who is part of the abstract pattern of the incrimination rule and legal (*de jure*) content which includes objective and subjective elements by which an act becomes a crime, and thus – the component of a crime described in the special part of the Criminal Code *(JCC no. 9 of 29.04.2016, §26).*

A person may be prosecuted for an offense if the action / inaction committed de facto by that person contains signs of a *de jure* components of a crime. Therefore, the legal classification of an act may be done in respect of a crime or of several crimes provided in the Criminal Law *(JCC no. 9 of 29.04.2016, §27).*

The Court held that the legal classification of the offense, being a complex operation, aimed at determining the objective truth, involves identification of the signs of the offense committed in objective reality with the signs of a crime detached from the incrimination legal provision, and this competence is assigned to judicial bodies *(JCC no. 9 of 29.04.2016, §28).*

1.6. Intimate, family and private life

1.6.1. Collecting biological evidence in case of a medical examination

Any physical intervention, even of a minimum degree, which is performed in relation to a person against his/her will, may affect the right of the examined person to the privacy of his/her personal life. The right to protection and respect of private life cannot be an absolute right, rather a right which may imply limitations conditioned that they are reasonable and proportional to the pursued legitimate aim *(JCC no. 18 of 18.07.2016*[16]*, §51, 53).*

[16] Judgment no.18 of 18.07.2016 on the exception of unconstitutionality of certain provisions of Art. 2641 para.(3) of the Criminal Code *(collection of biological samples from drivers)*

The Court held that the need of intervention in the private life by obliging the driver of a transportation means to collect biological evidence for establishing the drunk condition is justified by protection of some important values, such as public order, security in road traffic, prevention of danger for life and physical integrity of other persons, as well as prevention of the danger for the life, bodily integrity of the driver of the transportation means as well *(JCC no. 18 of 18.07.2016, §57).*

In the same respect, the European Court stated in the cases *Tirado Ortiz and Lozano Martin v. Spain* (Judgment of 15 June 1999) and *X. v. Holland* (Judgement of 4 December 1978) that even though the compulsory testing for levels of alcohol may be considered as violation of the applicants' private life in the meaning of article 8 § 1 of the Convention, at the same time, it may be considered as necessary for preventing crimes and protecting others' rights and freedoms. The European Court decided in its case-law that collecting the biological evidence from the drivers of transportation means for establishing the drunk condition is not affecting the right to private life *(JCC no. 18 of 18.07.2016, §58).*

Moreover, according to the Resolution (73) 7 of 22 March 1973 of the Committee of Ministers of the Council of Europe, chapter II p. 2 let. b), provides that "whenever the driver of the transportation means is suspected of committing offences under the alcohol influence while driving, it is necessary to carry out a medical examination, and if there are no medical counter-indications, to carry out the blood testing". And letter c) from the same point sets forth that "nobody can refuse or withdraw himself/herself from the respiratory test, blood test of medical examination" *(JCC no. 18 of 18.07.2016, §62).*

The Court has underlined that the need of collecting biological evidence is justified by the fact that the samples in the respective cases have a temporary nature, as they are quickly subject to metabolism, thus there no less restrictive means for performing the goal of ensuring road traffic safety. At the same time, there are no means which would confirm with certainty the advance drunk condition, and thus this measure is assessed as being proportional with the situation which has determined it and necessary in a democratic society *(JCC no. 18 of 18.07.2016, §63).*

Thus, the procedure for alcohol testing and medical examination for establishing the drunk condition of the person is regulated by the normative framework, which sets some guarantees in this respect, and the obligation of the driver of the transportation means to undergo the medical examination for establishing the drunk condition is not an excessive measure and it does not affect the constitutional provisions *(JCC no. 18 of 18.07.2016, §66).*

1.7. Freedom of conscience

1.7.1. Limits of the freedom of conscience

Pluralism, tolerance and sincerity characterize a "democratic society". Although sometimes it has to subordinate people's interests to those of a group of persons, democracy is not only the constant supremacy of the opinion of the majority, but also a balance which ensure fair treatment to minority and which avoids aby abuse of a dominating position *(JCC no.14 of 16.05.2016*[17]*, §77).*

The right to have a belief is a right of general nature, which protects the interior side of a person, meaning the area of personal believes and religious faith, and cannot be subject to any restrictions, limitations, conditioning or derogation. All - the faithful persons and atheists, as well as "agnostics, sceptics, or neutral persons" are benefiting from this right. *(JCC no.14 of 16.05.2016, §83).*

The person's consciousness implies individuality and differentiates the persona as an individual. That's why the state should protect the private life of the human being, as well as his/her consciousness. During the thinking process, the human being formulates certain believes, and his/her social life is frequently led by public manifestation of these believes – both situations being under the protection enshrined in article 9 of the European Convention on Human Rights *(JCC no.14 of 16.05.2016, §84).*

In this context, the persons who change or give up a religion or faith, the persons who support non-theist or atheist believes and the persons who do not practice a certain religion or believe should be equally protected and not subject to discriminatory treatment *(JCC no.14 of 16.05.2016, §87).*

[17] Judgment no. 14 of 16.05.2016 on the exception of unconstitutionality of Art.1 para.(2) p.c) of the Law no. 121 of 25 May 2012 on equality *(non-discrimination based on religion)*

Thus, the Court held that although article 31 of the Constitution enshrines the separation of religious cults from the state and provides for the autonomy, nevertheless the exercise of the right to freedom of conscience or religious faith should observe public safety and order, health and public moral protection, as well as the rights and freedom of other persons. Thus, the **right to have a belief protects the internal side of a person, and not the external manifestation of his/her believes** *(HCC nr.14 din 16.05.2016, §88).*

Moreover, when referring to the relations between religions, the constitutional provisions of article 16 should be correlated with the provisions set in article 31 of the Supreme Law, hence imposing the observance of the following principles: 1) equality between faithful and non-faithful; 2) cultivation of a tolerance climate and mutual respect; 3) prohibition of any manifestation of setting people against each other *(JCC no.14 of 16.05.2016, §89).*

The Court noted that the constitutional and international norms do not allow applying a discriminatory treatment based on religion or belief grounds. Nevertheless, in certain situations a different treatment may be set if there objective and reasonable justification *(JCC no. 14 of 16.05.2016, §90).*

In this respect, article 4 para. (2) of the Council of Europe Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation provides that the national legislation may include provisions, based on which, in the case of occupational activities within churches and other public or private organizations the ethos of which is based on religion or belief, a difference of treatment based on a person's religion or belief **shall not constitute discrimination where, by reason of the nature of these activities or of the context in which they are carried out, a person's religion or belief constitute a genuine, legitimate and justified occupational requirement, having regard to the organization's ethos.** This difference of treatment shall be implemented taking account of Member States' constitutional provisions and principles, as well as the general principles of Community law, and should not justify discrimination on another ground *(JCC no. 14 of 16.05.2016, §91).*

The provisions of art. 4 para. (2) of the Directive 2000/78/EC was transposed in article 7 para. (6) of the Law on Ensuring Equality, establishing directly the fact that in case of professional activities of the religious cults and their component parts does

not constitute discrimination, differentiated treatment based on religious and personal beliefs, when the religion or beliefs constitute an essential professional requirement, legitimate and justified *(JCC no. 14 of 16.05.2016, §92).*

In this context, the Court held that the legislator may establish certain exceptions only in the part related to the organization of the religious cult, internal principles of activity, but not in the part in which the representatives of the cults are interacting externally *(JCC no.14 of 16.05.2016, §94).*

1.7.2. Secular state

The Court underlined that article 1 para. (2) let. c) of the Law on Ensuring Equality, according to which *"The provisions of this law shall not extend to and cannot be interpreted as limiting or prejudicing religious cults and their component parts regarding to their religious beliefs"*, **should be applied to the extent in which it refers to the teachings, cannons, and traditions of religious cults, the provisions of which are applied to their own faithful person, to church actions in spaces meant for this purpose, so as not to contravene the legislation in force and not to affect the human rights and fundament freedoms** *(JCC no. 14 of 16.05.2016[18], §95).*

1.8. Right to information

1.8.1. Access to information held by the Governmental Agent

The Court held that the contested dispositions provide that the provisions of the Law on Access to Information do not apply to the correspondence of the Governmental Agent with the European Court and with other authorities, as well as the materials of the cases under the examination of the Governmental Agent *(JCC no. 16 of 18.05.2016[19], §60).*

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[18] Judgment no. 14 of 16.05.2016 on the exception of unconstitutionality of Art.1 para.(2) p.c) of the Law no. 121 of 25 May 2012 on equality *(non-discrimination based on religion)*

[19] Judgment no.16 of 18.05.2016 on the exception of unconstitutionality of Article 10 para.(4) of the Law on Governmental Agent no. 151 of 30 July 2015 *(access to information)*

The acts which ate under the procedure of the Governmental Agent and the ones which refer directly to the representation of the Government in the European Court may contain personal data and/or confidential information. If such information is disclosed, it could affect the private life of the applicants, reputation and/or presumption of innocence of other persons, who are mentioned in the acts held by the Governmental Agent *(JCC no. 16 of 18.05.2016, §74).*

The restriction provided by the Law on Governmental Agent[20] derives from the peculiarity of the contentious proceedings in front of the European Court, pursuing a double aim and namely (1) protection of the interests of the Governmental Agent institution when representing the state in front of the European Court, and especially (2) protection of the rights of the concerned persons in the cases examined by the European Court (right to private life, presumption of innocence, dignity and reputation of the person, etc.) *(JCC no. 16 of 18.05.2016, §75).*

Thus, the restriction of the right of access to a certain category of information is applied for securing the "other right", in particular – protection of rights, freedom and dignity of other persons, as well as hindering the disclosure of confidential information, and thus it correspond to the legitimate aim, referred to in the second paragraph of article 54 of the Constitution *(JCC no. 16 of 18.05.2016, §76).*

Based on the specific nature of the activity of the Governmental Agent institution, the Court established the existence of certain conditions which have determined the establishment of some restrictions in the exercise of the right of access to information provided by the contested norm. Nevertheless the Court noted that the contested norm is not a blanket norm, which sets forth excessive restrictions to the information held by the Governmental Agent and does not allow the individualization of the categories of information to be restricted for the public *(JCC no. 16 of 18.05.2016, §82).*

In this context the Court held that due to the special importance they have, the information regarding personal data, the disclosure of which could affect the persons'

[20] Article 10 para. (4) of the Law No. 151 of 30 July 2015 on the Governmental Agent sets the following: "The provisions of the Law No. 982-XIV of 11 May 2000 on Access to Information do not apply to the correspondence of the Governmental Agent with the European Court and with other authorities, as well as to materials from the cases which are under the review of the Governmental Agent."

rights, benefit from increased legal protection and prevails over the free access to information in the cases expressly provided in the law *(JCC no. 16 of 18.05.2016, §86).*

In relation to the confidential information in the correspondence of the Governmental Agent with the public authorities, the Court mentioned that the secret correspondence of authorities is protected by the provisions of the Law on State Secrete No. 245-XVI of 27 November 2008, being subject to a special storage regime *(JCC no. 16 of 18.05.2016, §87).*

At the same time, the Court noted that in relation to the **correspondence** of the Governmental Agent **in the context of amiable regulation of a case**, article 62 §2 of the Regulation of the European Court provides that the negotiations held for obtaining an amiable settlement of a case are confidential and should not influence the observations made by the parties during the contentious proceeding. No written or oral communication, and no offer for regulation, which would occur during such negotiations will be able to be mentioned or invoked in the contentious procedure *(JCC no. 16 of 18.05.2016, §88).*

But in the part related to the need to restrict the access to the correspondence of the Governmental Agent with the European Court, according to the general rule from article 40 § 2 of the Convention, the access to the acts submitted to the European Court Secretariat is not limited for the public, only if the President of the European Court decides otherwise *(JCC no. 16 of 18.05.2016, §89).*

Moreover, the Regulation of the European Court provides that the public's access to a document or a part of a document may be restricted for the purpose of moral interest, public order or national security in a democratic society, whenever the interests of the minors or protection of the private life of the parties impose it, or when in the special circumstance, in the extent in which it is considered to be strictly necessary by the President of the Chamber, advertising would impact the achievement of justice interests *(JCC no. 16 of 18.05.2016, §91).*

Based on the above mentioned, it may be concluded that there is a need to perform an individualized examination of the requests of information held by the Governmental Agent, in a similar manner like that of the European Court, without excepting integrally and automatically the categories of information *(JCC no. 16 of 18.05.2016, §92).*

In this context, if a limitation is applied to some information held by the Governmental Agent, in order not to damage the private life or other legitimate interests, nevertheless the access to rest of information held by the Governmental Agent to be provided upon request, and if the partial version of a document becomes meaningless or may generate confusions, access may be refused, as it is provided in the Recommendation of the Committee of Ministers No. 2 of 21 February 2002 on Access to Official Documents *(JCC no. 16 of 18.05.2016, §93).*

1.9. Right to administration

1.9.1. Conflict of interests while performing functional activity

A conflict of interest involves a conflict between the duty to the public and personal interests of a civil servant, where the civil servant has interests in his capacity of a private person, which could improperly influence fulfillment of functional obligations and responsibilities *(JCC no. 13 of 13.05.2016*[21]*, §61).*

Personal interests are not limited to financial or pecuniary interests or those interests which generate a direct personal benefit to the civil servant. A conflict of interests can refer to an activity that otherwise may be legitimatized in his capacity as private person, to affiliates and personal associations as well as to family interests, whether those interests can be considered in a plausible manner as being capable of influencing in an improper manner the fulfillment of functional duties *(JCC no. 13 of 13.05.2016, §62).*

The objective of a policy on the conflict of interests should envisage fairness of official political and administrative decisions and of the public administration in general, recognizing that an unresolved conflict of interests may result in an abuse of office *(JCC no. 13 of 13.05.2016, §63).*

Therefore, the policy on the conflict of interests must strike a balance, by identifying risks regarding the fairness of public institutions and of public officials, prohibition of forms of unacceptable conflict of interest, proper handling of suchlike situations, informing public institutions and officials on the appearance of such conflicts of interests,

[21] Judgment no.13 of 13.05.2016 on the exception of unconstitutionality of Article 6 para.(1) p.d) and e) of the Law on the Activity within Customs Bodies no. 1150-XIV of 20 July 2000 (*restrictions for the performance of functional activity*)

introduction of effective procedures for the identification, declaration, settlement and promotion of appropriate solutions for the situations related to the conflicts of interest *(JCC no. 13 of 13.05.2016, §64).*

By regulating the conflict of interests, the legislature sought to protect social relations referring to the effective exercise by the civil servant of his/her functional activity that requires correct behavior of the person working within a public authority. This implies correctness of the civil servant while performing functional duties, abstainance from making decisions likely to render directly or indirectly, or through any third parties, some material advantages, any favoring of relatives or of persons in respect of whom the civil servant had business relations being excluded *(JCC no. 13 of 13.05.2016, §84).*

Despite the fact that the conflict of interests is not *ipso facto* corruption, however the emergence of conflicts between personal interests and public duties of public servants, if not treated properly, can lead to corruption *(JCC no. 13 of 13.05.2016, §85).*

1.10. Freedom of Association

1.10.1. Membership in the association on joint ownership of condominium

Condominium is a unique complex of property, which includes land plots within the borders established as well as the block (blocks) of flats, other real estate objects located on it, where one part composed of dwellings, spaces having other destination than for the purpose of housing, is possessed under private, state or municipal property, and the rest is undivided joint ownership *(JCC no. 20 of 20.07.2016[22], §49).*

Existence of certain area held in joint ownership and impossibility of individual management thereof requires that all owners constitute a structured organization in the form of association of condominium owners in order to act on behalf and for the mutual benefit of all joint owners. Therefore, given that none of the owners can exercise its exclusive ownership of undivided joined ownership over the undivided share part out of the ftced joint ownership in respect of the joint parties, the solution related to the

[22] Judgment no. 20 of 20.07.2016 on the exception of unconstitutionality of Article 22 para.(4) of the Law on the Housing Condominium no. 913-XIV of 30 March 2000 (*membership in the association on joint ownership of condominium*)

creation of an associations of joint owners is justified. Membership in this association is inextricably linked to the ownership of the housing *(JCC no. 20 of 20.07.2016, §55).*

Thus, following the acquisition of the ownership over an appartment, the person becomes the joint owner of the common parts of the building made up of a number of appartments and implicitly member of the association on joint ownership in condominium *(JCC no. 20 of 20.07.2016, §60).*

The necessity to establish such an association is imposed by the fact that in case of a building consisting of a number of housing the proper explotation thereof implies the administration of a number of assets that can not belong exclusively to a single owner *(JCC no.20 of 20.07.2016, §61).*

If the person decides to buy a housing in an apartment building, he/she implicitly agrees to entering a community that is intended to be managed and owns certain common assets. In this regard, the person does not join a public association or a political party, therefore, the association on joint ownership of condominium is not based on the concept of free association *(JCC no. 20 of 20.07.2016, §62).*

Mandatory association in a condominium is an effective tool to solve in a qualitative manner the problems related to the administration and management of joint property, which is based on clear instruments that regulate the relationship between the joint owners, including the powers and mechanisms for fulfilling the tasks assigned to each member *(JCC no. 20 of 20.07.2016, §65).*

In this regard, the Court held that by creating associations on joint ownership of condominium the legislator meant to protect certain general interests. As a matter of fact, administration and management of common property in good condition cannot be achieved only under associative structures. Therefore, imposing creation of associations of joint ownership by law is not an end in itself, **it is rather a way to ensure the process of maintenance of apartment buildings for the common interest of all joint owners** *(JCC no. 20 of 20.07.2016, §66).*

Thus, under certain situations the legislator may establish special forms of association and given the goal which they pursue, **these associations cannot be considered associations within the meaning of the freedom of association. As a matter of fact, the association of joint owners circumscribe this particular situation** *(JCC no. 20 of 20.07.2016, §67).*

1.11. The right to work and labor protection

1.11.1. Suspension of the individual labor contract

Labour legislation imposes on the workforce a number of requirements to be employed and provides the situations when the labor relations are suspended and terminated *(JCC no. 6 of 03.03.2016[23], §70).*

However, despite the fact that labor legislation allows certain limitations on the rights of the employees, however, these should exist a justification for such limitations, they should be necessary and should respond to a general interest. According to the proportionality test, the measure taken must be appropriate – to be able to objectively lead to the fulfilment of the purpose, should be necessary - indispensable for the achievement of the the aim and proportionate - to ensure the right balance between particular interests with a view to correspond to the aim pursued *(JCC no. 6 of 03.03.2016, §72).*

The purpose for which the possibility of suspending the individual employment contract was regulated, the case of referral to a court of the criminal case in relation to commission by an employee of a crime incompatible with the position held, was to enable the employer to prevent the employee, while carrying out his/her functional duties, from committing other offences similar to those for which he/she is being investigated and to prevent him/her from causing further damage. In addition, these provisions are meant to protect the interests of the employer or of the institution where the employee activates *(JCC no. 6 of 03.03.2016, §83).*

Referring to the regulations governing suspension of labor relations with a civil servant, in case he/she is acknowledged as suspect or in case of issuance of an indictment, the Court noted that the measure aims, among fails to require any other conditions such as commission of criminal offences incompatible with the position held *(JCC no. 6 of 03.03.2016, §84).*

The Court noted that restricting the right to work through the suspension of labour relations is applied to safeguard "another right", in particular to protect the institution and the prestige of the profession *(JCC no. 6 of 03.03.2016, §85).*

[23] Judgment no.6 of 03.03.2016 on the exception of unconstitutionality of Article 53 p.c) of the Law no. 158-XVI of 4 July 2008 on public office and status of civil servant and of Article 76 p.g) of the Labour Code (*suspension of labour relations*)

Given the nature and specifics of this measure, since the legislature considered it necessary by considering certain reasoning to suspend the employment agreement or of labour relations, by itself this measure does not violate the right to work. The Constitution does not prohibit the suspension of labour relations, provided, however, that such a measure is secured by the guarantees and complies with the principle of proportionality *(JCC no. 6 of 03.03.2016, §87).*

However, the Court noted that the law should not leave a free choice for the employer or for the public authority in deciding whether to suspend or not in an unilateral manner the labour relations without providing clear and precise conditions, modalities and criteria (see, *mutatis mutandis* ECtHR *Milojević and others v. Serbia* of 30 January 2016) *(JCC no. 6 of 03.03.2016, §88).*

While regulating the situations of suspension of labour relations there should not be admitted the possibility of issuing arbitrary or unjustified decisions in order to protect the right to work as this requires, *inter alia*, that the restriction for the exercise of this right complies with the constitutional requirements imposed by art. 54 para. (4) on proportionality, not only providing measures of reparatory nature or of certain alternative solutions *(JCC no. 6 of 03.03.2016, §89).*

According to the Labour Code, the suspension only operates if the criminal case is sent to court, and the offense is incompatible with the work executes, however the Law no. 158 of 4 July 2008 regulates suspension from the stage of acknowledgment as suspect and in absence of any causal relation between the activity performed and the offence committed *(JCC no. 6 of 03.03.2016, §90).*

The Court found that the provisions of art. 76 p. g) of the Labour Code were meant to protect the public interest by removing the person from a particular function if he/she is accused of an offense related to the performance of this function, thereby preventing the commission of other similar facts or the being suitable, necessary and appropriate to the aim pursued, the provision of Art. 76 p. g) of the Labor Code, subject to constitutional control does not represent a violation of the right to work under Article 43 of the Constitution in conjunction with Article 54 *(JCC no. 6 of 03.03.2016, §92).*

Unlike Art. 76 p. g) of the Labour Code, when applying the provisions of Art. 53 p. c) of Law no. 158 of 4 July 2008 the assessment of the basis for suspending labour rela-

tions is the discretion of the public authority which is not bound in any way to take into account the intrinsic link between the alleged offence committed and the functional activity carried out by the sivil servant *(JCC no. 6 of 03.03.2016, §93).*

In this respect, the mere fact that the person was recognized as a suspect for the commission of an offense which is extrinsic to this person's relations of professional activities that are being carried out and the public authority to which it belongs may not serve as grounds for suspension of laboyr relations *(JCC no. 6 of 03.03.2016, §94).*

The Court noted that following the effects of the impugned provisions of the challenged law an imbalance is created to the detriment of the civil servant in the meaning that in respect of the latter labor relations may be suspended in case of initiation of any criminal cases *(JCC no. 6 of 03.03.2016, §95).*

However, on the other hand, the Court held that the provisions of art. 53 lit. c) of the Law on of the Law on Civil Service, which entitles the employer to suspend employment relationships till the case is sent to court, with no intrinsic link between the alleged criminal offence and his office, infringes upon the principle of proportionality. Therefore, the measure is excessive compared to the pursued goal, this being in breach of Article 43 in conjunction with Article 54 of the Constitution (*JCC no. 6 of 03.03.2016, §97).*

1.12. Right to private property and the protection thereof

1.12.1. Prohibition to transfer and withdraw funds from bank accounts foe persons affiliated to a commercial bank

The Court noted that in the cases when there are bank deposit contracts between clients and commercial banks, we can speak about legitimate waiting period of these persons in observing their right to property *(JCC no. 11 of 11.05.2016[24], §54).*

Postponing the payment of claims to creditors and transfer of bank assets for a period of up to 2 months and limit the restriction of this moratorium to certain categories of

[24] Judgment no. 11 of 11.05.2016 on the exception of unconstitutionality of certain provisions of Articles 37^{7} para.(2) and 37^{15} para. (2) of the Law on Financial Institutions No. 550 of 21 July 1995 (*prohibition of transfer and withdrawal of funds from bank accounts of persons affiliated to a commercial bank*)

creditors may prevent the worsening of financial situation of the bank, keeping its assets and avoid the excessive risk in the financial system. These purposes contribute to the protection of economic welfare of the country *(JCC no. 11 of 11.05.2016, §63).*

The priority granted in the interest of depositors and other creditors who are not affiliated to the banks, compared to the shareholders and creditors who are affiliated to the bank is based on the purpose to protect the right of other persons (for instance, priority given to the creditors not affiliated to the bank is actually a protection to their right to property) *(JCC no. 11 of 11.05.2016, §64).*

As for the rights of others, if the person could transfer and withdraw money without restrictions, there would be a danger to prejudice the persons not affiliated to the bank. Weighed with the risk suffered by persons not affiliated to the bank through the actions of persons affiliated to the bank who had an advantage, the limitation of the rights to use their money in the bank weighs less. On one hand, we have the core of the right to property of the persons not affiliated to the bank, persons who can be prejudiced irremediably, on the other hand, the 'periphery' of the right to property of the concerned persons, whose right to dispose of their money is restricted for a period of up to 2 months. In this sense, affecting the core of the right to property is more severe than affecting the 'periphery' of the right to property *(JCC no. 11 of 11.05.2016, §81).*

As for the public interest discussed, the Court underlined the need to maintain the economic welfare of the country, which is based exclusively on financial stability of the banks forming the banking system. Weighing again the limitation of the right of the persons in questions to use their money for a reasonable period of time and the interest to maintain an economic welfare of the country, the last prevails. Hence the Court established the proportionality of challenged legal measures *(JCC no. 11 of 11.05.2016, §82).*

1.12.2. Excluding the right to privatize housing provided by the state employer

The Court noted that it is the prerogative of the legislature to decide the manner in which the right of ownership of the state in respect of its property should be exercised. Both Art. 46 of the Constitution and Art. 1 of Protocol no. l of the European Conven-

tion do not guarantee the right to become owner of a property and are limited in their effectiveness to the mere fact of recognition of the current right, rather than the right to obtain ownership in respect of an asset *(JCC no. 15 of 17.05.2016[25], §§71, 49).*

The Court held that housing provided by the state employer by their nature are not intended for alienation to the tenants due to the fact that have a special purpose provided by the law. Housing provided by state employers is assigned for use exclusively to the employees and their family members for the period of carrying out functional duties, according to the law *(JCC no. 15 of 17.05.2016, §57).*

In this regard, the action of using the housing provided by the state employer is closely related to the existence of labor relations between the employees and the owners of these housing and shall lasts for the period of labor relations *(JCC no. 15 of 17.05.2016, §58).*

The Court also pointed out that the legislature is empowered to regulate the regime of privatization according to different categories of housing. Thus, the provisions of Article 5 para. (2) of the Law on Privatization of Housing, amended by the Law no.278 of 7 December 2012 provide that the immovable property situated in military towns of close type, hostels, company housing, damaged or irreparable housing, houses that are intended for demolition, cantons and other constructions that are on the balance or owned by state forest fund cannot be sold or transmitted free of charge in private property *(JCC no. 15 of 17.05.2016, §63).*

The right to privatize housing provided by the state employer is not a right guaranteed by the Constitution and the legislator is free to choose, depending on government policy and on financial resources, the measures which may be applicable to the property owned by it. Thus, the exclusion of housing provided by the state employer from the fund intended for privatization cannot be regarded as a violation of art. 46 of the Constitution, due to the fact that such housing does not represent an "in respect of a "good" cannot be invoked as "asset". *(JCC no. 15 of 17.05.2016, §§66, 67).*

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[25] Judgment no.15 of 17.05.2016 on the exception of unconstitutionality of certain provisions of the Law on the Privatization of Housing no. 1324-XII of 10 March 1993 (*excluding the right to privatize the housing provided by the state employer*)

1.12.3. Notification of the mortgage borrower

In art. 31 para. (3) of the Law on Mortgage, the legislature set the mandatory content of the notification and of the notice, concurrently indicating that the creditor must provide a deadline by which the debtor shall execute the mortgage right and shall indicate the amount of outstanding sums to be paid in order to avoid enforcement proceedings *(JCC no. 26 of 27.09.2016[26], §59).*

Having analyzed the abovementioned provisions, the Court found that the notification is a stage in granting an additional term to the mortgage borrower and a final settlement procedure, which offers the opportunity to set off the mortgage over the immovable property *(JCC no. 26 of 27.09.2016 , §60).*

Therefore, the procedure for notifying the mortgage borrower is a preliminary stage in the process of enforcement of the mortgage and is essential for the preservation of the ownership over the immovable property. This procedure aims at preventing the introduction by the mortgage creditor of abusive or unexpected claims that might put hinder voluntary enforcement of the obligation *(JCC no. 26 of 27.09.2016, §61).*

According to Article 31 para. (2) first sentence of the Law, the notification shall be sent to the mortgage borrower and, where applicable, to the debtor by registered letter with acknowledgment of receipt. According to the same paragraph, second sentence, the notification shall be deemed received on the expiry of 7 working days from the day of dispatch *(JCC no. 26 of 27.09.2016, §62).*

Havig analysed the content of art. 31 para. (2) of the Law, the Court found that while the norm establishes that the debtor mortgage shall be notified by registered letter with acknowledgment of receipt, another time the same paragraph states that notification shall be deemed received on the expiry of 7 working days from the day of dispatch *(JCC no. 26 of 27.09.2016, §64).*

Therefore, the Court held that the applicability paragraph. (2) the second sentence of Article 31 of the Law on mortgage involves a number of weaknesses in terms of legislative clarity and predictability of the legal provision *(JCC no. 26 of 27.09.2016, §69).*

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[26] Judgment no.26 of 27.09.2016 on the exception of unconstitutionality of certain provisions of Articles 31para.(2) and 31 para. (4) of the Law No. 142-XVI of 26 June 2008 on mortgage (term of notification)

Thus, provided that the mortgaged property may be directly executed, especially in the case of a notarial act invested with an enforceable formula, the lack of predictability and clarity of the moment of receiving the notification directly affects the right to property of the mortgage borrower. As a matter of fact, the main purpose of the notification is to warn the mortgage borrower of the execution of the mortgage and to encourage the latter to pay the amounts of arrear, in order to halt the process of mortgage execution. In such situations, there exist the risk of abusive exercise by the mortgage creditor of the mortgage right in respect of the immovable property, affecting to some degree the ownership of the mortgage borrower *(JCC no. 26 of 27.09.2016, §70).*

Uncertainty and interference with the ownership of the mortgage borrower is obvious in the case of application of the provision indicated in para. (2) second sentence of Article 31 of the Law in conjunction with para. (7) of the same provision, according to which the mortgage borrower will be deprived of the right to voluntarily pay off the mortgage within the period specified in the notification *(JCC no. 26 of 27.09.2016, §71).*

Thus, given the seriousness resulting following the omission of the time frame prescribed in the notification, the Court held that effective acknowledgment thereof to the attention of the mortgage borrower is essential in exercising the mortgage right and for the protection of ownership *(JCC no. 26 of 27.09.2016, §72).*

The Court held that the text of the challenged law is formulated in an imprecise and unclear manner, which does not fulfil the requirements of clarity and predictability enshrined in Article 23.2 of the Constitution and might negatively influence the property right guaranteed by art. 46 of the Constitution. *(JCC no. 26 of 27.09.2016, §73).*

At the same time, the Court the Court attested that mortgage relations primarily relate to the banking system of the Moldova, which most often turns to mortgage guarantees for provided loans. In this regard, it is necessary to strike a balance between the economic interests of the country and protection of property rights of mortgage borrowers *(JCC no. 26 of 27.09.2016, § 75).*

Given the nature of the mortgage contract, there is a possibility that the mortgage borrower might abuse of its rights and guarantees provided by the Law on Mortgage, and might evade by various methods from the receipt of the notification sent by the creditor. In this respect, the Court underscored that the effects of the notification shall not

be based entirely on the actual receipt by the mortgagor of the notification. In case the mortgagor refuses the reception or does not receive the notification through no fault of the mortgagee and in order for legal certainty not to be affected, there shall be applied the general rules recommended for the procedure of sending recommended letters, set by the regulatory framework on postal communications *(JCC no. 26 of 27.09.2016, § 76).*

Moreover, taking into account the principle of equality of subjects within civil relations, the establishment of a security in favor of one party must not be disproportionate to the other party *(JCC no. 26 of 27.09.2016, § 77).*

1.12.4. Inheriting the shareholding within a limited liability company

The ownership of the shareholding successor may be affected through Art. 30 of the Law on limited liability companies, according to which the share part is regarded as owned by the acquirer as of the date of registration in the State Register of Legal Entities of the amendments to the founding documents on alienation / acquisition of the shareholding *(JCC no. 27 of 27.09.2016[27], §50).*

The Court found that the acquisition and recognition of ownership in respect of shares alienated or acquired depends on the changes made within this meaning to the founding document *(JCC no. 27 of 27.09.2016, §51).*

The Court noted that under Article 42 para.(1) of the Law, the quality of company associate is acquired either by participating in its founding, or through acquisition, subsequent to its founding, of capital shares. *(JCC no. 27 of 27.09.2016, §52).*

In this regard, the Court underscored that the acquisition of social shares, subsequent to the founding of the company, is made through the transfer of the capital shares between the living ones and upon death (*mortis causa*). *(JCC no. 27 of 27.09.2016, §53).*

In this regard, the Court held that while Article 42 of the Law that establishes the obtaining of the capacity of **an associate, inclusively by acquisition of capital shares, subsequent to the founding of the limited liability company, the registration of**

[27] Judgment no. 27 of 27.09.2016 on the exception of unconstitutionality of certain provisions of the Law No. 135-XVI of 14 June 2007 on limited liability companies (modification of the founding acts of LLC)

the acquired or inherited capital shares in the State Register of legal entities may not be conditioned by the amendments made to the founding act of the company. *(JCC no. 27 of 27.09.2016, §56).*

Moreover, since the founding and the activity of the limited liability company is based on the mutual will and trust of the associates, in addition to the aforementioned findings, the Court noted the existence of situations where the quality of new associate of the acquirer of shares may be refused by the company members. Such a refusal should not affect the property rights of the share parts acquirer, he/she being entitled to receive the equivalent value of the corresponding capital shares. *(JCC no. 27 of 27.09.2016, §58).*

1.12.5. Transmission of installations and public water supply networks

Under Article 3 para. (1) of the Law on the Public Water Supply and Sewerage Service, the public water supply and sewerage service covers a totality of activities of public utility and with regard to economic and social interest carried out in a general manner in order to capture, treat, transport, store and distribute potable or technological water to the consumers in the territory of one or more localities, as well as to collect, transport, cleanse and evacuate the wastewater *(JCC no. 30 of 01.11.2016[28], §44).*

Under the challenged provisions of article 19 par. (4) of the Law the Public Water Supply and Sewerage Service, following the termination of construction works, the installations and public networks of water supply and sewerage, located on public land, built by individuals and/or legal entities as well as those built until the entry into force of this Law, regardless of the funding source, are transmitted free of charge to the balance of local public authority or directly to the operator in accordance with the decision of the local council *(JCC no. 30 of 01.11.2016, §45).*

In the present case, the Court held that, under the aforementioned legal provisions the installations and public networks of water supply and sewerage are transmitted free of charge to the balance local public authority or directly to the operator, including in

[28] Judgment no. 30 of 01.11.2016 on the exception of unconstitutionality of Article 19.4 of the Law No.303 of 13 December 2013 on the Public Water Supply and Sewerage Service *(free of charge transmission to the balance of the authority of installations and public networks of water supply and sewerage, located on public land)*

cases when these constructions were built from the own investment resources by the individuals and/or by the legal entities *(JCC no. 30 of 01.11.2016, §47).*

The Court noted that while the person has obtained the necessary authorizations for carrying out legal construction works and invested his/her own resources, these goods are taken free of charge *(JCC no. 30 of 01.11.2016, §48).*

Given the fact that the water is attributed to the category of state property, and the contested provisions relate to the installations and public networks of water supply and sewerage situated on public land, the legislator is entitled to regulate the manner of usage thereof. At the same time, the Court stressed that any regulatory substance can affect a person's right to dispose of his/her assets *(JCC no. 30 of 01.11.2016, §49).*

The Court found that the challenged provisions in fact represent expropriation without regulating prior and fairly established compensation of the owner or holder of other real estate rights over water supply networks *(JCC no. 30 of 01.11.2016, §50).*

This conclusion is based on the fact that the legislature has determined that following the termination of construction works the installations and public networks of water supply and sewerage despite of the fact of being built using the own investments, are transmitted free of charge to the balance of local public authority or directly to the operator, meaning total deprivation of right to dispose of these constructions *(JCC no. 30 of 01.11.2016, §51).*

Expropriation is one of the most severe measures that may be applied with respect to the private property right as it is not a mere limitation of that right, it is rather a way leading to its loss. In this respect, the legislator adopted the Law on expropriation for public utility cases no.488-XIV of 8 July 1999, which regulated public utility and the declaration thereof, the manner of expropriation and the measures preceding expropriation, the rights of the expropriated person. Under that law, expropriation shall be preceded by a compensation offered to the owner of the asset *(JCC no. 30 of 01.11.2016, §52, 53).*

Moreover, with regard to the compensation paid to the owner of the property right for his/her deprivation of his right the European Court held that in the absence of remedial compensation Art. 1 of Protocol no. 1 would ensure only an illusory and ineffective protection of property rights, in total contradiction with the provisions of the European

Convention (case *James and Others v United Kingdom*, judgment of 22 February 1986) *(JCC no. 30 of 01.11.2016, §54).*

Deprivation of property requires the state's obligation to indemnify the owner, as lacking to pay a reasonable amount related to the value of the property, this measure constitutes an excessive infringement of the right to respect own assets. Failure to obtain fair compensation following the deprivation of property is a breaking of the balance between the need for protection of ownership and general requirements (*JCC no. 30 of 01.11.2016, §55).*

In this context, the Court held that any construction made out of the financial means of the individual or of the legal entity may be transmitted to the balance of local public authority or directly to the operator only following a fair and preliminary compensation (*JCC no. 30 of 11.01.2016, §56).*

In conclusion, the Court held that the provisions of Article 19 para. (4) of the Law on Public Water Supply and Potable Water, in the part referring to the free transmission of installations and public networks of water supply and sew to the balance of local public administration or directly to the operator, violate Article 46 para. (1) and (2) in conjunction with Article 54 of the Constitution *(JCC no. 30 of 01.11.2016, §57).*

1.13. Right to social assistance and protection

1.13.1. Retroactive payment of pension

The Court emphasizes that the right to pension (treated as a property right within the meaning of Art. 1 Protocol no. 1 to the European Convention) can not be seen only as an individual civil right, rather, at first, it belongs to the sphere of social protection and according to their social and legal nature, pensions represent the primary and the permanent are source of subsistence of pensioners (JCC no. 19 of 19.07.2016[29], §71).

Referring to the public interest, stretching a balance line between the interest of the state to establish certain deadline for the emergence, exercise or defense of civil ri-

[29] Judgment no. 19 of 19.07.2016 on the exception of unconstitutionality of certain provisions of the Law no.156-XIV of 14 October 1998 on State Social Insurance Pensions and of the Regulations on payment of pensions established in the public system of state social insurance and state social allowances, approved by Government Decision no.929 of 15 August 2006 (*retroactive payment of pension*)

ghts in order to ensure legal certainty on the one hand, and the right of citizens to receive full lifelong pension granted by the law, which is usually their primary source of subsistence, on the other hand, the Court found that the latter shall prevail *(JCC no. 19 of 19.07.2016, §72).*

The Court held that the legislature, establishing the 3 years period to collect retroactively the pension calculated, failed to take into account that its non-collection cannot depend on the will of the beneficiary *(JCC no. 19 of 19.07.2016, §64).*

Incidentally, in case of failure to timely pay the pension by the fault of social insurance body that establishes or pays the pension, the latter is paid without any time limitations *(JCC no. 19 of 19.07.2016, §65).*

At the same time, there may exist situations when the pension is not collected on time due to the reasons not attributable to the social insurance body, independent on the will of the pension beneficiary, however under such circumstances the law it sanctioning the pensioner *(JCC no. 19 of 19.07.2016, §66).*

Thus, taking into account the case law of the European Court on the application of Art. 1 of Protocol no. 1, according to which the right to benefit from social allowances shall be assimilated to a property right, the Court held that the legal provisions governing the establishment of a time limit of 3 years for retroactive collection of the calculated pension represent an interference with the right to property *(JCC no. 19 of 19.07.2016, §67).*

1.14. Protection of persons with disabilities

1.14.1. Rights and freedoms of persons with mental disabilities

According to the challenged provisions of Article 24 of the Civil Code, a person who, following a psychiatric disorder (mental illness or mental disability) cannot acknowledge or direct his/her actions can be declared incapable by the court, and guardianship shall be established in this respect *(JCC no. 33 of 17.11.2016[30], §102).*

[30] Judgment no. 33 of 17.11.2016 on the control of constitutionality of certain provisions of the Civil Code and Civil Procedure Code of the Republic of Moldova (*legal capacity of persons with mental disabilities*)

The Court noted that human dignity can be seen from two perspectives: first - as an inherent and inalienable value, and secondly – as a "right of the personality", which includes the values of psychological life of every human being, thus determining the position of the latter in the society and imposing due respect for each person. This "right of the personality" conditions the existence of minimum guarantees for every person to enjoy the opportunity to act freely within the society and to fully develop their personality in a social and cultural environment *(JCC no. 33 of 17.11.2016, §104).*

According to international acts, respect for human dignity, individual autonomy, including the right to make personal choices, as well as respect for the person's independence are fundamental principles *(JCC no. 33 of 17.11.2016, § 105).*

The aforementioned principles are the key elements defining the concept of legal capacity *(JCC no. 33 of 17.11.2016, § 106).*

The Civil Code of the Republic of Moldova recognizes the legal capacity of all persons. Thus, any person has the standing capacity and, except as provided by law, legal capacity. Also, the Civil Code stipulates that no one may be restricted in his/her standing capacity or deprived, in whole or in part, of legal capacity, except for the cases expressly provided by the law *(JCC no. 33 of 17.11.2016, § 107).*

In the light of the provisions of the UN Convention on the Rights of Persons with Disabilities, despite the fact that people with mental disabilities have the right to recognition irrespective of they place, of their legal capacity, it is possible to apply particular safeguarding measures which shall be adapted to the particular situation of that person (art. 12 par. (4)) *(JCC no. 33 of 17.11.2016, § 108).*

Thus, the Court held that guardianship can be established when the restrictions involved are proportionate to the level of disability of the person with mental disorders and only for a definite period of time, with subsequent assessment of the need to maintain this measure by the competent authority having established it *(JCC no. 33 of 17.11.2016, § 109).*

With reference to the proportionality of the protection measures, the European Court, in its case law stressed that strict scrutiny is called for where measures that have such adverse effect on a person's personal autonomy are at stake and that consideration of alternative measures while depriving a person from legal capacity is a factor to be tak-

en into account when considering the proportionality of such measures (*M.S. v. Croatia*, no. 36337/10, 25 April 2013, §97) *(JCC no. 33 of 17.11.2016, § 111).*

The European Court held that deprivation of legal capacity should be a measure of last resort, applied only where the national authorities, after carrying out a careful consideration of possible alternatives, have concluded that no other, less restrictive, measure would serve the purpose or where other, less restrictive measure, have been unsuccessfully attempted. (*Ivinović v. Croatia* no. 13006/13, 8 September 2014, §44) *(JCC no. 33 of 17.11.2016, § 112).*

Also, the European Court established in its case law the need for a "customized solution" in cases of declaration of incapacitation of individuals. In the case *Shtukaturov v. Russia*, the European Court ruled that national law of the defendant state provided full capacity and full incapacity of adults with mental disorders, but it did not provide for any "borderline" situation , such as partial deprivation of legal capacity, other than for drug or alcohol addicts. Therefore, the European Court found that the national legislation in this case does not provide a "customized solution" for adults with mental disorders by the fact that existing legislation at the time did not did not give the judges another choice but to fully deprive the person of legal capacity or to declare it as incapable (see *Shtukaturov*, no. 44009/05, judgment of 27 March 2008, § 95) *(JCC no. 33 of 17.11.2016, § 113).*

The Court held that the **protection measure for the persons with mental disorders should be flexible and provide a suitable solution for each situation or degree of disability.** Moreover, such a measure should not automatically involve full deprivation of a person with mental disorders of legal capacity *(JCC no. 33 of 17.11.2016, § 114).*

Therefore, in respect of aforementioned persons it is **necessary to establish alternative and provisional safeguarding measures** *(JCC no. 33 of 17.11.2016, § 115).*

The Court held that guardianship, as special measure for the protection of persons with mental disorders, **shall apply only in respect of those persons who cannot fully acknowledge or conduct their actions.** This security measure shall be established as a last resort, following the exhaustion of other less restrictive measures, the fact being ascertained by the courts while examining the application for declaration of incapacitation and subsequent assessment of the necessity to maintain the state of incapacity and only

to the extent that it does not fully deprive the person of the right to enter into minor legal acts or to carry out other activities that are inherent to his/her personality *(JCC no. 33 of 17.11.2016, § 118).*

Moreover, when establishing the guardianship, the legal representative must take into account the preferences of the person *(JCC no. 33 of 17.11.2016, § 119).*

The Court has emphasized that guardianship in itself is not unconstitutional, but in order to be compatible with the Constitution it shall be interpreted in the meaning that the declaration of legal incapacity targets only people fully lacking discernment and in respect of which the application of other less restrictive protection measures proves to be ineffective. *(JCC no. 33 of 17.11.2016, § 120).*

2 PUBLIC AUTHORITIES

2.1. Competence of the Government to regulate the imposition of sanctions

Section 34 paragraph one of the Regulation on exercising control over the use of public investment in construction[31] establishes that following the approval of the control minutes, the head of the State Inspectorate in Constructions adopts - in case there are found exaggerations of the volumes and costs of the performed works - the decision on the state budget collection of the amounts obtained unlawfully by the entrepreneur by way of exaggerating the volumes and costs of the performed works. The decision and control documents approved are transmitted to the territorial office of the State Tax Inspectorate at the place of residence of the undertaking company performing collection, to the Ministry of Finance, to financial authorities with a view to reduce the amounts of investments from the state or the local budget and of the investor *(JCC no. 29 of 28.10.2016[32], §59).*

The Court noted that pursuant to Article 31 of the Law on construction quality, the State Inspectorate in Constructions, is responsible for exercising the state control

[31] Annex No.3 to the Government Decision No. 360 of 25 June 1996

[32] Judgment no. 29 of 28.10.2016 on the exception of unconstitutionality of certain provisions of item 34 of Annex No.3 to the Government Decision No. 360 of 25 June 1996 on state quality control of constructions (*establishment of fines for the infringement of the legislation on the quality of constructions*)

over the uniform application of the legal provisions in the field of construction quality, within all phases and components of the system of construction quality and for finding contraventions, as well as for halting the poorly performed works. *(JCC no. 29 of 28.10.2016, §60).*

Court found that the State Inspectorate in Constructions is entitled to exercise state control of constructions quality and to issue decisions on compliance with laws and other regulations in the field of constructions. *(JCC no. 29 of 28.10.2016, §62).*

The Court noted that the purpose of State Control in Construction is to ensure rational use of their investments, compliance with rules for the use of building materials, construction mechanisms, correctness of calculations of construction costs, compliance with physical actual volumes of work to those provided in project and execution documentation *(JCC no. 29 of 28.10.2016, §63).*

Court held that the purpose of issuing such a decision is actually to return public money obtained by the entrepreneur unlawfully by way of exaggerating the volumes and the costs of the performed works, found by the act of control over the use of public investments in constructions. *(JCC no. 29 of 28.10.2016, § 64).*

At the same time, pursuant to item 34 of the third paragraph of the Regulation, simultaneously with the collection of the amounts (income) obtained unlawfully, the enterprise organisation is charged with a fine of the same size, regardless of its financial situation and the interrelationships with the budget *(JCC no. 29 of 28.10.2016, §66).*

In this regard, the Court noted that Articles 32, 33 and 34 of the Law on construction quality No.721-XIII of 2 February 1996 govern situations triggering criminal, administrative and patrimonial liability *(JCC no. 29 of 28.10.2016, §68).*

Arising from the mentioned legal provisions, the Court found that they do not provide for charging the entrepreneur with a fine amounting to the collection to the state budget of the amounts obtained unlawfully nor entitles the State Inspectorate in Constructions to impose such fines. *(JCC no. 29 of 28.10.2016, §69).*

The Court recalled that the normative act which is subordinated to the law may not contain primary rules and its content shall be in strict compliance with the rules and purpose of the law or of the normative act which is of superior legal value and cannot provide new regulations other than those established by the law or by another superior

act. Moreover, the normative act can not intervene in areas not regulated by the law. The acts of the Government are by-laws which develop and detail the provisions of the law. *(JCC no. 29 of 28.10.2016, §71).*

In this regard, the Court reiterated that the Government, as an authority of the executive power, shall execute the laws. Once the law is directly applicable, the necessity and legitimacy of a government decision appears only in so far as the implementation of the legal provision requires establishment of consequential rules ensuring their correct implementation and proper organization of activities *(JCC no. 29 of 28.10.2016, §72).*

Therefore, the Court reiterated that the law should exist prior to the decision, so that the Government decision is a legal act *secundum legem (JCC no. 29 of 28.10.2016, §74).*

Under such circumstances, the Government, in the exercise of the duty to implement the laws, acted *ultra vires*, entering within the competence of the legislative authority *(JCC no. 29 of 28.10.2016, §77).*

The Court therefore found that by approving the provisions of paragraph three Section 34 of the Regulation on the control over the use of public investment in constructions the Government exceeded its powers in violation of Art. 102 combined with Art. 72 para. (3) p.n) of the Constitution *(JCC no. 29 of 28.10.2016, §78).*

2.2. Assigning the responsibility by the Government

2.2.1. Relations between Parliament and Government. Ratione materie while assigning the responsibility by the Government

Assignment of Government's responsibility in relation to a draft law is an indirect legislative way of adoption of laws *(JCC no.5 of 02.03.2016*[33]*, §27).*

Taking into account its previous case law, the Court reiterated that Parliament is and remains the sole legislative authority, even in case of assigning of responsibility by the Government. Article 106[1] of the Constitution expressly regulates an exception to the

[33] Judgment no.5 of 02.03.2016 on the interpretation of Article 1061.1 of the Constitution (*assigning of responsibility by the Government*)

rule established by the constitutional provisions of Article 60, it cannot prevent Parliament from fulfilling its role as the procedure of assigning the responsibility by the Government takes place in front of the Parliament and is conducted under the supervision and control of the latter. Parliament has at its disposal by virtue of constitutional provisions, the right to dismiss the Government following the initiation and debating of a motion of non-confidence *(JCC no.5 of 02.03.2016, §29).*

Under Article 106[1] of the Constitution, the Government may assign responsibility before the Parliament in respect of a program, a statement of general policy or a draft law. *(JCC no.5 of 02.03.2016, §30).*

In this regard, the Court held that the government may assume responsibility concurrently in respect of several draft laws, with a view to achieve the existing public interest. [...] Any formal condition of a single draft law might be evaded by presenting several draft laws in the form of a single draft *(JCC no.5 of 02.03.2016, §33).*

However, the draft legislation that are to be presented to Parliament by the Government with a view to assign responsibility should apply to a single field of regulation *(JCC no.5 of 02.03.2016, §35).*

At the same time, given that the procedure of assigning reasonability of the Government before the Parliament is a peculiarity of the legislative procedure, while making use of this constitutional instrument it shall be taken into account the existence of a genuine emergency in adopting legislative measure *(JCC no.5 of 02.03.2016 §37).*

In this regard, the Court reiterated the findings of the Judgment no. 28 of 22 December 2011, according to which procedure of assuming the responsibility by the Government in respect of a draft law shall be a measure in extremis, determined by the urgency in adopting the measures contained in the law in respect of which the Government has assumed responsibility, by the necessity of adopting with utmost celerity the regulation in question, by the importance of the regulated field and by the immediate enforcement of the law in question *(JCC no.5 of 02.03.2016, §38).*

In conclusion, the Court held that the Government may assign responsibility before Parliament in respect of a single area of major social importance and be immediately implemented *(JCC no.5 of 02.03.2016, §39).*

2.2.2. Refusal by the President to promulgate a law adopted as a result of assignment of responsibility by the Government

Unlike ordinary legislative procedure, adoption of a draft law following the assigning of responsibility by the Government does not entail debating in respect of that draft law according to the ordinary legislative procedure in the Parliament's specialized committees and in plenary session. In this case the draft laws are subject to strict political debates, resulting in maintenance or dismissal of the Government by a vote of non-confidence granted by the Parliament *(JCC no.5 of 02.03.2016[34], §43).*

Given the particularities of this institution, the Court held that the President of the Republic of Moldova cannot send to the Parliament for reconsideration, prior to promulgating the law in respect of which the Government has assigned responsibility. Otherwise, such a possibility would lead, in fact, to the annulment of the constitutional mechanism *(JCC no.5 of 02.03.2016, §44).*

As well, the obligation of the President to promulgate the law adopted following the assigning of responsibility is implicitly due to the existence of a real urgency in its adoption *(JCC no.5 of 02.03.2016, §45).*

Real urgency and importance of the law adopted following the assigning of responsibility by the Government do not entail any delays from the part of other authorities *(JCC no.5 of 02.03.2016, §46).*

Thus, if the President considers that the law adopted by the Government following the assigning of responsibility is unconstitutional, he can notify the Constitutional Court in this respect *(JCC no.5 of 02.03.2016, §48).*

The Court held the exceptional nature of the procedure for the promulgation of a law in respect of which the Government had assigned responsibility. Article 93 para. (2) of the Constitution cannot be applied to the laws adopted following the assignment of responsibility by the Government before the Parliament *(JCC no.5 of 02.03.2016, §50)*

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[34] Judgment no.5 of 02.03.2016 on the interpretation of Article 1061.1 of the Constitution (*assigning of responsibility by the Government*)

2.3. Judicial Authority

2.3.1. Impartial settlement of cases by the judges

The constitutional norms on the status of judges are based on the requirements and principles of international documents, which enshrine the status and rights of magistrates, guarantees of their independence, starting with the role of justice in defending the rule of law *(JCC no. 21 of 22.07.2016[35], §101).*

According to Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, "**the purpose of justice independence** as set out in Article 6 of the Convention is to guarantee everyone the fundamental right to examine his/her case fairly, based only on law enforcement without any undue influence". "Judges should benefit from an unrestricted freedom in resolving cases impartially, in accordance with the law and with their own assessment of the facts" (para 3 and para 5 of the Recommendation). The judges must make decisions independently and impartially and to act without any restrictions, improper influences, pressures, threats or interferences, direct or indirect, from any authority, even judicial authority *(JCC no. 21 of 22.07.2016, §102).*

The judicial independence is not just the independence of the judiciary as a whole or compared to the other powers of the state, but it also pertains to the „internal" aspect. Each judge, regardless of his/her position in the system, shall exercise the same judging authority. Therefore, in handling a case, he/she must be independent also in respect to other judges and court president or other courts (as, for instance, courts of appeal or other superior courts) *(JCC no. 21 of 22.07.2016, §103).*

The Court mentioned that, under Article 114 of the Constitution, „justice shall be administered in the name of the law." Therefore**, judges are subject only to the law**. This principle protects judges, first of all from external inappropriate influences. At the same time, the principle is also applicable within the judiciary. The hierarchical organi-

[35] Judgment no. 21 of 22.07.2016 on the exception of unconstitutionality of Article 125 p.b) of the Criminal Code, Articles 7 para.(7), 39 para.(5) and 313 para.(6) of the Code of Criminal Procedure and certain provisions of Articles 2 p.d) and 16 p.c) of the Law on the Supreme Court of Justice (*acts representing illegal practice of entrepreneurial activity*)

zation of justice, in the sense of subordination of judges to the court presidents or to the superior courts in solving cases, would be a clear violation of this principle *(JCC no. 21 of 22.07.2016, §107).*

The fundamental idea is that a judge, in exercising his functions, is no-one's employee; he is the holder of a state office. He is thus the servant of the law, and accountable only to it. It is axiomatic that in solving a case, a judge is not acting at the orders or instructions of any third party within or outside the judiciary *(JCC no. 21 of 22.07.2016, §108).*

This requirement does not preclude a judge from a lower level jurisdiction to comply with a previous decision of a superior court concerning the interpretation of the applicable law in the subsequent case (judicial precedent) *(JCC no. 21 of 22.07.2016, §109).*

The Court emphasized that the decisions of judges shall be based on legal provisions. Or, Article 1 of the Law on the Status of Judges establishes that the judge is the sole bearer of judicial power vested constitutionally with the authority to dispense justice, **which he/she exercises based on the law** and the hierarchical organization of jurisdiction cannot prejudice the individual independence of the judge *(JCC no. 21 of 22.07.2016, §110).*

In a system, which is based on judicial independence, the superior courts ensure the consistency of case law throughout the country by their judgments delivered in individual cases. The lower courts, without formally being bound to respect judicial precedents in countries with a continental law system, unlike the situation in countries with a common-law system, tend to comply with the principles laid down in the judgments of superior courts to avoid their judgments being overruled by way of appeal. Moreover, the special procedural rules may ensure the consistency between different levels of the system of courts. *(JCC no. 21 of 22.07.2016, §111).*

On the contrary, a system in which the Supreme Court of Justice is given the opportunity to address „recommendations/explanations" to lower-level courts on matters of law enforcement is not such as to favour the emergence of a truly independent judicial power. Moreover, this involves the risk that judges behave like civil servants, who receive orders from their superiors. The adoption by the Supreme Court and other superior co-

urts of practical guidelines binding on lower courts, situation seen in several post-Soviet countries, raises questions in this regard *(JCC no. 21 of 22.07.2016, §112).*

Thus, such „recommendations/explanations" individually cannot form the basis of a judgment, to be based solely on legal provisions. Judges should benefit from an unfettered freedom in resolving cases impartially, in accordance with the law and with their own assessment of the facts *(JCC no. 21 of 22.07.2016, §113).*

Also, **a judgment cannot be quashed merely on the ground that it is contrary to the established practice of the Supreme Court of Justice**. In this respect, the European Court in its case-law has held that there is no such a right to an established case-law, so that its development imposed by a dynamic and progressive approach is admissible and does not violate the principle of legal security (ECtHR, *Unédic v. France*, 2008 §74; Legrand v. France, 2011) if two conditions are met: (1) the new approach is consistent at the level of that jurisdiction and (2) the court that decided to change the interpretation shall reason in detail the considerations for which it decided this way (*Atanasovski v. Macedonia*, 2010, §38) *(JCC no. 21 of 22.07.2016, §114).*

2.3.2. Recourse action against judges

Article 27 of the Law on Governmental Agent no. 151 of 30 July 2015 establishes the right of recourse of the State against individuals whose actions or inactions determined or significantly contributed to the violation of the European Convention. Moreover, according to the challenged legal provision, the amounts awarded by the European Court in a judgment or decision, by friendly settlement agreement in a case pending before the European Court or by unilateral declaration, shall be returned by judicial decision, proportionally to the degree of guilt. *(JCC no. 23 of 25.07.2016[36], §77).*

The Court found that, under the challenged law, it is possible for the state to initiate recourse action solely on the basis of a judgment or decision of the European Court. This rule does not require the existence of a court ruling, adopted within separate trial

[36] Judgment no.23 of 25.07.2016 on the exception of unconstitutionality of Article 27 of the Law no. 151 of 30 July 2015 on the Governmental Agent (*recourse action*)

proceedings by which the culpability of the person is ascertained. Moreover, the challenged legal provisions fails to indicate which particular actions or inactions in respect of which the persons concerned might be held materially liable, the only criterion being the existence of the damage covered by the state following a violation of the European Convention *(JCC no. 23 of 25.07.2016, §81).*

At the same time, the Court found that the mechanism for the recourse action initiated by the state for illegal actions of the investigation bodies, of the prosecution or of the courts is provided in Article 1415 of the Civil Code. The aforementioned rule provides that the state **in case of rendering compensations in respect of damages caused by certain actions** of the investigation bodies, of the prosecution or of the courts is entitled to initiate recourse against the person holding leading position within the aforementioned bodies **if the guilt thereof is ascertained by a court sentence**. Article 1405 of the Civil Code lays down exhaustively the list of actions by of the investigation bodies, of the prosecution or of the courts which entail the liability of the state, i.e. illegal conviction, illegal criminal prosecution, illegal application of preventive measures in the form of preventive custody or the affidavit not to leave the locality, illegal application of arrest or community service work as administrative sanction *(JCC no. 23 of 25.07.2016, §82).*

Thus, according to the aforementioned provisions, the state is entitled to initiate recourse actions against a person holding leading positions within the investigation bodies, the prosecution bodies or within courts only if there exists a court sentence finding the culpability of the person for committing the actions clearly established by the law and in respect of which the state has repaired the incurred prejudices *(JCC no. 23 of 25.07.2016, §83).*

Based on the above, the Court held that the provision of Article 27 of the Law on the Governmental Agent, as opposed to Article 1415 of the Civil Code, fails to require the necessity to ascertain the element of guilt by a court decision, and thus making possible the initiation of a recourse action by the state on the mere grounds of existence of a judgment or decision by the European Court *(JCC no. 23 of 25.07.2016, §84).*

The Court noted that, in accordance with European standards in this field, accountability of judges cannot result only from the findings of the European Court by which

it stated a violation of the Convention. In this regard, the Venice Commission in *Amicus Curiae* Opinion of 13 June 2016 stated that:

> 41. The ECHR only establishes the liability of the defendant State. It cannot reasonably be said or presumed that the primary focus of the ECtHR's jurisprudential role in dealing with the case of any applicant before it would be to assess, quantify and review the nature or degree of guilt (criminal abuse or criminal intention or gross negligence) on the part of each of those judges whose decisions in the national courts was brought before the ECtHR. That has to be the object of a different, internal judicial procedure.
>
> 42. It must be remembered that the matter which is before the ECtHR is not the prosecution of the judges involved in the case at the national level. Therefore, even following any determination of that Court in the applicants favour (including the finding of a violation) would not of itself meet the standard required for determining the individual's criminal culpability, as the case is not procedurally framed as a prosecution of the wrongdoing of the individual or judge. *(JCC no. 23 of 07.25.2016, §85)*

Based on the case law of the European Court the idea emerges that the reason for finding of judicial errors does not reside in the civil, criminal or disciplinary liability of a judge, rather in granting to the aggrieved person the right to corresponding compensation. In particular, the Court paid particular importance to whether judicial error committed by lower courts, i.e. the mistakes related to the administration of justice, can be neutralized or corrected in a different manner (see *Giuran v. Romania*, 21 June 2011, §§32, 40). Thus, the proceedings before the European Court do not seek to determine the level of guilt (criminal abuse or gross negligence) of judges whose decisions adopted at national level led to subsequent examination of applications by the European Court *(JCC no. 23 of 25.07.2016, §86).*

With respect to the friendly settlement of a case pending before the European Court, under Article 39 of the European Convention, and a unilateral declaration of the state by which it acknowledges a violation of the European Convention, the Venice Commission stressed in its *Amicus Curiae* Opinion that these proceedings before the European Court may be motivated by political considerations more than legal ones. Thus, in terms of Article 27 of the Law on the Governmental Agent, judges are not

only vulnerable to external influence by the government, but may also **become liable for reasons beyond the exercise of their judicial function** *(JCC no. 23 of 25.07. 2016 §87).*

The Court pointed out that judges **cannot be compelled to perform their duties being threatened with sanctioning, which may negatively influence the decisions that are to be taken**. As a matter of fact, while exercising their duties, judges should have unlimited freedom to decide the cases on an impartial manner, in accordance with the current legal provisions and guided by their own assessments, unaffected of bad faith. For these reasons, the judge's findings that led to the adoption of a decision in a particular case, which consequently has been repealed or amended, cannot serve as a reasonable ground for material sanctioning of a judge *(JCC no. 23 of 25.07.2016, §94).*

To this end the Court emphasized that institution of regress actions in itself is not contrary to constitutional principles, as long as the mechanism of holding judges materially liable provides the guarantees which are inherent for judicial independence *(JCC no. 23 of 25.07.2016, §102).*

At the same time, the enjoyment by the state of the right to recourse action in terms of art. 27 of the Law on the Governmental Agent, based solely on the judgment of the European Court, on the friendly settlement agreement or on the unilateral declaration by the Government by which it acknowledges the violation of the European Convention, lacking the finding of the judge's guilt by a court sentence adopted within separate judicial proceedings is negatively influencing the independence of the entire judiciary system, and thus is contrary to Articles 6 and 116 para. (1) and (6) of the Constitution *(JCC no. 23 of 25.07.2016, §103).*

2.3.3. Extension of the expired mandate of Supreme Court judges

The appointment and dismissal of judges should be based on the principle of legality. One of the conditions of the rule of law is that state authorities should provide effective protection of individuals' rights. In this sense, means shall be provided for *bona fide* settlement of disputes that the parties cannot resolve by themselves without any undue delay or prohibitory costs. The judges are those who generally perform this goal, while

the manner in which the activity of judges is regulated has direct repercussions upon individuals and their rights *(JCC no. 12 of 12.05.2016,*[37] *§32).*

Referring to international standards on the term of mandate of judges, the Court recalled it is regulated Recommendation (2010) 12 adopted by the Committee of Ministers to member states on judges: independence, efficiency and responsibilities (adopted by the Committee of Ministers on 17 November 2010 at the 1098 meeting of the Ministers' Deputies) which provides that "Security of tenure and irremovability are key elements of the independence of judges. Accordingly, judges should have guaranteed tenure until a mandatory retirement age, where such exists. The terms of office of judges should be established by law. A permanent appointment should only be terminated in cases of serious breaches of disciplinary or criminal provisions established by law, or where the judge can no longer perform judicial functions. Early retirement should be possible only at the request of the judge concerned or on medical grounds. (§ 49, 50)" *(JCC no. 12 of 12.05.2016, §35).*

Opinion no. 1 (2001) on standards concerning the independence of the judiciary of the Consultative Council of European Judges stated at paragraph 48 that: "European practice is generally to make full-time appointments [of judges] until the legal retirement age. This is the approach least problematic from the viewpoint of independence." *(JCC no. 12 of 12.05.2016, §36).*

The same reasons are included in the Report of the Venice Commission on the independence of the judiciary (CDL-AD (2010) 004), report adopted at the 82nd Plenary Session (Venice 12-13 March 2010) *(JCC no. 12 of 12.05.2016, §37).*

Moreover, according to European Court of Human Rights, the body ensuring access to justice under the conditions of a fair trial should not only be a court established by law, rather an independent and impartial instance. While evaluating these criteria of fair trial, the European Court ruled in respect of the term of office of judges from first instance courts in the case *Gurov v. Moldova* that it was not possible to consider as a "tribunal established by law" the panel of judges of a court of appeal that heard the case at the national level, as **there were no legal grounds for the participation in the exa-**

[37] Judgment no. 12 of 12.05.2016 on the interpretation of Articles 116 para.(2), 116 para. (4) and 136 para. (1) of the Constitution (*extending the mandate of the judge*)

mination of cases of a judge whose term of office has expired (judgment of 11 July 2006, §34) *(JCC no. 12 of 12.05.2016, §38).*

Pointing out the institution of transfer of judges from other courts, the Court distinguished the circumstances regarding the possibility of transfer of judges from one court to another, until the appointment of a new judge in district courts and in courts of appeal, on the one hand, and the Supreme Court judges on the other hand *(JCC no. 12 of 12.05.2016, §44).*

According to law[38], when the courts cannot normally activate due to the inability of judges, given the health conditions, to carry out their powers for a period of 6 months, given the existence of vacancies, the high workload of the court or given other similar reasons, the chairman of the court may ask the Superior Council of Magistracy to transfer the judges for a limited period of time to other courts *(JCC no. 12 of 12.05.2016, §43).*

However the institution of transfer has no effect in case of Superior Court judges, given the status of Supreme Court of Justice as a supreme instance in the system of courts being the sole court of this level. If the vacancy occurs for a judge of the Supreme Court, his place cannot be filled through the transfer of a judge from another court. As a matter of fact, according to Article 116 para. (4) of the Constitution, Supreme Court judges are appointed by the Parliament following the proposal by the Superior Council of Magistracy. These judges should have worked in the position of judge for at least 10 years. Therefore, the causes of such a judge could be taken only by another judge of the Supreme Court or by another judge appointed by the Parliament for this position *(JCC no. 12 of 12.05.2016, §46).*

In situations when the vacancy appears for the position of a judges in the district courts and courts of appeal, the settlement of cases that have been distributed will not be prejudiciated unless there is an insufficient number of judges in other courts where other judges could be transferred from. Given these reasons, the Court did not consider it necessary to extend the expired mandate of the judges of lower courts *(JCC no. 12 of 12.05.2016, §§47, 48).*

[38] Article 20/1 para.(1) of the Law no. 544 of 20 July 1995 on the Statute of Judges

In respect of the Supreme Court judges, the Court must take into account the factual circumstances of impossibility to transfer other judges to the Supreme Court and delayed actions of the Parliament related to the appointment of judges, in certain cases, a factual situation that has been outlined by the author of the complaint. In this respect, the Court found a clearly different situation of Supreme Court judges, as compared to other judges *(JCC no. 12 of 12.05.2016, §49).*

Any inaction or delayed action by the Parliament within the procedure for the appointment of Supreme Court judges is contrary to the constitutional principle of loyalty, as it jeopardizes one of the fundamental values of the Constitution: the rule of law. This conclusion also refers to other authorities involved in the procedure of appointing judges of lower courts *(JCC no. 12 of 12.05.2016, §51).*

The Court emphasized that different procedure of appointment of Supreme Court judges determines the possibility of extending their mandate following the occurrence of the vacancy, util their replacement, to avoid creation of impediments for efficient functioning of this authority *(JCC no. 12 of 12.05.2016, §53).*

The Court also noted that, if the vacancy occurs for a number of Supreme Court judges, their successors appointed by the Parliament will enter into their positions preserving the order in which the vacancies occurred. Thus, under Article 116 para. (2) and para. (4) of the Constitution, a Supreme Court judge whose mandate has expired due to the achievement of the retirement age shall exercise his/her duties until the appointment of a new judge *(JCC no. 12 of 12.05.2016, §54).*

2.3.4. The enforceability of court judgments

Compliance with court judgments is expressed by mandatory enforcement thereof *(JCC no. 32 of 17.11.2016[39], §55).*

A final decision cannot be retried by the same court, however it may be retried by another higher court. The final judgment has the authority of *res judicata (JCC no. 32 of 17.11.2016, §57).*

[39] Judgment no.32 of 17.11.2016 on the exception of unconstitutionality of certain legal provisions referring to the enforcement of claims against the state (*enforcement of claims against the state*)

A decision to shelter the appeal remedies is often incorrectly defined as "final", a term that should still be reserved for judgments bearing the authority of *res judicata* from the moment of their delivery and irrespective of the provided remedies *(JCC no. 32 from 17.11.2016, §58).*

On the contrary, a judgment that is not subject to appeal by any ordinary means or is no longer subject to appeal due to their exhaustion or due to the expiry of the deadlines, is irrevocable (cannot be retried by any jurisdiction, except for exceptional cases, through an action for the review). Such a judgment acquires the force of *res judicata (JCC no. 32 of 17.11.2016, §59).*

Thus, there should be made a distinction between (1) "res judicata" or "irrevocable", which are the characteristics of a judgment which prevents other processes covering what has already been tried, and (2) "res judicata" or "final", which are the characteristics of a judgment which can be challenged by ordinary appeal. Thus, although any irrevocable decision is final, not any final decision is irrevocable (*JCC no. 32 of 17.11.2016, §60*).

Therefore, the notion "final", which can be challenged by an appeal must be distinguished from the notion "irrevocable", which cannot be challenged by means of judicial appeal either ordinary or extraordinary *(JCC no . 32 of 17.11.2016, §61).*

In this context, the Court held that although the text of the Constitution does not provide the concept of "final judgment", a similar distinction between "final" and "irrevocable" is used also in procedural law *(JCC no. 32 of 17.11.2016, §62).*

Civil procedural law attributes enforceable character to enforceable character to the judgments either immediately after delivery or at the stage where they become final without waiting their becoming irrevocable *(JCC no. 32 of 17.11.2016, §64).*

In this context, the Court held that the enforcement, even the immediate one, of a final judgment (e.g. following the examination of the appeal) does not prevent the formulation of a recourse and right to a fair trial does not guarantee in itself the right to automatic suspension of an unfavorable judgment (*OAO Neftyanaya Kompaniya Yukos v. Russia*, ECtHR, judgment of 20 September 2011, §549) *(JCC no. 32 of 17.11.2016, §67).*

3 NATIONAL ECONOMY AND PUBLIC FINANCES

3.1. Fair competition

With a view to ensure the needs of potable water of individuals and legal entities the Parliament adopted the Law on the Public Water Supply and Sewerage Service[40], aimed at creating the legal framework for the establishment, organization, management, regulation and monitoring the public service for the supply of potable and technological water, sewerage and treatment of domestic and industrial wastewater under the conditions of accessibility, availability, reliability, continuity, competitiveness, transparency, compliance with quality standards, safety and environmental protection *(JCC no. 28 of 11.10.2016[41], §39).*

Under Article 8 para. (1) p.b), p.d) and p.g) of the Law on Public Water Supply and Sewerage Service, local public authorities of the first level shall organize, coordinate, monitor and control the functioning of public systems of water supply and sewerage, according to legal provisions; shall administrate the public system of water supply and sewerage as part of the technical infrastructure of the administrative-territorial units; shall delegate the management of public systems of water supply and sewerage and of corresponding public goods as required by the law *(JCC no. 28 of 11.10.2016, §40).*

Also, in accordance with Article 13 of the Law, delegated management is the type of management by which the local public authorities transfer, based on an agreement on the delegation of management, to one or to several operators, which are companies of private or mixed share capital or state or municipal enterprises as well as all duties and responsibilities related to the provision of public service in respect of water supply and sanitation, and the management and operation of all related systems and technical infrastructure *(JCC no. 28 of 11.10.2016, §41).*

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[40] Law no. 303 of 13 Decdember 2013

[41] Judgment no. 28 of 11.10.2016 on the exception of unconstitutionality of Article 19 para. (5) of Law No. 303 of 13 December 2013 on public Water Supply and Sewerage Service (*prohibition of the drilling of new artesian wells and the exploitation of the existing ones*)

Article 19 para. (5) of the Law on Public Water Supply and Sewerage Service prohibits the drilling of new artesian wells and the exploitation of the existing ones for groundwater, except the cases when there is obtained a consent of the operator which is coordinated with the local public administration authority *(JCC no. 28 of 11.10.2016, §44).*

In this case, the Court noted that the legislator conditioned the drilling of new artesian wells and the exploitation of the existent ones with a view to use the groundwater by the existence of the consent issued by an operator (business agent). Correspondingly, admission to the market of new operators is thus subject to the consent issued by the incumbent operator *(JCC no. 28 of 11.10.2016, §51).*

Therefore, provision of the requirement to obtain the consent of the operator coordinated with the local public authority to drill new artesian wells and for the exploitation of the existing ones with a view to use the groundwater constitutes a breach of the principle of fair competition, as it aims to limit the right to use the subsoil *(JCC no. 28 of 11.10.2016, §53).*

The Court noted that local public authorities, when admitting a new operator to the market, are entitled to consult the opinion of an existing operator, so as not to jeopardize the reliability of available centralized systems of water supply and sewerage. *(JCC no. 28 of 11.10.2016, §56).*

Moreover, the criteria which shall serve as grounds for the adoption of decision on the delivery of the consent to drill new artesian wells and exploit the existing ones with a view to use the groundwater must be clearly prescribed by law *(JCC no. 28 of 11.10.2016, §57).*

The Court held that the provisions which impose the requirement for the new operator to obtain the consent of the existing operator for the use of groundwater, in the localities that have public systems of water supply, transgresses the principle of respecting fair competition and the exclusive right of the State over public property, the measure being excessive in relation to the objective which is to be achieved, thereby affecting Article 9 para. (3) combined with Articles 126 para.(1) and 127 para.(4) of the Constitution. *(JCC no. 28 of 11.10.2016, §59).*

4 CONSTITUTIONAL COURT

4.1. Exception of unconstitutionality

The term "exception" originates in the fact that the normative acts of public authorities enjoy the presumption of constitutionality and the allegations of unconstitutionality of parties to the trial or uncertainty of the judge in this regard represents an exceptional situation *(JCC no. 2 of 09.02.2016[42], §70).*

Thus, the exception of unconstitutionality represents a procedural action of defence through which the Constitutional Court is notified on some legal provisions applied in the case before the court *(JCC no. 2 of 09.02.2016, §71).*

The Court mentioned that the procedure of resolving the exception of unconstitutionality has two important phases: (1) *judiciary phase*, preliminary, that consists in raising the exception of unconstitutionality during trial proceedings and ruling of the judge on this procedural incident, eventually ending in notification of the Constitutional Court; (2) *constitutional jurisdiction phase* that consists in solving the exception of unconstitutional by the Constitutional Court *(JCC no. 2 of 09.02.2016, §74).*

The Court held that during the first phase, the ordinary judge plays a determinant role, as he/she is the one who finally rules on the raising of the exception of unconstitutionality. He/she may be called *'first constitutional judge'* who in the process of application of the law notifies the existence of unconstitutional aspects *(JCC no. 2 of 09.02.2016, §71).*

Hence, when the ordinary judge establishes or a certain uncertainty is invoked by the parties about the constitutionality of the applied act, he/she shall initiate the review of constitutionality *(JCC no. 2 of 09.02.2016, §76).*

The Court mentioned that the exception of unconstitutionality may be raised by:

(1) *the court ex officio*, which under the observation of the principle of supremacy of Constitution, is not entitled to apply any norm deemed unconstitutional;

(2) *parties to the proceedings*, including their representatives, whose rights and interests may be affected by the application of an unconstitutional norm in settling the case *(JCC no. 2 of 09.02.2016, §77).*

[42] Judgment no. 2 of 09.02.2016 on the interpretation of Art. 135 para.(1) p.a) and p.g) of the Constitution of the Republic of Moldova (*exception of unconstitutionality*)

Being an instrument to protect the rights and fundamental freedoms, the exception of unconstitutionality may be invoked in a triggered proceeding and only if it has incidence in settling the case brought before the court *(JCC no. 2 of 09.02.2016, §78).*

Thus, **specific constitutional review through the exception of unconstitutionality is the only instrument with the help of which the citizen has the possibility to act while defending against the legislature, if his/her constitutional rights are violated by the law** *(JCC no. 2 of 09.02.2016, §79).*

The Court mentioned that the **citizens' right of access to the constitutional court through the exception of unconstitutionality is an aspect of the right to a fair trial.** This indirect method allowing the citizens to access the constitutional justice provides the Constitutional Court, as a guarantor, with the possibility to exercise control over the legislature with regard to the observance of the rights and fundamental freedoms *(JCC no. 2 of 09.02.2016, §80).*

According to the legal provisions, when the exception of unconstitutionality is accepted, the judge shall rule on the suspension of the proceedings until the exception of unconstitutionality is settled by the Constitutional Court, in order to exclude the application of norms that are in contradiction with the Constitution while solving the case *(JCC no. 2 of 09.02.2016, §81).*

The Court noted that the ordinary judge shall not rule on the grounds of the complaint or on the conformity of challenged rules with the Constitution, but shall limit exclusively to the verification of the following requirements:

(1) object of the exception shall belong to the category of acts provided in Article 135 para. (1) let. a) of the Constitution;

(2) exception shall be raised by one of the parties or by the representatives or shall indicate the fact that it is raised by the court *ex officio*;

(3) challenged provisions should be applied in settling the case;

(4) there is no prior judgement of the Court on the challenged provisions *(JCC no. 2 of 09.02.2016, §82).*

The Court noted that the verification of constitutionality of challenged norms **is the exclusive competence of the Constitutional Court**. Thus, the ordinary judges have

no right to refuse the parties to notify the Constitutional Court unless the conditions mentioned in paragraph 82 are not met *(JCC no. 2 of 09.02.2016, §83).*

Based on the above-mentioned, **any court that required to settle a litigation when there are doubts regarding the constitutionality of a provision has the power and obligation to notify the Constitutional Court** *(JCC no. 2 of 09.02.2016, §87).*

Accurate and uniform application and enactment in the spirit of constitutional principles of the law represents the pillar of the rule of law, and consequently, the exception of unconstitutionality is a constitutional guarantee of the rights and freedoms granted to citizens in order to protect themselves against eventual deviations of the legislature by adopting legal provisions that are contrary to the Constitution. The Constitutional Court, having the role of the guarantor of the supremacy of the Constitution, becomes the guarantor of these rights and freedoms *(JCC no. 2 of 09.02.2016, §108).*

Thus, in order to ensure the application of this constitutional mechanism, the Constitutional Court shall rule exclusively on the exception of unconstitutionality upon notification by the judges of all courts *(JCC no. 2 of 09.02.2016, §109).*

4.2. Confirmation of the results of presidential elections of 13 November 2016 and validation of the mandate of the President of the Republic of Moldova

4.2.1. Examination of complaints on the organization and conduct of elections

The fundamental goal of the Constitutional Court mission in respect of confirmation of the results of election for the position of President of the Republic of Moldova is to assess the extent to which the election process was conducted in accordance with constitutional provisions and with other universal principles governing democratic elections *(JCC no. 34 of 13.12.2016[43], §89).*

The decisions of electoral bodies and of other bodies competent in this regard can be challenged in the courts of law within administrative procedures. Accordingly, the legality of acts issued by these bodies may be subject to judicial review at the request of interested parties *(JCC no. 34 of 13.12.2016, §88)*

[43] Judgment no. 34 of 13.12.2016 on the confirmation of the results of elections and validation of the mandate of the President of the Republic of Moldova

The Court also recalled that any final and irrevocable judicial decision on the legality of acts issued by these authorities is *res judicata* and must be observed accordingly. Hence, the Court may not rule on the accuracy of the evidence administered in judiciary, involving as subject-matter the legality of electoral authorities' acts. To proceed as such would mean to substitute State authorities - which have their competences provided in the law - by the Constitutional Court *(JCC no. 34 of 13.12.2016, §90)*

Moreover, the failure to examine the electoral complaints by the competent authorities renders it impossible for the Constitutional Court to consider them, i.e. in line with Article 4 para. (3) of the Code of Constitutional Jurisdiction, the Constitutional Court examines exclusively legal matters, not factual circumstances. The Constitutional Court does not have the necessary procedural instruments in order for the evidence to be administered, for the witnesses to be heard etc. These legal possibilities only exist in ordinary law-courts. Stemming from the legal provisions in force, there explicitly results that all the complaints on electoral violations are to be solved exclusively by law-courts, as this does not fall within the competence of the Constitutional Court *(JCC no. 34 of 13.12.2016, §98)*

In this context, the Court recalled that a norm shall be construed in that it would allow for its application, not in the meaning that its application is excluded. The Court underscored that its field of competence is provided by the Constitution and by the Law on the Constitutional Court and cannot be modified by the caselaw of the ordinary law-courts *(JCC no. 34 of 13.12.2016, §99)*.

In this regard, neither electoral authorities, nor the law-courts had to decline their competence, but to examine the violations complained of in the election day. Or, if they are competent to examine violations during the electoral campaign, they are a fortiori competent to examine violations from the voting day. It is exactly this category of violations that may prove particularly pertinent in the process of confirming/annulling the election results *(JCC no. 34 of 13.12.2016, §101)*

For these reasons, the Court held that due to the poor application of the law by the ordinary law-courts, electoral actors were in fact deprived of an efficient judicial review, hence this rendered it impossible for the Constitutional Court to operate with acts finding violations. Therefore, the Court issued an Address to the Parliament (1), aiming at clarifying the law relating to the examination of complaints on the organisation and con-

duct of elections. In particular, the Court recommended to the Parliament a separate and explicit regulation on the examination procedure of the complaints for various types of elections. In this respect, the Court asked the Parliament to regulate differentiated the procedures of examining the complaints in the event there is a second round of elections, including the complaints submitted on the voting day *(JCC no. 34 of 13.12.2016, §102)*.

4.2.2. Alleged violations invoked for the annulment of elections

a) Voting rights suppression of citizens domiciled outside the country, through non-provision of voting ballots and poor organisation of the voting process by the public authorities.

The Court noted the right to vote is a relative and not an absolute right. Therefore, the exercise of the right to vote may be subjected to certain implicit limitations, and the states enjoy a wide margin of discretion in this regard. Thus, the exercise of the right to vote shall take place under the law *(JCC no. 34 of 13.12.2016, §108)*.

The Court noted that the equality of the vote does not mean the compulsoriness of the exercise thereof under identical conditions both within the country and outside its borders, due to the fact that its citizens are under different legal situations *(JCC no. 34 of 13.12.2016, §110)*.

In the same context, the European Convention does not secure the right of the citizens of a Member State to vote outside the borders of their country. The Code of Good Practice in Electoral Matters of 2002 of the Venice Commission provides that the condition of residence may influence the exercise of the right to vote. Moreover, The Code of Good Practices establishes that the right to vote and to be elected may be accorded to citizens residing abroad *(JCC no. 34 of 13.12.2016, §111)*.

The Court noted that the legal framework of Moldova permits expatriate voting. However, this voting procedure cannot take place under any conditions, but it has to comply with legal provisions *(JCC no. 34 of 13.12.2016, §114)*.

- *Reduced number of polling stations opened abroad*

The Court recalled that by its Decision no. 11 of 18 November 2014 on the inadmissibility of the complaint on the control of constitutionality of the Government Decision no. 872 of 20 October 2014 „On the organisation of polling stations abroad," the

Court mentioned that establishing the number of polling stations abroad is an issue related to the competence of authorities empowered to organise and conduct elections, due to the fact that these bodies have a better understanding in appreciating the possibilities and practical needs in the process of organising the expatriate vote provisions *(JCC no. 34 of 13.12.2016, §119)*.

Given the number of polling stations abroad and the localities where these stations were opened, the conclusion is that these polling stations were opened for the electors residing abroad on the election day, both within the diplomatic missions and consular offices of Moldova, as well as in other localities than those where the diplomatic missions and consular offices are situated, according to Article 29/1 para.(1) and (3) of the Electoral Code, which demonstrates that public authorities have made additional efforts in this regard *(JCC no. 34 of 13.12.2016, §123)*.

Taking into account the aforementioned, the Court noted that it is not the role of the Constitutional Court, nor its competence to give an appreciation on whether it was necessary to open a greater or a smaller number of polling stations abroad, whether these stations had to be spread territorially in a different manner or whether it was necessary to take other organisational measures. This competence is attributed exclusively to the Government, implicitly by the Ministry of Foreign Affairs and European Integration, while the Constitutional Court is competent only in ascertaining whether by the manner of organising the elections, there was or was not violated the essence of the right to vote or the of the right to be elected; however, there were observed no elements of this aspect in the present case *(JCC no. 34 of 13.12.2016, §125)*.

Nevertheless, taking into account the number of citizens residing abroad have not managed to vote, the Court recommended to the Parliament to modify the mechanism of the expatriate voting, as well as in order to provide additional criteria for the calculation of the number and geographic distribution of polling sections abroad *(JCC no. 34 of 13.12.2016, §126)*.

- *Reduced number of ballots*

Court noted that the number of ballots, even though at first seems relatively small as compared to the number of polling stations, in fact corresponds to the estimations provided by the Ministry of Foreign Affairs and European Integration based on the sta-

tistical data following the real situation registered during the previous cycles of elections *(JCC no. 34 of 13.12.2016, §130)*.

In this context the Court held that, according to the authorities, at least in two countries where the number of ballots had been exhausted, [...], the opening of polling stations is permitted, under the domestic legislation, only within the diplomatic missions and consular offices *(JCC no. 34 of 13.12.2016, §135)*.

The Court thus concluded that there are no objective evidences that the public authorities departed from their obligation to act in good faith, as provided by Article 56 of the Constitution *(JCC no. 34 of 13.12.2016, §138)*.

The Court held that […] the request to annul the elections should have been supported by evidences on which it was grounded; the electoral fraud cannot be established solely on various information presented in the media, deductions, probable calculations grounded on mere assessments of the author of the complaint *(JCC no. 34 of 13.12.2016, §139)*.

Taking into account the difference of 67.488 votes between the two candidates during the second round of elections, the number of 4031 votes that could not have been expressed in the polling stations abroad, even in the situation when these votes had been ascertained by the electoral or judicial authorities, are not such as to influence the final result of elections, all the more that the eventual electoral option of the citizens that were unable to exercise their right to vote cannot in abstracto be attributed exclusively to one single candidate against the other candidate *(JCC no. 34 of 13.12.2016, §140)*.

However, taking into account that a great number of citizens residing abroad have not succeeded to vote, the Court recommended to the Parliament to modify the expatriate voting mechanism and to provide additional criteria for the calculation of the number and geographic distribution of ballots to the polling sections abroad, including the provision of a reserve number of ballots *(JCC no. 34 of 13.12.2016, §141)*.

b) Organised transportation and alleged corruption of the voters domiciled on the left bank of Nistru river

The Court held that the organised transportation in itself is not an electoral violation, unless it is proved that undue pressure was exercised in order to influence the electoral option. For that matter, the organised transportation was attested also in the

diaspora, without involving in this case the allegations of "electoral tourism." *(JCC no. 34 of 13.12.2016, §146)*

The Court found that the annulment of elections can only intervene if the voting process and the establishment of results took place in a fraudulent manner, and this is likely to change the assignment of mandate, or, if appropriate, the order of candidates who can participate in the second ballot, as well as the fact that the application for the annulment of the election must be filed together with the evidence on which it is based *(JCC no. 34 of 13.12.2016, §153).*

In this respect, the Court found that the raised circumstances are not such as to lead to the annulment of the elections, since they do not prove a fraud such as to modify the assignment of the mandate. Or, given the difference of 67.488 votes between the two candidates in the second round, the 16.728 votes, even in the event of a vitiated vote, were not such as to influence the final results of elections *(JCC no. 34 of 13.12.2016, §154).*

At the same time, the Court held that electoral corruption is a form of political corruption, when political leaders use the gained benefits in an abusive way in order to influence the elections*(JCC no. 34 of 13.12.2016, §155).*

The corruption of voters constitutes the offering or giving money, goods, services or other benefits in order to determine the voter to exercise his/her electoral rights in a particular way within the elections. In this respect, Article 38.7 of the Electoral Code provides that electoral candidates are prohibited from offering voters money or gifts, or to distribute goods free of charge, including humanitarian aid or other charity. On the other hand, the Court found the absence of criminalisation, in the Criminal Code, of corrupting voters in presidential elections, similarly to the criminalization of offering or giving money, goods, services or other benefits in order to determine the voter to exercise his/her rights in a particular way within parliamentary or local elections and within the referendum (Article 181/1) *(JCC no. 34 of 13.12.2016, §156).*

The Court held that corrupting of voters should be regarded as a gross violation of the principles of free and democratic elections, including of the fair and transparent election process. Such violations create preconditions for questioning of the legality and of the legitimacy of elections. Moreover, these violations may considerably influence the election results *(JCC no. 34 of 13.12.2016, §157).*

c) Involvement of the representatives of the Orthodox Church of Moldova in the electoral campaign

The Court underscored that pursuant to Article 31.4 of the Constitution, religious cults shall be autonomous, separated from the State *(JCC no. 34 of 13.12.2016, §161).*

The Court held that electoral propaganda and/or financial or material support of the candidates, engaging in activities that violate the Constitution, are grounds for suspending the activity of religious denominations and their component parts (Article 24 of the Law on freedom of conscience, thought and religion[44]). The activity of religious denominations and their component parts may be suspended in the judicial order, for a period of up to one year. In case the religious denominations or their component parts carry out gross acts, their activity may be terminated in the judicial order. The Ministry of Justice has the right to bring cases to ordinary courts against religious denominations or their component registered parts in order to suspend or terminate their activity provided that it presents conclusive evidence on the existence of one of the grounds provided by law *(JCC no. 34 of 13.12.2016, §167).*

The Court found that State authorities responsible for the election process and the activity of religious denominations have not properly executed their positive obligation to prevent and sanction the involvement of religious denominations in the electoral process. For these reasons, the Court recommended the establishment of prompt and immediate sanctioning mechanisms, including by way of criminal-law sanction, for any attempt of involvement of religious cults in electoral campaigns *(JCC no. 34 of 13.12.2016, §168).*

d) Multiple voting

In regards to the suspicion of the existence of cases of multiple voting, the Court held that the submitted evidence does not confirm such situations *(JCC no. 34 of 13.12.2016, §171).*

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[44] Law no. 125-XVI of 11.05.2007 on the freedom of conscience, thought and religion

e) Defamatory publication spread by representatives of the opposing electoral candidate Igor Dodon

In the absence of relevant acts ascertaining infringements, it was impossible for the Court to determine the impact of these leaflets over the election results *(JCC no. 34 of 13.12.2016, §175).*

f) Media outlets favouring the opposing electoral candidate

The Court held that the media is the cornerstone of a democratic society. It is an instrument for exercising power and influencing the opinion *(JCC no. 34 of 13.12.2016, §177).*

The Court held that the organisation of free and fair elections presumes there is ensured a fair information and media environment, which complies with the Ethics Code for Journalists *(JCC no. 34 of 13.12.2016, §178).*

The main function of the media in democratic societies consists of reflecting the facts and the political events in the most objective, impartial and open way; promoting a large number of opinions and points of view, as well as of interpreting the news so that the public would understand the relevance of the information it receives. This is the basic principle underlying the idea of „advocacy" journalism which aims to promote the participation of citizens in public life. From this perspective, the media promotes and protects the rights and expectations of the citizens through its role of a „watchdog." *(JCC no. 34 of 13.12.2016, §179).*

With regard to the coverage of presidential elections by mass-media, the Court found that the reports by international observers underline the lack of autonomy of media sources with regard to political and business interest, including due to the high concentration of media ownership in hands of certain interest groups, which continuously threatens the pluralism of opinion *(JCC no. 34 of 13.12.2016, §183).*

The Court noted that the Broadcasting Council of Moldova, sanctioned successively the broadcasters for unbalanced and biased coverage of the presidential campaign, including for the violation of the Regulation on coverage of the campaign in the presidential elections of 30 October 2016 in Moldovan media. *(JCC no. 34 of 13.12.2016, §184).*

The Court found that, pursuant to current regulations, the Broadcasting Council examines complaints concerning the election coverage by broadcasters according to the established procedure. This makes it virtually impossible to apply sanctions within a reasonable time and proportionate to the committed acts, and as a consequence it limits the possibility to form an impartial political opinion for the public and to provide equal conditions for the electoral candidates *(JCC no. 34 of 13.12.2016, §185).*

Considering the role and the importance of the media, the Court underscored the necessity to establish effective instruments that would allow responsible authorities to impose sanctions with immediate and dissuasive execution, such as the suspension of broadcasting for the entire electoral campaign, for those media outlets that breach the duty of impartiality during the electoral period. For these reasons, the Court issued an Address to the Parliament (6), in view of amending the legislation on the liability of broadcasters during electoral campaigns *(JCC no. 34 of 13.12.2016, §186).*

General conclusions regarding the ballot for the election of the President of the Republic of Moldova in 2016

The Court found that the 2016 presidential elections were organised and took place amids a political, financial and social crisis, exacerbated by the lack of trust in State institutions *(JCC no. 34 of 13.12.2016, §187).*

This fact cannot be ignored, the shown phenomena being generated mainly by the deficiencies of the electoral legislation, likely to generate legal uncertainty. The Court noted that, in order to hold presidential elections, the Electoral Code was substantially amended and supplemented with several months prior to the elections. Or else, in the absence of such amendments holding the elections would have been impossible *(JCC no. 34 of 13.12.2016, §188).*

Although the legal framework ensures an adequate basis for democratic elections, there are still certain gaps and ambiguities. These relate in particular to the collection and verification of signatures supporting the candidates, the funding and conduct of the electoral campaign, the effective resolution of electoral disputes, the implementation of the provisions concerning the media and those on holding the second round

of presidential elections. These deficiencies are also reported by national and international observers and led to the deficient implementation of the law *(JCC no. 34 of 13.12.2016, §189).*

Also, a number of imperfections of the law, as it was amended, were found, for example in terms of organising the vote in special polling stations (which raised suspicions in relations to the exercise of practices like „electoral tourism") and in polling stations abroad *(JCC no. 34 of 13.12.2016, §190).*

In this context, the Constitutional Court underscored the necessity to re-examine the entire electoral legislation regarding the elections of the President, the Parliament and the elections of local public administration authorities, in order to concentrate it in a revised Electoral Code whose general and special provisions shall provide, in accordance with constitutional principles, the organisation of democratic, fair and transparent elections. In this regard, the Court issued 6 Addresses to the Parliament *(JCC no. 34 of 13.12.2016, §191).*

The observations set forth are not such as to determine any other conclusion than that which led to the examination of the presented submissions and the evidence submitted by the authors of the request for the annulment of the elections. The alleged fraud constitutes, in reality, as shown in this evidence, a series of sequential elements that have not formed a phenomenon capable of changing the voters' will, meaning a modification in the assignment of the mandate. In regards to these infringements of the law, it remains with the competent authorities to investigate the facts and apply the sanctions provided by law *(JCC no. 34 of 13.12.2016, §192).*

In exercising its competences pursuant to the Constitution, the Constitutional Court confirmed the results of the presidential elections, according to which on 13 November 2016, Mr Igor Dodon was elected President of Moldova *(JCC no. 34 of 13.12.2016, §194).*

4.3. Extending the mandate of the judge of the Constitutional Court until the appointment of a successor

Unlike the regulation on the term of office of judges of the courts of law, the wording of Article 136 of the Basic Law regarding the structure of the Constitutional Court

does not provide an age limit for the holding of the position of constitutional judge, it only sets the term of office of 6 years *(JCC no. 12 of 12.05.2016[45], §30).*

For good functioning of state authority, the role of constitutional courts is essential and defining as it represents a pillar for the democracy, guaranteeing equality before the law, human rights and fundamental freedoms *(JCC no. 12 of 12.05.2016, §55).*

Establishing in the Constitution of the procedure for the appointment of constitutional judges is a guarantee of their independence and impartial exercise of their duties in accordance with the Basic Law. Moreover, this position is among the highest within the state authorities, its fundamental role deriving from the powers vested to the Constitutional Court, the sole authority of constitutional jurisdiction in the Republic of Moldova, aimed at ensuring supremacy of the Constitution *(JCC no. 12 of 12.05.2016, § 59).*

Following an analysis of constitutional and legal provisions it may be concluded that, while performing his/her mandate, the constitutional judge exercises judicial competence subject to the rules governing a fair trial. Thus, to ensure an institutional balance, the Court must act in full composition *(JCC no. 12 of 12.05.2016, §61).*

the Constitution does not admit any malfunctions in exercising constitutional jurisdiction due to the inaction of authorities which appoint or nominate the judges of the Constitutional Court. Or, the delays in the appointment of a new judge following the expiry of the mandate of a Constitutional Court judge jeopardize the activity of this authority *(JCC no. 12 of 12.05.2016, §65).*

Therefore, in order to avoid obstacles that may interfere with the good functioning of the Court, **the constitutional judge whose term of office has expired shall perform his/her duties until his successor is sworn in to the position** *(JCC no. 12 of 12.05.2016, §66).*

Only through the application of this mechanism any prejudice towards the functioning of the constitutional court and infringement of its independence will be avoided *(JCC no. 12 of 12.05.2016, §69).*

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[45] Judgment no. 12 of 12.05.2016 on the interpretation of Articles 116 para.(2), 116 para. (4) and 136 para. (1) of the Constitution (*extending the mandate of the judge*)

The Court also stated that the authorities responsible for the appointment of constitutional judges must act in the spirit of constitutional loyalty and under the principle of legality, by appointing new judges within the time frame provided by the law *(JCC no. 12 of 12.05.2016, §70).*

5 REVISION OF THE CONSTITUTION

5.1. Substantial and procedural limitations of constitutional amendments

Substantial limitations with regard to amendments to the Constitution are enshrined in the Constitution and refer to the specific contents of constitutional amendments; procedural limitations referring to constitutional amendments envisage the special procedure of modifying of the Constitution provided thereby *(JCC no. 7 of 04.03.2016*[46]*, §72).*

Procedural limitations referring to constitutional amendments arise from the constitutional regulation as a whole and are intended to protect the universal values underlying the Constitution as the Supreme Law and as a social contract, as well as the state as the common good of the whole society and to preserve the harmony of these values and the harmony of constitutional provisions *(JCC no. 7 of 04.03.2016, §73).*

The imperative that no amendment to the Constitution may affect the harmony of the constitutional provisions or the harmony of values enshrined therein prevents the adoption of amendments which are contrary to at least one of the constitutional values underpinning the state as the common good of the whole society enshrined in the Constitution – independence of the state, democracy, republic as form of government and the intrinsic nature of human rights and fundamental freedoms, except for the cases when Article 1 of the Constitution is amended in the manner prescribed in Article 142 para. (1) of the Constitution (*JCC no. 7 of 04.03.2016, §75).*

The stability of the Constitution is a characteristic which, along with other characteristics among which and, first of all, in corroboration with the special legal, supreme

[46] Hotărârea Curții Constituționale nr.7 din 04.03.2016 privind controlul constituționalității unor prevederi ale Legii nr.1115-XIV din 5 iulie 2000 cu privire la modificarea și completarea Constituției Republicii Moldova *(constituționalitatea amendamentelor la Constituție)*

force of the Constitution, establishes a difference between legal constitutional regulation and (ordinary) regulation provided by the legal acts of lower legal force. Stability of the Constitution does not preclude the possibility to amend the Constitution when this is necessary, however the procedure of constitutional amendment is more difficult and complex as compared to the procedure for the modification of organic and ordinary laws *(JCC no. 7 of 04.03.2016, §77).*

Special procedure of constitutional amendment cannot be identical to the procedure of adoption of laws. With a view to ensure the stability of constitutional provisions it has been provided a special amendment procedure in order to ensure that the Constitution is amended only when necessary and to prevent any hasty alteration of the Constitution *(JCC no. 7 of 04.03.2016, §81).*

Constitutional provisions regulating certain limitations with regard to constitutional revision entail legal force and cannot be circumvented, are based on the existence of principles and provisions stated by the original constituent legislator which are mandatory for the derivative constitutional power *(JCC no. 7 of 04.03.2016, § 85).*

The Court held that compliance with the procedures governing constitutional revision granting time for public and institutional debates can contribute in a significant manner to the legitimacy and acceptance of the Constitution, and to the development and strengthening of democratic constitutional traditions. Instead, if the rules and procedures for constitutional revision are subject to interpretation and controversy, or if these are applied in a hastily manner or in absence of democratic debates, this could undermine political stability and, ultimately, the legitimacy of the Constitution itself *(JCC no. 7 of 04.03.2016, §86).*

Thus, in the realm of protecting the constitutional order and the rule of law and with a view to guarantee the supremacy of the Fundamental Law constitutional justice shall intervene *(JCC no. 7 of 04.03.2016, §88).*

The logic of the need of a constitutional review carried out by a body that is independent from Parliament is resulting from the perception that if the Parliament itself is the judge of its own legislation, it may be easily tempted to resolve any doubt in its favor *(JCC no. 7 of 04.03.2016, §89).*

B | COURT FINDINGS

1 PROVISIONS RECOGNIZED CONSTITUTIONAL

The Court recognized as constitutional:

- section 118 of Art. I of Law no. 155 of 5 July 2012 amending and supplementing the Code of Civil Procedure of the Republic of Moldova, in the part excluding the words *"or the ruling or decision by another body"* from Article 449, p. e) *(JCC no. 4 of 01.03.2016);*
- Article 76 p.g) of the Labor Code of the Republic of Moldova No. 154-XV of 28 March 2003 *(JCC no. 6 of 03.03.2016);*
- the phrases:
  – *"(2) Any citizen of the Republic of Moldova may run for the office of President of the Republic of Moldova, provided that he/she has the right to vote and is over 40 years of age, had lived or has been living permanently on the territory of the Republic of Moldova for no less than 10 years and speaks the official state language."*
  – *"(6) The procedure for the election of the President of the Republic of Moldova shall be provided for by organic law."*
  in section 2 of Article I of Law no. 1115-XIV of 5 July 2000 amending the Constitution *(JCC no.7 of 04.03.2016);*
- Articles 37^{7} para. (5) and 37^{15} para. (2) of the Law on Financial Institutions no. 550 of 21 July 1995 *(JCC no. 11 of 11.05.2016);*
- Article 6 para. (1) p.d) and p. e) of the Law on the Customs Service no.1150-XIV of 20 July 2000 *(JCC no. 13 of 13.05.2016);*
- Article 1 para. (2) p.c) of Law on ensuring equality no. 121 of 25 May 2012 *(JCC no. 14 of 16.05.2016);*
- the phrases *"housing provided by the employer"* in Article 5 para. (2), and *"except for the housing provided by the employer"* in Article 17 para. (1) of the Law on Privatization of Housing no.1324-XII of 10 March 1993 *(JCC no. 15 of 17.05.2016);*

- the phrase *"or from collection of biological samples within this medical examination"* in Article 264[1] para. (3) of the Criminal Code of the Republic of Moldova no. 985-XV of 18 April 2002 *(JCC no. 18 of 18.07.2016);*
- – the phrase *"the validity of which may not exceed 6 consecutive months"* in Article 34 para. (3) of the Law no. 156-XIV of 14 October 1998 on State Social Insurance Pensions;

  – The phrase *"the validity of which may not exceed 6 consecutive months"* in section 5 paragraph two of the Regulations on the payment of pensions established within the public social insurance system and of the state social allowances, approved by Government Decision no. 929 of 15 August 2006 *(JCC no. 19 of 19.07.2016);*
- Article 22 para. (4) of the Law on the Housing Condominium no. 913-XIV of 30 March 2000 *(JCC no. 20 of 20.07.2016);*
- Article 125 p.b) of the Criminal Code no. 985-XV of 18 April 2002, *to the extent* that the current wording is not interpreted as criminalizing entrepreneurial activity in absence of a license *(JCC no.21 of 22.07.2016);*
- Article 27 of the Law on Governmental Agent no. 151 of 30 July 2015 *to the extent* that the recourse action is based on a sentence delivered within separate legal proceedings separate at the national level, by which it is ascertained that the judge or another person has committed or admitted intentionally or following gross negligence actions or omissions that caused or contributed to significant violations of the European Convention on Human Rights and Fundamental Freedoms, the fact being established by a judgment of the European Court, or has imposed the friendly settlement of the case before the European Court or formulation of the unilateral declaration *(JCC no. 23 of 25.07.2016);*
- Article 55 para. (2) and para. (8) of Law no. 320 of 27 December 2012 on Police and the Statute of Police Officer and section 59 para.5) and section 65 of the Disciplinary Statute of the Police Officer, approved by Government Decision no. 502 of 9 July 2013 *(JCC no. 24 of 14.09.2016);*
- the words *"only"* in art. 17 and *"exclusively"* in Article 49 para. (1) p.a) of the Law no. 135-XVI of 14 June 2007 on Limited Liability Companies *(JCC no. 27 of 27.09.2016)*;

- section 34 first paragraph of Annex no. 3 to the Government Decision No.360 of 25 June 1996 on the Construction Quality State Control *(JCC No. 29 of 28.10.2016);*
- – Article 24 of the Civil Code of the Republic of Moldova no. 1107-XV of 6 June 2002, *to the extent* it is interpreted that the declaration of legal incapacity refers only to the persons who are totally lacking discernment, in respect of which the application of other less restrictive protective measures proves to be ineffective;
  – The *phrase "Acts of procedure performed by a person lacking legal capacity shall be null and void."* from Article 57 para. (2) and Article 169 para. (1) p.e) of the Code of Civil Procedure of the Republic of Moldova no. 225 XV of 30 May 2003 *(JCC no. 33 of 17.11.2016).*

2 PROVISIONS DECLARED UNCONSTITUTIONAL

The Court declared unconstitutional:

- – paragraph (3);
  – the words *"90 days"* in paragraph (5);
  – paragraphs (8) and (9)
  of Article 186 of the Code of Criminal Procedure of the Republic of Moldova no. 122-XV of 14 March 2003 as being contrary to Article 25 para. (4) of the Constitution *(JCC no. 3 of 23.02.2016);*
- Article 53 p. c) of Law no. 158-XVI of 4 July 2008 on the Civil Service and Status of Civil Servant *(JCC no.6 of 03.03.2016);*
- – the phrases:
  – *"(1) The President of the Republic of Moldova shall be elected by the Parliament by a secret ballot."*
  – *"(3) The candidate who obtained the vote of three-fifths of the elected members of Parliament shall be elected as President. If no candidate has obtained the necessary number of votes, a second ballot shall be held to choose between the first-placed two candidates, established according to the decreasing number of the votes obtained in the first ballot."*
  – *"(4) If in the second ballot no candidate has obtained the necessary number of votes, there shall be conducted repeated election."*

– *"(4) If in the second ballot no candidate has obtained the necessary number of votes, there shall be conducted repeated election."*
in section 2 Article I of the Law no. 1115-XIV of 5 July 2000 amending the Constitution;
– the phrase *"except as provided in Article 78 para. (5)"* in section 5 Article I of the Law no. 1115-XIV of 5 July 2000 amending the Constitution;
– Section 6 Article I of the Law no. 1115-XIV of 5 July 2000 amending the Constitution,
as being ***inconsistent with the limits of revision*** of the Constitution provided by Article 142 para. (2) and Article 135 para. (1) p.c) in conjunction with Article 141 para. (2) of the Constitution.
– The Law no. 1234-XIV of 22 September 2000 on the Procedure of Election of the President of the Republic of Moldova.
– the Law no. 1227-XIV of 21 September 2000 amending the Electoral Code, concurrently reviving the provisions that have been repealed;
– Articles 82 and 83 of the Rules of the Parliament approved by the Law no. 797-XIV of 2 April 1996 *to the extent* these provisions do not provide the prohibition to essentially modify the draft laws amending the Constitution and to the extent these provisions do not provide the prohibition to vote in the first reading the text of a draft law amending the Constitution that has been essentially modified, as being ***inconsistent with Art. 135 para. (1) p.c), Art. 141 para. (2) and Art.143 para. (1)*** of the Constitution *(JCC no.7 from 04.03.2016);*

- the words *"fine in the amount of 300 conventional units applied to legal entities [letters d) and e)] and to the person holding leading positions [letters a) - f)]"* of Art. 345 para. (2) of the Contravention Code of the Republic of Moldova no. 218-XVI of 24 October 2008, to the extent that the provisions thereof do not allow individualization of sanctions *(JCC no. 10 of 10.05.2016);*
- Article 10 para. (4) of the Law no. 151 of 30 July 2015 on the Governmental Agent *(JCC no. 16 of 18.05.2016);*
- Article 191 of the Code of Criminal Procedure of the Republic of Moldova no. 122-XV of 14 March 2003 in the part relating to the omission with a view to

regulate the period for which judicial review may be ordered and the maximum length of such a measure *(JCC no. 17 of 19.05.2016);*

- – the phrase *"for a period not exceeding 3 years until the date of submitting the request"* in Art. 35 para. (1) of the Law no. 156-XIV of 14 October 1998 on State Social Insurance Pensions;
  – The phrase *"for a period not exceeding 3 years until the date of submitting the request, but not earlier than the date of suspension"* in section 20 of the Regulations on the payment of pensions established within the public social insurance system and of the state social allowances, approved by Government Decision no. 929 of 15 August 2006 *(JCC no. 19 of 19.07.2016);*
- section 15 of the Annex to the Law no. 793-XIV of 10 February 2000 *(JCC no. 22 of 22.07.2016);*
- section 59 para. 2) and para. 3) of the Disciplinary Statute of the Police Officer, approved by Government Decision no. 502 of 9 July 2013 *(JCC no. 24 of 14.09.2016);*
- the words *"Notification shall be deemed received following the expiry of 7 working days from the day of dispatch."* in Article 31 para. (2) and the words *"or the expiry of the deadline provided for the receipt of the notification"* in Article 31 para. (4) of the Law no. 142-XVI of 26 June 2008 on Mortgage *(JCC no. 26 of 27.09.2016);*
- the phrase *"made in the founding documents"* in Article 30 para. (1) and para. (2) of the Law no. 135-XVI of 14 June 2007 on Limited Liability Companies *(JCC No. 27 of 27.09.2016);*
- the phrase *"of the operator in coordination with"* in Article 19 para. (5) of Law no. 303 of 13 December 2013 on Public Water Supply and Sewerage Service *(JCC no. 28 of 11.10.2016);*
- section 34 third paragraph of Annex no.3 to the Government Decision No.360 of 25 June 1996 on the Construction Quality State Control *(JCC No. 29 of 28.10.2016);*
- the phrase *"free of charge to the balance"* in Article 19 para. (4) of Law no. 303 of 13 December 2013 on Public Water Supply and Sewerage Service and in Article 5 para. (4^1) of the Law no.272-XIV of 10 February 1999 on Potable Water *(JCC no. 30 of 01.11.2016);*

- the phrase "*Until 31 December 2014, inclusive,*" and the phrase *"but no later than 1 January 2015"* in para. (4) of Article 73 of the Customs Code of the Republic of Moldova no.1149-XIV of 20 July 2000 *(JCC no. 31 of 03.11.2016);*
- – phrases *"after it became irrevocable", "issued on the basis of the irrevocable court judgment", "released based on the irrevocable judgment", "released based on the irrevocable court judgment"* in paragraphs (1), (2) and (3) of Article 6 of the Law no. 87 of 21 April 2011 on the state repairing of damages caused by the violation of the right to trial within a reasonable time, or the right to cause the enforcement of the judgment within a reasonable time;
  – Phrases *"only after the court judgment became irrevocable"* and *"based on an irrevocable judgment"* in para. (1) and para. (2) of Article 68 of the Law on Public Finances and budgetary-fiscal responsibility no. 181 of 25 July 2014 *(JCC no. 32 of 17.11.2016);*
- – the phrases *"or adults with limited legal capacity"* and *"or the guardian of the adult with limited legal capacity"* in Article 58 para. (2);
  – the phrase *"or by the adults declared incapable"* in Article 58 para. (2^1), to the extent that the procedural acts performed by incapacitated persons are deemed null and void;
  – the phrase *"and of the adults declared incapable in the manner provided by the law"* in Article 58 para. (6), to the extent that it prohibits participation in the trial proceedings of persons declared incapacitated and does not allow the court to take their will into consideration;
  – Article 170 para. (1) p.c) and Art. 267 p.b) to the extent that it prohibits in all circumstances submission of summons by an incapacitated person;
  – the sentence *"The issue related to the summoning of the person shall be resolved in each case depending on his/her health condition."* in Art. 306 para. (2), to the extent that it allows the court to examine the application related to the declaration of incapacitation in the absence of the person when the latter is in impossibility to travel to the court,
  from the Code of Civil Procedure of the Republic of Moldova no. 225-XV of 30 May 2003 *(JCC no. 33 of 17.11.2016).*

3 INTERPRETATION OF CONSTITUTIONAL PROVISIONS

The Constitutional Court interpreted the following provisions:

• In the meaning of ***Article 135 para.(1) p.a) and p.g), in conjunction with Articles 20, 115 116 and 134 of the Constitution:***

– in case of uncertainty regarding the constitutionality of laws, decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and ordinances of the Government, which are to be applied in any pending proceedings, the court must notify the Constitutional Court;
– the exception of unconstitutionality may be raised before the court by either party to the trial or by its representative, as well as by the court *ex officio*;
– the complaint relating to the control of constitutionality of legal provisions to be applied for the settlement of the pending case shall be submitted directly to the Constitutional Court by judges / panels of judges of the Supreme Court of justice, courts of appeal and first instance courts, which are examining the case;
– an ordinary judge shall not give an opinion on the complaint or on the conformity of challenged rules with the Constitution, and shall limit him/herself exclusively to the verification whether the following requirements are met:
  – object of the exception shall belong to the category of acts provided in Article 135 para. (1) let. a) of the Constitution;
  – exception shall be raised by one of the parties or by the representatives or shall indicate the fact that it is raised by the court *ex officio*;
  – challenged provisions should be applied while settling the case;
  – there is no prior judgement of the Court on the challenged provisions *(JCC no.2 of 09.02.2016);*

• 1. In the meaning of ***Article 106[1] para. (1) of the Constitution***, the Government may assume responsibility concurrently in respect of several draft laws, provided that the proposed adoption thereof is a measure *in extremis* determined by:

– urgency in adopting the measures regulated by the law/laws in respect of which the Government has assumed responsibility;
– the need for regulation to be adopted with the utmost celerity;

– immediate application of the law/laws;
– the fact that the laws regulate a single domain.

2. In the meaning of ***Articles 106[1] para. (1) and 93 para. (2) of the Constitution***, the President of the Republic of Moldova cannot send to the Parliament for reconsideration, prior to promulgation, a law in respect of which the Government had assumed responsibility. If the President considers that the law adopted though the procedure of assumption of responsibility by the Government is unconstitutional, he may submit a complaint in this regard to the Constitutional Court *(JCC no. 5 of 02.03.2016);*

• 1. In the meaning of ***Article 116 para. (2) and para. (4) of the Constitution***, the Supreme Court judge whose mandate expired in connection to his/her reaching the due age shall perform the duties until the appointment of a new judge.

2. In the meaning of ***Article 136 para. (1) of the Constitution***, the Constitutional Court judge whose term has expired shall perform the duties until the swearing in by the newly appointed judge *(JCC no. 12 of 12.05.2016).*

4 VALIDATION OF ELECTIONS OF THE PRESIDENT OF THE REPUBLIC

In plenary session, following the confirmation of the results of elections of the President of the Republic of Moldova from 13 November 2016, the Court validated the election of Mr Igor Dodon as President of the Republic of Moldova *(JCC no. 34 of 12.13.2016).*

5 VALIDATION OF THE MANDATES OF MEMBERS OF PARLIAMENT

The plenary session has not established any circumstances impeding validation of the mandates of Members of Parliament assigned by the Central Electoral Commission to the following acting candidates:

• Mrs. Valentina Rotaru and Mr Sergei Chiseliov on the list of the Democratic Party of Moldova *(JCC no. 8 of 16.03.2016);*

• Mr. Oleg Ogor, on the list of the Liberal Party *(JCC no. 25 of 21.09.2016);*

• Ms. Irina Mizdrenco, on the list of the Party of Socialists from the Republic of Moldova *(JCC no. 35 of 20.12.2016);*

• Mr. Simion Grișciuc, on the list of the Liberal Democratic Party of Moldova *(JCC no. 35 of 20.12.2016).*

6 COURT DECISIONS

In process of exercising constitutional jurisdiction in 2016 the Court issued **96** *decisions on inadmissibility* based on the following considerations:

6.1. Decisions on the inadmissibility of complaints concerning the review of constitutionality of normative acts

The grounds for declaring the inadmissibility of complaints related to the review of constitutionality are provided in Section 28 of the Rules on the examination of complaints submitted to the Constitutional Court[47]. Thus, the complaint shall be declared inadmissible if:

a) its settlement is not the competence of the Court;
b) there exists already a judgment/decision/opinion of the Court related to the challenged provisions;
c) the challenged provisions have been amended or repealed;
d) the complaint is is manifestly unfounded.

Following a retrospective analysis of *22 decisions on the inadmissibility of complaints concerning the review of constitutionality* submitted to the Court in 2016, the most frequently mentioned reasoning were related to the following:

1. The complaint **is manifestly unfounded, is formulated in an abusive manner and is based on faulty arguments** and cannot be accepted for examination on the merits (*see DCC no. 1 of 19.01.2016, DCC no. 30 of 29.04.2016, DCC no. 40 of 08.07.2016, DCC no. 60 of 09.06.2016, DCC no. 61 of 09.06.2016, DCC no. 63 of 26.09.2016, DCC no. 75 of 12.10.2016, DCC no. 76 of 12.10.2016, DCC no. 77 of 12.10.2016*) as well as **lack of impact of constitutional norms** in respect of the challenged legal provisions (*DCC no. 15 of 23.03.2016, DCC no. 47 of 05.08.2016, DCC no. 19 of 23.03.2016*), either the complaint does not meet the conditions of admissibility with a view to carry out the control of constitutionality and cannot

[47] Approved by the Decision of the Constitutional Court no. AG-3 of 3 June 2014 (Official Gazette of the Republic of Moldova no. 185-199 of 18.07.2014) http://constcourt.md/public/files/file/Baza%20legala/rules_examination_complaints.pdf

be accepted for examination on the merits (*DCC no. 18 of 23.03.2016*). The criterion indicated in subsection d) of Section 28 of the Regulation has been invoked in the situation when, given the circumstances described, the Court held that an eventual invalidation of the challenged act would be superfluous (*DCC No. 24 of 29.04.2016*).

2. **The challenged provisions have already been subject to the control of constitutionality on other occasions** (*DCC no.6 of 26.02.2016*), either given the identity of object and taking into account that no new elements, capable of justifying reconsideration of the Court's previous jurisprudence have emerged (*DCC no. 10 of 23.03.2016*) or the complaint is repetitive and no new elements emerged, capable of justifying reconsideration of the case related to both the solution and the arguments exposed (*DCC no. 13 of 23.03.2016, DCC no. 15 of 23.03.2016*).
3. The settlement of the complaint is not the competence of the Court, including lack of *ratione materiae* jurisdiction (*DCC no.2 of 22.01.2016*).

6.2. Decisions on the inadmissibility of exceptions of unconstitutionality

Out of the **69 decisions on the inadmissibility of exceptions of unconstitutionality** the following reasons of inadmissibility may be emphasized:

1. The most often cited reason for declaring inadmissibility of the complaint is **the lack of impact of constitutional provisions invoked upon the contested rules**. These grounds are present in the most of the decisions on the inadmissibility of complaints related to the exception of unconstitutionality issued by the Constitutional Court during the period from February until December 2016. When invoking the grounds for inadmissibility from this perspective, the Court noted that, within the procedure of raising the exception of unconstitutionality, the Constitutional Court is guided by the provisions of Article 135 of the Constitution, i.e reporting the legal provision, namely the norm which shall be applicable in a particular case, to the relevant constitutional provision invoked as well as by the relevance of the challenged legal provisions for the settlement of the dispute in the courts (*see, e.g. DCC no. 80 of 18.11.2016, DCC no. 48 of 06.09.2016, DCC no. 32 of 14.06.2016, DCC no. 11 of 23.03.2016*).

2. Declaring the exceptions of unconstitutionality inadmissible based on the fact that **the challenged provisions involve a question of application of law and not the unconstitutionality thereof** is another reason invoked by the Constitutional Court. For example, given that the Parliament is the sole legislative authority, it is the exclusive right of the legislature to establish regulatory conditions, so that the complaints (declared inadmissible under this grounds) actually reflect issues of legality, rather than issues of constitutionality (*DCC No.37 of 14.06.2016, DCC no. 46 of 08.07.2016, DCC no. 72 of 12.10.2016, etc.*).
3. Another reason to declare the inadmissibility of an exception of unconstitutionality is **the exceeding of the domain of constitutional jurisdiction**, the Constitutional Court lacking *ratione materiae* competence to examine the issues submitted for settlement. In this respect the Court recalls on various occasions that the review of the constitutionality of a legal text refers to the compatibility thereof with the constitutional provisions and not a mere comparison of the provisions of several laws between them. On other occasions, while invoking the exceeding of constitutional jurisdiction, the Constitutional Court based on the lack of jurisdiction to rule on the opportunity of establishing by the legislature of particular regulations (*DCC no. 41 of 08.07.2016*). Concurrently, the Court finds states that the complaint presents an analysis of the challenged legal provision in relation to another legal provisions, and not with the constitutional norm, which also leads to the exceeding of the domain of constitutional jurisdiction *(DCC No. 36 of 14.06.2016).* Besides In addition to exceeding of *ratione materiae* jurisdiction of the Court in relation to the power of the legislature, they are cases when the Court stated lack of *ratione materiae* competence in relation to the court (*DCC No. 27 of 29.04.2016*), or to the Government (*DCC no. 22 of 29.04.2016*) the problem thus lying in the field of applicability of the legal provision rather than the constitutionality thereof.
4. The grounds related to the declaration of inadmissibility due to **the existence of a judgment covering the challenged provisions (identity of object)** also is frequently encountered reason in constitutional jurisprudence. This category of grounds for inadmissibility relates to the situation where the object of the

complaint is identical to the object of the complaints previously submitted to the Court and no new elements likely to cause reconsideration of the case in relation to both the solution and the considerations set out in its previous judgments or decisions appeared, these arguments being valid for the case under consideration (*DCC no. 33 of 14.06.2016, DCC no. 5 of 26.02.2016, DCC no. 89 of 05.12.2016*).

5. The Court issued decisions on inadmissibility of complaints due to **lack of impact of the contested provisions for the settlement of case pending before the court of law** based on the reasoning that in the situation of a concrete control exercised by way of exception of unconstitutionality, the Court examines the inconsistency of the legal provisions applicable in the case pending before the court with the Constitution. In its Judgment no. 2 of 9 February 2016 on the interpretation of Article 135 para. (1) p.a) and p.g) of the Constitution the Court ruled that, given the fact that the legal provision challenged via the institution exception of unconstitutionality is subject to constitutional review applied to a particular case referred to a court of law, the procedure of settlement of such an exception of unconstitutionality represents a concrete control of constitutionality. The reason for the establishment of such a control is based on censorship and interference by the constitutional court in the process of application by an ordinary court of the legal provision in respect of which there exist doubts of constitutionality. Therefore, failure to comply with this condition represents an inevitable ground for inadmissibility *(see DCC no. 78 of 12.10.2016, DCC no. 65 of 12.10.2016, DCC no. 56 of 09.06.2016*)
6. When the Court invoked as grounds for declaring the inadmissibility of the exception of unconstitutionality the fact that it **represents an *actio popularis* or is an *in abstracto* approach in relation to the challenged provisions**, the constitutional review institution relied on its finding that the claims alleged in fact target the *in abstracto* approach of issues related to the application of the legal provision which is not connected with the merits of the dispute mainly thus being an *actio popularis* which is may not be used while solving the exceptions of unconstitutionality, as opposed to the ordinary control of the constitutionality of norms. Moreover, the Court points out that, in the absence of a genuine dispute, the exception of unconstitutionality may represent a hidden form of an

actio popularis, its object being abusive, leading to the impossibility to be accepted for examination on the merits (*see DCC no. 84 of 18.11.2016, DCC no. 74 of 12.10.2016, DCC no. 64 of 26.09.2016*).

6.3. Inadmissibility decisions on the interpretation of the Constitution

In 5 decisions on the inadmissibility of complaints on the interpretation of the Constitution, the Court invoked the following reasons:

- the issues addressed by the authors of the complaint cannot be reported to any articles of the Constitution (*DCC no. 3 of 26.02.2016, DCC No.4 of 26.02.2016*);
- the aspects addressed in the complaint have previously been examined by the Constitutional Court, thus being found an identity of objects (*DCC No. 8 of 16.03.2016*);
- the complaint is manifestly unfounded, formulated in an abusive manner and poorly substantiated, therefore cannot be accepted for examination on the merits (*DCC No. 20 of 23.03.2016*);
- Constitutional provisions do not require interpretation, being developed by express legal provisions (*DCC No. 87 of 22.11.2016*).

C | ADDRESSES

In 2016 the Court has issued 17 addresses to the Parliament, as follows:

• ***Address PCC-01/55b of 09.02.2016, JCC no. 2 of 9.02.2016***

The Court held that the notification on the review of constitutionality of some legal provisions to be applied while settling a case shall be lodged directly with the Constitutional Court by the judges/panels of judges of the Supreme Court of Justice, courts of appeal and courts that are adjudicating the case.

Having analysed the current legal provisions the Court notes that these norms shall be amended in accordance with the reasons outlined in the aforementioned judgment. In this context, given that all courts of law are entitled to submit complaints to the Constitutional Court, Article 12/1 of the Code of Civil Procedure and Article 7 para.(3) of the Code of Criminal Procedure shall be amended as follows:

"In case of any uncertainties in respect of the constitutionality of laws, decisions of the Parliament, decrees of the President of the Republic of Moldova, decisions and ordinances of the Government that shall be applied for the settlement of particular case, the judge/panel of judges *ex officio* or at the request of either party (the representative thereof) shall notify the Constitutional Court."

Moreover, taking into account the arguments exposed in the aforementioned Judgment, norms regulating civil and criminal procedures shall comprise the following regulations:

"In the process of raising of the exception of unconstitutionality and notifying the Constitutional Court the judge shall not give an opinion on the complaint or on the conformity of challenged rules with the Constitution. The judge shall limit him/herself exclusively to the verification whether the following requirements are met:

(1) object of the exception shall belong to the category of acts provided in Article 135 para. (1) let. a) of the Constitution;
(2) exception shall be raised by one of the parties or by the representatives or shall indicate the fact that it is raised by the court *ex officio*;
(3) challenged provisions should be applied while settling the case;
(4) there is no prior judgement of the Court on the challenged provisions.

The ruling on the refuse to raise the exception of unconstitutionality may be challenged separately with recourse."

In addition to that, taking into account that the institution of the exception of unconstitutionality shall be regulated in details, it is considered appropriate to supplement the Code of Criminal Procedure with a new article dedicated to this particular mechanism, similarly to the Code of Civil Procedure.

Besides the amendments that shall be operated to procedural legislation, the Court holds that art. 4 para. (1) p. g) of the Law on the Constitutional Court and art. 4 para. (1) p.g) of the Code of Constitutional Jurisdiction the words "raised by the Supreme Court of Justice" shall be excluded. Moreover, art. 25 of the Law on the Constitutional Court and art. 38 of the Code of Constitutional Jurisdiction, p.d) shall have the following wording: "d) judges / panels of judges of the Supreme Court of Justice, courts of appeal and first instance courts".

• ***Address PCC-01/26g/34g of 10.05.2016, JCC no. 10 of 10.05.2016***

The Court declared unconstitutional the words "fine in the amount of 300 conventional units applied to legal entities [letters d) and e)] and to the person holding leading positions [letters a) - f)]" in Article 345 para.(2) of the Contravention Code, to the extent it does not allow the individualization of sanctions.

The Court noted that art. 9 of the Contravention Code establishes the criteria which have to be applied while individualizing the sanction. Thus, while applying the contravention law it is necessary to take into account the nature and the degree of harm caused by the offense, the personality of the perpetrator and the mitigating or aggravating circumstances. Moreover, the Court found that in respect of the offense provided in Article 345 para. (2) of the Contravention Code the legislator has imposed a sanction of fine in a fixed amount.

The Court held that according to constitutional principles, the legislature cannot regulate a penalty in such a way as to deprive the court of the opportunity to individualize the sanction, taking into account the circumstances of the case. The Court emphasized that the lack of mechanisms allowing the judicial individualization distorts the effective, proportional and dissuasive character of the contravention sentence.

The Court found that such regulations establishing the sanction of fine in a fixed amount are provided in a number of articles of the Contravention Code.

• ***Address PCC1/29a of 18.05.2016, JCC no. 16 of 18.05.2016***

The Court declared unconstitutional para. (4) of Article 10 of the Law on the Governmental Agent, which states: "The provisions of the Law no. 982-XIV of 11 May 2000 on Access to Information shall not be applicable in respect of the correspondence of the Governmental Agent with the European Court and with other authorities, as well as to the materials from the files pending within the procedure of the Governmental Agent.".

In this Judgment the Court held that the exempting the information held by the Government Agent from the legal provisions of the Law on Access to Information pursues the legitimate aim of protection of state interests within the procedures related to

representation before the European Court and, in particular, this/here rights of other persons (right to privacy, reputation, etc.) and was determined by the specificity of procedures related to state representation before the European Court as well as by corresponding fulfilment by the Governmental Agent of his/her duties.

At the same time, the Court found that the provision of para. (4) Article 10 of the Law on Governmental Agent establishes excessive restrictions with a view of information possessed by the Governmental Agent. The Court found that the challenged norm as a blanket rule, and underlined that it fails to ensure a fair balance between the right of access to information and the protection of other person's rights.

In this respect, the Court emphasizes the importance and necessity of regulating the confidentiality of certain information held by the Governmental Agent, taking into account the reasons stated in the Judgment of the Constitutional Court no. 16 of 18 May 2016; however this should be done without full and automatic exemption of all categories of information held.

• ***Address PCC-01/33g of 19.05.2016, JCC no. 17 of 19.05.2016***

The Court declared unconstitutional Article 191 of the Code of Criminal Procedure of the Republic of Moldova no. 122-XV of 14 March 2003 in respect of the failure to regulate the period for which judicial review may be ordered and the maximum time frame for such measures.

In the aforementioned judgment the Court held that the right of every person to know his/her rights and duties enshrined in Art. 23 of the Constitution implies, *inter alia,* adoption by the legislature of clear procedural rules prescribing exact terms and conditions under which the individuals are capable of exercising their rights.

The Court held that failure to indicate the term of application of the measure of provisional release pending trial is a legislative omission inconsistent with the Constitution.

In this context, the Court held that, acknowledging the existence of a legislative omission and given its role as guarantor of the supremacy of the Constitution, it cannot ignore this lack of constitutionality as particularly this omission is generating, *eo ipso*, the violation of the constitutional right of a person to know his/her rights and duties.

Given the reasons outlined in the Judgment no. 17 of 19 May 2016, the Court emphasized the importance and necessity for the Parliament to clearly regulate the deadline for the application of preventive measures provisional release pending trial.

• ***Address PCC-01/67g of 19.07.2016, JCC no. 19 of 19.07.2016***

The Court declared unconstitutional the phrase "for a period not exceeding 3 years until the date of request" in Art. 35 para. (1) of Law no. 156-XIV of 14 October 1998 on State Social Insurance Pensions and the phrase "a maximum of 3 years preceding the date of the request, but not earlier than the date of suspension" in section 20 of the Regulations on the payment of pensions established within the public social insurance system and of the state social allowances, approved by Government Decision no. 929 of 15 August 2006.

The Court also declared as constitutional the provisions of Art. 34 para. (3) of Law no. 156-XIV of 14 October 1998 on State Social Insurance Pensions and section 5 second paragraph of the Regulations on the payment of pensions established within the public social insurance system and of the state social allowances, approved by Government Decision no. 929 of 15 August 2006 in relation to the limitation for the term of 6 month of the validity of the Power of Attorney under which the trustee may collect the pension on behalf of the beneficiary, and stated that it is a question of opportunity, thus being the competence of the legislature and does not infringe constitutional provisions.

Although the Court noted that persons beneficiating from pensions may choose among several ways of collecting these means, including bank cards or current accounts which may be opened on demand within the banking institutions, the Court however, found that the existing mechanism is deficient especially for the citizens living abroad, and for these reasons it requested the Parliament to review the regulatory framework in this field.

• ***Address PCC1/25g/57g of 25.07.2016, JCC no. 23 of 25.07.2016***

The Constitutional Court declared Article 27 of the Law no. 151 of 30 July 2015 on the Governmental Agent, to the extent in which the recourse action is based on a

judgment delivered within separate legal proceedings on the national level by which it is found that the judge or another person has committed or admitted, intentionally or through gross negligence, action or inaction that caused or contributed to significant violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms, established by a judgment of the European Court, or by a friendly settlement imposed for a case pending before the European Court or by an unilateral declaration.

In this Judgment The Court ascertained that, under the contested provision, it is possible to initiate the recourse action of the State exclusively on the basis of a judgment or a decision of the European Court. This provision does not require the existence of a judicial sentence, adopted in a separate trial that proves the guilt of the person, including the judge.

The Court found that, in other cases provided by the law, in order to file a recourse action it is necessary that the guilt of the person is proven by a judicial sentence (art. 1405 and 1415 of the Civil Code). Also, in accordance with Article 19 para. (3) of the Law on the Status of Judges, a judge may be held accountable for the judgment only if he/she has been found guilty of criminal abuse by a final sentence.

Within review of constitutionality, the Court held that the legal provision regulating the recourse action stipulated in Article 27 of the Law on Governmental Agent exceeds the general framework of liability of judges in relation to the abovementioned legal provisions, by the fact that it allows for a person to be held accountable in the absence of a judicial sentence that proves his/her guilt, but only on the basis of a judgment delivered by the European Court. The same view was shared by the Venice Commission in its Amicus curiae brief.

The Court reiterated that holding accountable to disciplinary liability of the judge only on the basis of a judgment of the European Court condemning the state, without proving that the law has been intentionally infringed by the judge, constitutes an inadmissible interference in the judge's independence.

In light of the above, given the fact that the challenged legal provision shall apply to various categories of persons, including judges, the Court emphasized the importance and the need to regulate by a comprehensive regulatory framework the mechanism that

would permit the implementation of the recourse action in the context of sentencing of the Republic of Moldova by the European Court, taking into account the reasons stated in the judgment of the Constitutional Court no. 23 of 25 July 2016.

• ***Address PCC-01/83g of 27.09.2016, JCC no. 26 of 27.09.2016***

The Court declared unconstitutional the words *"Notification shall be deemed received on the expiry of 7 working days from the day of dispatch"* in Article 31 para. (2) and the words *"or the expiry of the deadline provided for the receipt of the notification"* in Article 31 para. (4) of the Law no. 142-XVI of 26 June 2008 on Mortgage.

The Court held that the abovementioned provisions entail a series of legislative deficiencies, and this fact is inconsistent with the requirements of clarity and predictability, as enshrined in Article 23 para. (2) of the Constitution.

The Court found that the lack of predictability and clarity of the moment of receiving notification by the mortgage borrower is hindering his/her right to voluntarily pay the mortgage within the time limit provided as well as ownership rights of the latter over the mortgaged property.

At the same time, the Court drew attention to the fact that mortgage borrower might evade in bad faith from the receipt of the notification, thus making impossible the actual receipt of the notification. Given that in such situations banks' financial stability could be jeopardized, the Court noted the need to establish a fair balance between the economic interests of the state and protection of property rights of mortgage borrowers. The Court emphasized that in case of refusal or evasion of the debtor to receive notification the general rules of procedure governing the dispatch of registered letters set forth by the regulatory framework for postal services shall be applicable.

Given the reasons outlined in the Judgment no. 26 of 27 September 2016, the Court stressed the need of explicit and uniform regulation by the Parliament of the procedure related to the sending and receiving of notifications similar to the specific procedure of notification and summoning, with a view to guarantee in a balanced manner the rights of both contracting parties.

• ***Address PCC-01/97g of 27.09.2016, JCC no. 27 of 27.09.2016***

The Court declared unconstitutional the phrase "made to the founding documents" in paragraphs (1) and (2) of Article 30 of the Law on Limited Liability Companies.

In this Judgment the Court held that the obligation imposed with a view to change the founding documents of a limited liability company in order to register the social part, directly violates the ownership right of persons having acquired the shares and is inconsistent with Article 46 of the Constitution.

Moreover, since the founding and the activity of the limited liability company is based on the mutual will and trust of the associates, in addition to the aforementioned findings, the Court noted the existence of situations where the quality of new associate of the acquirer of shares may be refused by the company members. However such a refusal should not affect the property rights of the share parts acquirer, he/she being entitled to receive the equivalent value of the corresponding share parts. At the same time, having analyzed the Law on Limited Liability Companies in the aggregate, the Court noted the lack of any regulation in respect of such situations.

Thus, noting the existence of a legislative omission and given its role of guarantor of the supremacy of the Constitution, the Court held that it cannot ignore this legal vacuum due to the fact that it is able to generate, *eo ipso*, the infringement of property rights of the person acquiring a social part.

Given the reasons outlined in the Judgment no. 27 of 27 September 2016, the Court emphasized that the Parliament needs to regulate expressly the effects of acquisition through inheritance of the ownership over the share part in the event that the membership of the acquirer of shareholding may be refused by the company members.

• ***Address No. PCC-01/73g/125g of 28.10.2016, JCC no. 29 of 28.10.2016***

The Court recognized to be constitutional paragraph one and declared unconstitutional paragraph three of Section 34 Annex no. 3 to the Government Decision No.360 of 25 June 1996 on Construction Quality State Control.

The Court noted that under Art. 31 of the Law on Construction Quality, the State Inspectorate for Constructions is responsible for carrying out state control over the uni-

form application of legislation in the field of construction quality at all stages and components of the construction quality system, as well as for the ascertainment of offences and cessation of works executed in an improper manner.

Moreover, given the powers of the State Inspectorate for Constructions, established by the Law no. 721-XIII of 2 February 1996 on Construction Quality, the Court pointed out that the aforementioned acts fails to regulate in detail its powers to deliver decisions and to apply sanctions in case of any violations ascertained.

Therefore, considering the reasons outlined in the Judgment No.29 of 28 October 2016, the Court emphasizes the need to regulate the empowerments of the State Inspectorate for Constructions related to the power to issue decisions and to apply sanctions while exercising construction quality state control.

• ***Address PCC-01/76g of 01.11.2016, JCC no. 30 of 01.11.2016***

The Court noted that a similar rule is contained and art. 5 para. (41) of Law No.272-XIV of 10 February 1999 on Potable Water. Although while raising the exception of unconstitutionality the author failed to indicate Art. 5 para. (41) of the Law on Potable Water, however, the Court found that there exists direct connection thereof with the challenged provisions.

By the aforementioned judgment the Court declared unconstitutional the phrase "free of charge to the balance" in Article 19 para. (4) of the Law on Public Water Supply and Sewerage System, and Article 5 para. (41) of the Law on Potable Water.

The Court found that the challenged provisions in fact represent expropriation without regulating prior and fairly established compensation of the owner or holder of other real estate rights over water supply networks. In this context, the Court held that any construction made with the use of financial means of the individual or of the legal entity may be transmitted to the balance of the local public authority or directly to the operator only after prior and established compensation.

Thus, taking into account the reasons outlined in Judgment No. 30 of 1 November 2016, the Court emphasizes to the Parliament the need to expressly regulate the conditions under which the person shall be offered compensation, as well as the legal status of the asset transmitted to the local public authority

• ***Address PCC01/80g of 17.11.2016, JCC no. 32 of 17.11.2016***

The Court declared unconstitutional the phrases containing the word "irrevocable" in paragraphs (1), (2) and (3) of Article 6 of Law no. 87 of 21 April 2011 on the state repairing of damages caused by the violation of the right to trial within a reasonable time, or the right to cause the enforcement of the judgment within a reasonable time and of paragraphs (1) and (2) of article 68 of the Law on Public Finances and Budgetary and Fiscal Responsibility no. 181 of 25 July 2014.

The Court held that the contested provisions of Law no. 87 and of the Law no.181/2014 narrow the scope of enforcement of final judgments delivered against the state being limited only in respect of irrevocable judgments, contrary to the clear-cut provisions of Article 120 of the Constitution.

The Court held that the rationale of Law no. 87/2011 was to establish an effective domestic remedy against excessive length of judicial or enforcement proceedings. For this reason, the Court held that the judgments delivered based on that Law shall be submitted for enforcement immediately after the judgment becomes final and shall be enforced not later than within three months from this date, similar to the procedure for enforcement of judgments of the European Court of Human Rights, with a view to avoid further delays, which the Law no. 87/2011 should address in fact.

At the same time, the Court found that under Art. 435 of the Civil Procedure Code, while challenging the judgment using the recourse, a request for he suspension of enforcement is only possible if the appellant filed a bail, including where quality of appellant belongs to the state. In this regard, the Court considers it necessary to establish a distinction between the cases when the suspension of enforcement of the judgment is requested by individuals and private legal entities and the cases when this is requested by legal entities of public law (state authorities).

Given the reasons pointed out in the Judgment no. 32 of 17 November 2016, the Court emphasizes to the Parliament the need to regulate the procedure for the examination of cases envisaged by the Law no. 87/2011 and the enforcement of judgments delivered based on this Law, with a view to improve the existing mechanism by excluding of at least one stage of jurisdiction and by excluding of the obligation of filing by the

State of the bail in case of requesting suspension of enforcement while challenging the judgment with recourse.

• ***Address No. PCC-01/139e-34/1 of 13.12.2016, JCC no. 34 of 13.12.2016***

While examining the case on the confirmation of the results of presidential elections, the Court found several weaknesses in the Electoral Code in the part referring to the examination of complaints, and stated that in this respect the electoral authorities and the courts have dismissed a large number of complaints on the basis of lack of jurisdiction.

Court noted absence of legal provisions that would enable the competent authorities to examine electoral complaints submitted following the election day as well as lack of legal provisions related to the subject of disputes that could be filed for settlement in the first instance courts. Also, the Court stated absence of clear regulations in respect of the procedure for the examination of complaints filed on the election day that could not have been filed in courts on the same day.

The Court held that the only legal provision regulating the examination of complaints filed after the summing up of voting results is provided in Art. 67 para. (3) of the Election Code, according to which "[...] the complaints against the decision of the electoral authority concerning the totalization of voting results and assignment of mandates shall be examined by the court of law concurrently with the confirmation of the legality and validation of mandates."

The Court noted that the courts have not specified presidential elections as falling under this rule.

The Court held that, due to poor application of legal provisions by the ordinary courts, the electoral actors were actually deprived of efficient judicial review and the Constitutional Court was in impossibility to make use of the acts by which the violations were ascertained.

Therefore, taking into account the reasons outlined in the Judgment No. 34 of 13 December 2016, the Court pointed out to the Parliament the need to clarify the legislative provisions in respect of the examination of complaints filed regarding the orga-

nization and deployment of elections. In particular, the Court recommended to the Parliament to regulate separately and explicitly the procedures for the examination of complaints related to different types of ballots. In the same context, the Court asked the Parliament to regulate in a differentiated manner the procedures of examination of complaints in the event of deployment of the ballot in two rounds, including of the appeals submitted on the election day.

• ***Address No. PCC-01/139e-34/2 of 13.12.2016, JCC no. 34 of 13.12.2016***

The Court held that the current legislation of the Republic of Moldova allows voting abroad. In the same time, overseas voting cannot take place under any circumstances, it shall take place in compliance with the applicable legal provisions. In this regard, pursuant to art. 291 of the Election Code, when opening polling stations outside the country the authorities shall take into consideration: (1) the number of citizens who had performed prior registration and (2) the number of voters having participated in the previous elections.

Having examined the materials of the case file the Court found that a large number of Moldovan citizens living abroad have not been able to exercise their right to vote and the number of polling stations and of ballots distributed to the polling stations abroad were, in fact, insufficient.

Therefore, given that a large number of citizens living abroad were not able to vote, taking into account the reasons outlined in the Judgment No. 34 of 13 December 2016, the Court considered it necessary for the Parliament to come up with new regulations with a view to change the voting mechanism abroad and to introduce additional criteria to determine the number of polling stations abroad and the geographical distribution thereof.

• ***Address No. PCC-01/139e-34/3 of 13.12.2016, JCC no. 34 of 13.12.2016***

In this Judgment, in relation to the critics on the limited number of ballots provided to the polling stations abroad, the Court held that Article 29 para. (2) of the Election Code states: "The polling stations [...] shall contain at least 30 and not more than 3000

voters." Similarly, Article 49 para. (3) of the Election Code provides that "To the polling bureaus within the polling stations established outside the territory of the Republic of Moldova the Central Election Commission shall send the ballots [...] based on the estimated number of voters determined based on the information provided by the Ministry of Foreign Affairs and European Integration and collected by the Central Election Commission, but no more than 3 000 ballots for each polling station."

According to information provided by the Central Election Commission, 13 of the 100 polling stations opened abroad this number of ballots was exhausted prior to the statutory closing of the polling stations.

Thus, given that a large number of citizens living abroad were unable to vote, the Court considered it necessary for Parliament to come up with regulations in order to modify the current mechanism of voting abroad, and to introduce additional criteria for the establishment of the number of ballots and their geographical distribution abroad, including by securing the polling stations opened broad with a number of spare ballots.

• ***Address No. PCC-01/139e-34/4 of 13.12.2016, JCC no. 34 of 13.12.2016***

In its Judgment No. 34 of 13 December 2016 on the confirmation of the results of elections and validation of the mandate of the President of the Republic of Moldova, the Court held, that corruption in elections is a form of political corruption where the political leaders are making use of the abusively obtained benefits to influence elections.

Corruption of voters represents offering or giving money, goods, services or other benefits to determine the voter to exercise his/her voting rights in a certain manner during the elections. In this regard, according to art. 38 para. (7) of the Election Code, electoral contestants are prohibited to offer money to voters, to distribute material goods to them free of cost, including from humanitarian aid or other charity actions.

On the other hand, the Court found the absence of criminalization, in the Criminal Code, of corrupting voters in presidential elections, similarly to the criminalization of offering or giving money, goods, services or other benefits in order to determine the voter to exercise his/her rights in a particular way within parliamentary or local elections and within the referendum (Article 181/1).

The Court held that corrupting of voters should be regarded as a gross violation of the principles of free and democratic elections, including of the fair and transparent election process. Such violations create preconditions for questioning of the legality and of the legitimacy of elections. Moreover, these violations may considerably influence the election results.

Thus, taking into account the reasons outlined in the Judgment No. 34 of 13 December 2016, the Court stressed to the Parliament the need to expressly regulate in the Criminal Code issued related to the incrimination of corruption in respect of voters within the presidential election.

• ***Address No. PCC-01/139e-34/5 of 13.12.2016, JCC no. 34 of 13.12.2016***

The Court found the aggressive involvement in presidential elections of representatives of the Moldovan Metropoly, who used an extreme, xenophobic, homophobic and sexist language addressed to an electoral candidate, these facts being of public knowledge and confirmed by the reports of national and international observers. The Court held that such conduct is contrary to the Constitution.

The Court emphasized that, according to art. 31 para. (4) of the Constitution, religious denominations are autonomous and separate from the state. In its jurisprudence the Court noted that keeping neutral attitude in respect of religious issues was instituted as the founding principle of the state the Republic of Moldova.

The Court held that under Art. 15 para. (2) of Law no. 125 of 11 May 2007 on the Freedom of Conscience, of Thought and of Religion: "All religions and their component parts shall refrain from publicly expressing their political preferences or favoring any political party or any socio-political organization."

Moreover, Article 38 para. (3) of the Election Code prohibits any kind of direct or indirect financing or material support to the political parties' activity, of electoral campaigns/electoral contestants by religious organizations.

In this context, the Court held that electoral propaganda and/or financial or material support of the candidates, engaging in activities that violate the Constitution of the Republic of Moldova are grounds for suspending the activity of religious cults and their

component parts. The activity of religious denominations and their component parts may be suspended in the judicial order, for a period of up to one year. In case the religious denominations or their component parts carry out gross acts, their activity may be terminated in the judicial order. The Ministry of Justice has the right to bring cases to ordinary courts against religious denominations or their component registered parts in order to suspend or terminate their activity provided that it presents conclusive evidence on the existence of one of the grounds provided by law. The Court found that State authorities responsible for the election process and the activity of religious denominations have not properly executed their positive obligation to prevent and sanction the involvement of religious denominations in the electoral process.

Thus, taking into account the reasons outlined in the Decision No. 34 of 13 December 2016, the Court emphasized to the Parliament the need to expressly regulate the mechanisms for prompt and immediate sanctioning, including in criminal order, of any attempts of religious involvement in election campaigns.

• ***Address No. PCC-01/139e-34/6 of 13.12.2016, JCC no. 34 of 13.12.2016***

In the Judgment no. 34 of 13 December 2016, the Court held that the media is the cornerstone of a democratic society. Media is a tool to exercise power and to influence opinion, while the organisation of free and fair elections presumes there is ensured a fair information and media environment, which complies with the Ethics Code for Journalists.

Under Article 64 of the Electoral Code, broadcasters, within all their talk-shows, and written media founded by public authorities are under the duty to observe the principles of fairness, accountability, balance and impartiality while covering elections. Public broadcasters shall allocate free airtime to the electoral candidates in a fair and non-discriminatory manner, based on objective and transparent criteria.

At the same time, the Court found that, pursuant to current regulations, the Broadcasting Council examines complaints concerning the election coverage by broadcasters according to the established procedure. This makes it virtually impossible to apply sanctions within a reasonable time and proportionate to the committed acts, and as a con-

sequence it limits the possibility to form an impartial political opinion for the public and to provide equal conditions for the electoral candidates.

Considering the role and the importance of the media, the Court underscored the necessity to establish effective instruments that would allow responsible authorities to impose sanctions with immediate and dissuasive execution, such as the suspension of broadcasting for the entire electoral campaign, for those media outlets that breach the duty of impartiality during the electoral period.

D. DISSENTING OPINIONS

Separate opinion has been delivered by judge Alexandru Tănase to the Opinion no. 4 of 18.04.2016 on the initiative to revise Article 70 of the Constitution of the Republic of Moldova (*elimination of parliamentary inviolability*) (complaint no. 38c/2016)

TITLE III

ENFORCEMENT OF ACTS OF THE CONSTITUTIONAL COURT

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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 current legislation.

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.

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[48].

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.

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.

[48] 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

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 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.

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 subjective right of each individual, and secondly, to become a source of law for the legislature and the executive, playing a leading role in the development of law. Only together these conditions can guarantee the supremacy of the Constitution by ensuring the constitutionality of legislative acts.

1 LEVEL OF ENFORCEMENT OF CONSTITUTIONAL COURT JUDGMENTS DECLARING THE UNCONSTITUTIONALITY OF CERTAIN NORMATIVE ACTS

With a view to monitor the process of amending the legislative acts which provisions were declared unconstitutional by the judgments of the Constitutional Court, the Court is requesting the Government and the Parliament on regularly basis to be informed on the level of enforcement of the adopted acts. It their answers 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. According to the submitted information, during 2016 the Court delivered **17 judgments** in which at least one of the challenged provision was declared unconstitutional, the Parliament and the Government having to interfere with a view to settle the legislative gaps created. Out of the aforementioned judgments which were due for enforcement on the date of approving of this Report, **3 judgments** have been enforced**, 4 judgments** are still not enforced or are in the process of enforcement, and in respect of **11** judgments the term for enforcement is still pending.

Following a comparative analysis all the enforceable judgments delivered by the Constitutional Court in **2011-2013** have been enforced. Out of the total number of judgments delivered in 2014-2015 in which at least one of the challenged provision was declared unconstitutional, only one judgment for each of these years is unenforced *(See Chart no. 17).*

Based on the aforementioned analysis the Court remarks a high degree of enforcement of its judgments delivered over the recent years and this fact emphasizes the role of the instance of constitutional jurisdiction.

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 current legislation or on the need to make changes in legal regulations that have been subject to constitutional review.

The jurisdictional activity of the Constitutional Court is mainly oriented towards reviewing the complaints submitted and exercising constitutional competences in respect to these complaints. The constitutional review of acts from the point of view of their 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 system of law within the state.

Therefore, when performing constitutional review and based on addresses delivered to public authorities in respect of the challenged acts, the Court acted as a passive legislator. In 2016 the Court issued 17 addresses. Based on the information available to the Court, on the day of approval of this report out of the 4 addresses due for enforcement only 1 address was enforced. As a comparison, in 2015 the Court issued 5 addresses of which one was enforced, 3 being in the process of enforcement and one is still unenforced. In 2014 the Court has issued 8 addresses, of which only 3 have been enforced; in 2013 the court issued 6 addresses, all of which have been enforced; the addresses issued in 2012-2013 are enforced in full *(See Chart 18).*

TITLE

IV

COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

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COLLABORATIONS AND OTHER ACTIVITIES OF THE COURT

1 PARTICIPATION OF CCM IN INTERNATIONAL ORGANISATIONS

1.1. 8th Conference of Heads of Institutions of the Association of Constitutional Courts using the French language (ACCPUF)

On 28-29 September 2016, the Constitutional Court of Moldova for the first time hosted the 8th Conference of Heads of Institutions of the Association of Constitutional Courts using the French Language (ACCPUF).

ACCPUF reunites constitutional courts and similar institutions from the Francophone area, the Association gathering almost 45 members - constitutional courts from Africa, Europe, America and Asia. The Constitutional Court of Moldova joined the ACCPUF in 1997.

The event was part of series of events organized at national level on the occasion of celebrating in 2016 the 20th anniversary of Moldova's membership in the International Organization of La Francophonie (OIF).

During this meeting 31 constitutional courts and councils, represented by 80 presidents and delegates from four continents reunited to discuss the topic *"Organization of the adversarial proceedings before the Constitutional Court."*

Welcome speeches during the solemn ceremony of opening of the Conference were delivered by the President of the Republic of Moldova Mr. Nicolae Timofti, Prime Minister Mr. Pavel Filip, President of the Constitutional Court of Moldova Mr. Alexandru Tanase, President of ACCPUF and of the Federal Court of Switzerland Mr. Gilbert Kolly, other senior officials of the Venice Commission and of the OIF.

In his speech President of the Republic of Moldova Nicolae Timofti congratulated the ACCPUF members and mentioned that constitutional courts strengthen cooperation in order to not only disseminate common experience, but also to create a common front in the prevention and resistance to any acts threatening the independence of the constitutional judiciary. In this regard, the President of the Republic of Moldova stressed that political crises can be mitigated and a political culture can be fostered by way of constitutional review, and the acts of the Constitutional Court have a visible influence on the functioning of justice.

President of the Constitutional Court of Moldova Mr. Alexandru Tanase, welcomed the presence in Chișinău of the Heads of constitutional courts, members of ACCPUF, participating in the conference and noted that this reunion, apart from the aspect of institutional cooperation within ACCPUF, comes to denote also the francophone vitality in our country. Thus, Francophonie is not only a common linguistic space, but also promotes the human rights and rule of law values.

Prime Minister Pavel Filip noted the importance of the independence of constitutional courts, emphasizing that the creation of a new level of cooperation between con-

stitutional courts is welcomed. This, according to the Prime Minister, opens the way for mutual cooperation of Constitutional Courts in protecting common values: the rule of law, democracy, territorial entirety and fundamental rights. Moreover, according to him, the organization of this prestigious conference in Chișinău is an honor us and confirms the rallying of the Constitutional Court of the Republic of Moldova to the most respected constitutional jurisdictions of the civilized world.

The President of the Swiss Federal Tribunal Mr. Gilbert Kolly, in his capacity of President of ACCPUF, thanked the Constitutional Court of the Republic of Moldova for hosting, for the first time, an ACCPUF event.

The conference was held in three plenary sessions, during which the Presidents of constitutional courts of Belgium, Burkina Faso, Canada, Cambodia, Djibouti, France, Mali, Morocco, Monaco, Moldova, Senegal addressed to the participants and delivered presentations regarding the procedures and practices proper to their institutions in the process of constitutional jurisdiction.

The event was organized in cooperation and with the financial support of the General Secretariat of ACCPUF, of the International Organization of La Francophonie and the EU Project "Support to the Constitutional Court of the Republic of Moldova".

1.2. The 15th meeting of the Joint Council on Constitutional Justice of the Venice Commission

Between 6 to 8 June 2016, the Scuola Grande of San Giovanni Evangelista in Venice hosted the 15th meeting of the Joint Council on Constitutional Justice of the Venice Commission. The meeting was attended by the Secretary General of the Constitutional Court of Moldova Ms Rodica Secrieru, in her capacity as the liaison officer to the Venice Commission. The thematic mini conference held in 2016 discussed the topic of migration. The Secretariat presented a communication on the activities of the Venice Commission carried out during the preceding year and plans for future actions, the participants were informed on the briefs, opinions and reports on constitutional justice adopted by the Commission following the meeting held in Bucharest in June 2015, as well as delivered a presentation on the cooperation activities with regional, European, world and language organizations.

2 PARTICIPATION OF CCM IN REGIONAL ORGANIZATIONS

2.1. First Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ)

On 30 June 2016 in Chișinău - under the aegis of the Constitutional Court of Moldova, for the first time in the country history an outstanding event took place reuniting the Presidents and representatives of constitutional courts of 10 states within the First Congress of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ)

The theme discussed within the First Congress of BBCJ was ***"The role of constitutional courts in the protection of democratic values."*** Among the guests to this event were officials representing constitutional institutions from a number of countries such as Cyprus, Lithuania, Latvia, Georgia, Poland, Romania, Azerbaijan, Ukraine and Turkey; representatives of the Venice Commission, OSCE, GUAM; academia representing the universities of Germany, Romania and Poland, as well as representatives of the Federalist Society of Law and Public Policy Studies from the United States of America.

The President of the Republic of Moldova Mr. Nicolae Timofti in the greeting speech addressed to the Congress participants expressed his belief that the creation BBCJ represents a reflection of the common tendency to promote the exchange of information on judicial case law in constitutional matters. In turn the constitutional jurisdiction occurs as a guarantee of peace and regional and international security.

The Speaker of Parliament, Mr. Andrian Candu, welcomed the participants to this Congress and noted that the creation of a new level of cooperation between constitutional courts is always welcome, as it opens the way for mutual assistance among these courts in protecting common values which must be carried out with the joint effort of all state powers, the role of a courts of constitutional jurisdiction being overwhelming. Particularly due to this reason the independence of constitutional courts must be protected, regardless of criticism or remarks to which it is subject. Attitude towards the decisions of the constitutional court reflects political maturity of political actors and of the society as a whole.

Mr. Alexandru Tanase, President of CCM, underlined the great pleasure and honor to hold the position of President of the Association and President of the Court hos-

ting the First Congress of BBCJ. In his speech, the President of the Court stressed that the constitutional courts members of BBCJ share many things in common. The states where BBCJ members are coming from have experienced totalitarian Soviet past, where the idea of constitutionalism was totally missing. Each state, though apart, managed to overcome brutal social experiences, based on serious violations of human rights, they felt firsthand the consequences of military occupation, organized famine, unjust convictions, mass deportations of whole peoples, arbitrary nationalizations and total lack any elements of political pluralism.

This common past of the countries stretching from the Baltic Sea to the Black Sea makes it clearly how important freedom, democracy and human rights are. These particular states understand better than other people that quitting the Soviet totalitarian past is not only the abolition of communist rhetoric, this means rather the development of different fundamental systems where the person is the supreme value, and the key role of the State is to deliver justice.

A key role in this process is played by the Constitutional Courts, which are called to remove the legal acts in contradiction with the Constitution. The Constitutional Courts

of our states have the heavy burden to ensure the legal acts adopted by the three powers in the State are fair in their objective content, fair towards the subject it refers to and the society in general. Our Courts watch the enforcement of the laws of our countries equally to all, and the legal systems function in accordance with the requirements of social justice.

Finally, Alexandru Tanase stressed that that the mission of the BBCJ is to ensure that the values of the rule of law, of democracy and respect for human rights are never emptied of their content in our states, and the constitutional courts should enjoy the necessary independence to fulfil its fundamental mission.

The President of the Constitutional Court of Georgia, Mr. George Papuashvili addressed a congratulatory message to the members of BBCJ on the occasion of the first ever Congress. Referring to the Court hosting the event - Constitutional Court of Moldova - underscored the importance of its bold decisions and the support provided to Georgia's Constitutional Court in the current difficult situation it undergoes, when it is facing political pressure and its independence is under threat.

The President of the Constitutional Court of Lithuania, Mr. Dainius Žalimas greeted the participants and noted that BBCJ members have common roots in a totalitarian regime, a fact which points to the crucial role of the institution of constitutional courts. In this regard, their role is of primary element for the concept of judiciary itself.

He also stated that Lithuania's Constitution provides sufficient safeguards for the independence of the Constitutional Court of Lithuania. The only exception were the austerity measures during the financial world crises, which resulted in a reduced remuneration of constitutional judges' work. Nevertheless, the Court continues to promote the principle of independence of the Constitutional Court as an inherent element of the concept of its existence.

The President of the Constitutional Court of Ukraine, Mr. Yurii Baulin thanked BBCJ member courts for their support to Ukraine in the complex process of defending state's independence and territorial integrity. Mr. Baulin underlined the extremely complicated role of the Constitutional Court within this process and mentioned that this fact determines the need to further strengthen the independence of the Court. In his view, the independence of a judge of the Court is not a privilege, but a necessity and a guarantee in exercising constitutional competences.

Mr. Petre Lazaroiu, judge of the Constitutional Court of Romania, reiterated the role of the Constitutional Court in protecting human rights and freedoms and settling the conflicts between state authorities. The important mission of the constitutional court implies its subjection to many challenges. Moreover, Mr. Lazaroiu mentioned the pressures to which the Constitutional Court of Romania is from time to time subjected from both the politics which acts in various manner,including through mass media, and from public authorities - a situation in which CCR is put in a position to fight back to be able to effectively exercise its role as the guarantor of the supremacy of the Constitution.

Mr. Marec Zubic, judge of the Constitutional Tribunal of Poland, delivered a presentation over the recent events in the country following the amendment in 2015 of the Law regulating the activity of the instance of constitutional jurisdiction and pointed out that changing the manner of appointing constitutional judges and changing the decision-making procedure practically paralyzed the efficiency of the Constitutional Tribunal and therefore undermined democracy, human rights and the rule of law in Poland.

Finally, all the speakers highly appreciated the idea of creating of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions and expressed confidence that it will become a successful platform for the development of joint projects of high importance both for its members and for other institutions of constitutional jurisdiction in the region.

BBCJ was established in 2015 and encounters as members the Constitutional Courts of Georgia, Lithuania, Moldova and Ukraine. In the first year of its activity, the Presidency of BBCJ was held by the Constitutional Court of Moldova, as the Court having initiated the establishment of BBCJ. At the same time, membership within the Association is open to other constitutional courts that comply with the criteria laid down in the Association Statute.

By signing the Declaration on the establishment of the Association the founding Courts expressed their intention to strengthen constitutional justice in the countries of the Baltic Sea and the Black Sea Region and stressed the determining role of instances of constitutional jurisdiction in affirming the supremacy of the Constitution and of the

constitutional justice, human rights and fundamental freedoms, expressing the need to respect the independence and sovereignty of states and their territorial integrity.

The Congress was organized thanks to the partnership and support of the EU Project "Support to the Constitutional Court of the Republic of Moldova".

2.2. Vilnius Forum

Another meeting of BBCJ members that took place following the First Congress in Chisinau in June 2016 was held on 24 and 25 October 2016, when a delegation of CCM attended the Vilnius Forum, organized within the Cooperation Project "Assistance to the Constitutional Courts of Georgia, Republic of Moldova, and Ukraine in Ensuring the Implementation and Protection of the Principles of the Rule of Law" with the financial support of the Ministry of Foreign Affairs of Lithuania within the Development Cooperation and Democracy Promotion Program.

In his welcome address to the participants at the Forum, the ***President of the Constitutional Court of Lithuania, Mr. Dainius Žalimas***, in his capacity of host and initiator of the Project, has noted that this reunion serves as further evidence that the cooperation between the Constitutional Court of the Republic of Lithuania and the Constitutional Courts of Georgia, Moldova and Ukraine is intensive, continuously developed and strengthened.

Also, Mr. Dainius Žalimas underscored that this cooperation format represents a successful continuation of the collaboration of Constitutional Courts in view of achieving the higher-level objectives of the represented states correlated to the aim of the European Union to strengthen democratic processes in the Eastern Partnership countries. The President of the Constitutional Court of the Republic of Lithuania has expressed hope that such four-party conferences of constitutional courts that are in line with the objectives of development cooperation and democracy promotion will become a good tradition.

Representatives of the delegation of the ***Constitutional Court of Moldova*** pointed out that the European integration process has brought new challenges in the field of constitutional justice, therefore it is important to ensure that justices of constitutional courts have an opportunity to constantly share their experience and knowledge. Also, the CCM delegation expressed its appreciation for the cooperation between the Consti-

tutional Courts participating in the Forum, members of the Association of Constitutional Justice of the Countries of the Baltic and Black Sea Regions (BBCJ), which contributes significantly to strengthening the assertion of the supremacy of the Constitution. In addition, **the opportunity of organizing the Forum is even more relevant due to the fact that the event marks the first anniversary of the creation of the Association.**

Mr. Yurii Baulin, President of the Constitutional Curt of Ukraine, underlined that the Vilnius Forum is particularly important in helping the constitutional justice institutions to solve problems in their countries, since recent events in Crimea and eastern Ukraine highlight the vulnerability of the protection of the principles of the rule of law and make it necessary to look for solutions to overcome the difficulties that have arisen.

Mr. Zaza Tavadze, President of the Constitutional Court of Georgia, in turn, noted that such reunions provide an opportunity to discuss new tendencies of constitutional jurisprudence.

On the 25th October 2016 on the occasion of the Constitution Day of Lithuania and in the context of participation of the delegation of the Constitutional Court at the official ceremony dedicated to the Constitution Day, Mr. Dainius Žalimas, President of

the Constitutional Court of Lithuania, was awarded the "Order of Honor" of the Republic of Moldova conferred by Presidential Decree no. 2391-VII of 21 October 2016 for substantial contribution to the development of inter-departmental cooperation in the field of constitutional law between the Republic of Lithuania and the Republic of Moldova. This high distinction was handed in within a solemn atmosphere by the Ambassador of the Republic of Moldova to Lithuania and by the President of CCM.

3 PARTICIPATION IN OTHER INTERNATIONAL EVENTS

Opening of the judicial year at the European Court of Human Rights in Strasbourg is marked each year by a solemn ceremony and a thematic seminar, the subject matter in 2016 regarding the topic of *"International and national courts confronting large-scale violations of human rights"*. The President and Secretary General of the Court attended the traditional events which took place on 29 January 2016.

In the period 26 - 27 May 2016 the President and Secretary General attended the ***International Conference on the occasion of the 20th anniversary of the Constitutional Court of Latvia.*** The conference reunited officials from the ECHR, the Venice Commission, the Court of Justice of the EU, as well as presidents and judges of European courts. The participants had the opportunity to debate the topic "*Judicial activism of constitutional courts in a democratic state*".

At the end of May the Constitutional Court of Romania organized in Bucharest the International Conference "*Role of assistant magistrates in the jurisdiction of constitutional courts*", an event attended by the representatives of constitutional courts and judicial authorities of 27 states, representatives of the Court of Justice of the European Union and of the Venice Commission. The conference highlighted the usefulness and importance of assistant magistrates / judicial assistants / referents within the activity of constitutional courts and for the continuity of constitutional jurisprudence. At the same time, such meetings allow expansion and dynamic change of institutional cooperation relations. CCM was represented by the Secretary General and Head of the Legal Department - Registry.

On 23-24 June the President of the Court and the Secretary General attended the conference entitled *"European constitutional democracy in peril"* organized by the University of Exeter (UK) and ELTE University in Budapest (Hungary), organized as discussion

panels focused on the following topics: the populist challenge; human rights mechanisms; citizens, migrants, asylum seekers; direct democracy; regional and local trends in adjudication; constitutional courts under attack. CCM President chaired one of the panels and actively participated in the discussions, which broadly raised issues related to the aspects of European constitutional democracy in comparative and theoretical perspective.

Societas Iuris Public Europaea (SIPE) organized the ***11th Congress at the Law Faculty of the University of Bucharest*** between 30 June – 2 July 2016, under the patronage of European Commissioner for Migration, Home Affairs and Citizenship, entitled *"Migration: new challenges for Europe, state sovereignty and social rule of law"*. The event was attended by the President of SIPE Ms. Julia Iliopoulos-Strangas, President of the Court of Justice of the EU, judges of the ECHR, academia from the Universities of Athens, Bielefeld, Iasi, Hamburg, Florence, Frankfurt, Lisbon, Milan, Paris, CCM being represented by the Head of Research and Analysis Division, Secretariat of the Court.

On 23 June 2016 a representative of the Constitutional Court attended the conference entitled *"Amicus Curiae: an effective guidance tool on human rights issues to national judicial institutions"*, held in Tbilisi by the Council of Europe in cooperation with the Office of Public Defender of Georgia within the Project "Improving the Operational Capacities of the Public Defender's Office of Georgia". The conference aimed to discuss the role of Amicus Curiae for the activity of the Public Defender, the importance of setting human rights protection standards and sharing of best national and international practices, as well as the need to amend national legislation.

On the occasion of the ***25th anniversary of the Constitution and of the Independence of the Republic of Kazakhstan*** on 29 and 30 August 2016, a judge of the Constitutional Court of Moldova participated in the events dedicated to this anniversary and delivered a presentation within the international scientific-practical conference *"Constitution - the foundation of dynamic and stable development of the state and of the society"*, organized by the Constitutional Council. The event reunited guests from 10 countries and international organizations, among them the Venice Commission, OSCE, IRZ Foundation, as well as presidents and judges of the Constitutional Courts of Armenia, Germany, Jordan, Moldova, Kyrgyzstan, Russia, Turkey, Uzbekistan, Ukraine, Serbia and other special guests.

Another anniversary event to which the President and Secretary General of the Court were invited was the ***International Conference organized by the Constitutional Court of Georgia*** on 9-12 September to celebrate the 20th anniversary of the institution. The conference had as main theme *"Constitutional justice in transitional democracy. Successes and challenges of constitutional control in Georgia and Eastern Europe"*. This significant event was attended by presidents and judges of the European constitutional courts and senior officials of the ECtHR and the Venice Commission.

The ***Constitutional Court of Bulgaria celebrated the 25th Anniversary*** by organizing, on 21-22 September in Sofia, the International Conference "*Protection of fundamental human rights and national security in the modern world. The role of constitutional courts*". The event brought together representatives of European constitutional courts, of the Venice Commission, the ECHR and the Court of Justice of the EU, experts and other distinguished guests. The Constitutional Court was represented by the President who delivered a presentation on the topic "Liberty and security: new challenges to the constitutional review of the restrictions to human rights", and the Secretary General.

Another Constitutional Court celebrating ***its 20th anniversary in 2016 was the Constitutional Court of Ukraine***. Thus, on 7-8 October in Kiev, the international conference dedicated to this anniversary was organized on the topic of "*Constitutional Control and the Processes of Democratic Transformation in Modern Society*" dedicated, in particular, to constitutional control in the democratic transformation of the legal mechanisms for the protection of human rights, transformation of social legislation in cases of financial and economic crisis and problems of mutual influence in terms of democratic development. The President of the Court delivered a presentation "*The exception of unconstitutionality as part of a fair trial*".

The conference was attended by representatives of the Council of Europe, European Union, OSCE, the Constitutional Court of Armenia, Austria, Azerbaijan, Belarus, Bulgaria, Croatia, Cyprus, Georgia, Hashemite Kingdom of Jordan, Republic of Kazakhstan, Republic of Kyrgyzstan, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Romania, Turkey, as well as by representatives of public authorities and academic institutions of Ukraine.

Another event was held in Sofia on 21 and 22 April 2016 within High-Level Conference of Ministers of Justice and representatives of the Judiciary entitled "Strengthening Judicial Independence and Impartiality as a Pre-condition for the Rule of Law in Council of Europe Member States". The event was attended by senior officials of the Council of Europe, the ECHR, the Venice Commission, representatives of the Constitutional Courts and Bulgarian officials. The President and Secretary General of CCM represented Moldova at this conference. The event was organized by the Council of Europe in collaboration with the Ministry of Justice of the Republic of Bulgaria, the state that held the Presidency of the Council of Europe during November 2015 - May 2016.

The ***4th Summer School of the Association of Constitutional Courts and Equivalent Institutions in Asia*** took place in the period 2 - 9 October 2016 and was organized in Ankara by the Constitutional Court of Turkey. The theme of this Summer school *was "The right to privacy and family life"*. The event was attended by representatives of 14 constitutional courts or equivalent institutions of Asia, Europe and Africa. CCM was represented by a judicial assistant and a senior consultant in the Secretariat of the Court. Participants presented reports on national legislation and constitutional case law of their countries in the field of privacy, intimate and family life. They also had the opportunity to share their knowledge and experience through discussions and Q&A sessions.

International Annual Congress in Regensburg, this year being at the XVIII edition, was held on 14-15 October under the auspices of the University of Regensburg and of prof. Rainer Arnold, with the support of the German Foundation IRZ. The congress brought together over 50 participants from abroad, representatives of world known academics and of the constitutional courts of Albania, Armenia, Bosnia and Herzegovina, Bulgaria, Georgia, France, Latvia, Lithuania, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden, Turkey, Ukraine, Hungary. The issue discussed during the two workshops aimed *Constitutional justice and Politics; Constitutionalism in Central, Eastern and South Eastern Europe between Identity and Europeanization*. The presentation delivered by the President of the Court detailed the topic of the role of the Constitutional Court in settling political conflicts, pointing out that the authorities of Constitutional jurisdiction shall exercise judicial activism whenever the functionality of constitutional and democratic institutions are in danger and that the determination of functionality criteria

for political institutions in the spirit of the rule of law, enshrined in the Constitution, is the most efficient way to settle legal conflicts of constitutional or political nature. The Congress was attended by two other judges of the Court and by the Secretary General.

On 17 October 2016 the President of the Constitutional Court of Moldova addressed a ***congratulation message to the Constitutional Tribunal of Poland*** during the ceremony held in the city of Gdansk to celebrate the 30th anniversary of the establishment of the High Court. In his speech, President congratulated Polish officials present at the event, stressing that over the centuries Poland has attached great importance to the aspirations of freedom. This is revealed primarily through the adoption by the Polish-Lithuanian Commonwealth of the first modern European Constitution in May 1791, while the creation in the 80s of the twentieth century of the Polish Constitutional Tribunal constituted a courageous of fundamental importance to Polish people, given the risks associated with the influence of the Soviet Union at that times.

Referring to the attacks that are threatening Polish Constitutional Tribunal over the recent period, the President of CCM stressed the need to grant effective independence of the institutions of constitutional jurisdiction. In this way, a constitutional court will be able to guarantee not only respect for democratic principles in general but also the recognition and development of the human personality.

The ceremony was attended by the guests from other constitutional courts, representatives of the European Union and of the Venice Commission. The organizers have decided to hold the ceremony in the city of Gdansk, given its importance as the flagship of civic movements for freedom that brought democratic change in Poland.

On 17-19 October the ***International Istanbul Law Congress*** took place being organized by the Ministry of Justice of the Republic of Turkey, with the participation of guests from over 35 countries, representatives of the ministries of Justice, constitutional courts, Supreme Judicial courts, Law Academy and the representatives of scientific academia. The congress was organized in workshops, general topic proposed for discussion referring to the development of judicial cooperation, speeding up of judicial mechanisms and alternative dispute resolution. Two judges of the CCM took part in the work of this forum.

On 21-22 October the ***Constitutional Court of Armenia organized the annual Yerevan Conference*** reuniting over 20 constitutional courts to discuss the topics of

the role and importance of the "Rule of Law Checklist" adopted by the Venice Commission at its 106th Plenary Session and the role of the constitutional court in overcoming regulatory gaps and legal uncertainty. A judge of the Court took part in this Conference.

On 25 November 2016 the Constitutional Court judges attended the The ***Solemn Assembly at the Patriarchal Palace in Bucharest, on the occasion of the anniversary of 150 years since the adoption of the 1866 Constitution of Romania and the 25th anniversary since the adoption of the 1991 Constitution of Romania***. During the event speeches were delivered by the Prime Minister of Romania - Dacian Ciolos, President of the Constitutional Court of Romania (CCR) - Valer Dorneanu and the President of the Constitutional Court Alexandru Tanase. Addressing to the distinguished audience, Alexandru Tanase thanked the President of the Chamber of Deputies of the Romanian Parliament, President of the Romanian Constitutional Court and President of the Romanian Academy for the invitation to this event. Alexandru Tanase highlighted that the 1866 Constitution of Romania is a common element of constitutional identity of both Romania and the Republic of Moldova, being applied on the territory of Bassarabia following the Unification prior to the adoption of the Constitution of 1923. Moreover, the President of CCM noted that the Republic of Moldova when adopting its own Constitution in 1994, was inspired by the 1991 Constitution and therefore, in addition to cultural, language and value identity, people living in the Republic of Moldova and in Romania share constitutional identity which was born out of the values of European civilization. In conclusion, the President of CCM congratulated the judges of the Constitutional Court of Romania for ensuring that the values of the rule of law, the democratic values and the respect for human rights are never emptied of content.

4 COOPERATION PROGRAMS WITH FOREIGN PARTNERS

4.1. The EU project "Support to the Constitutional Court of Moldova"

In February 2016 a consortium led by the German Foundation for International Legal Cooperation (IRZ) in cooperation with the Constitutional Court of the Republic of Lithuania and the Faculty of German Law at the University of Warsaw as members, star-

ted the implementation of the EU funded Project "Support to the Constitutional Court of the Republic of Moldova". The overall goal of the project, which is conducted under the provisions of the Justice Sector Reform Strategy for the years 2011-2016 is to accelerate sustainable reform of the justice sector in Moldova to ensure the proper functioning of the rule of law by strengthening the Constitutional Court.

Among the objectives to be achieved are listed:

- Strengthening the Constitutional Court as laid down in the "Justice Sector Reform Strategy for the years 2011-2016" in consultation with the Venice Commission of the Council of Europe;
- Improving the procedures and internal organization of the Constitutional Court; increasing the capacity of the staff in providing support for Constitutional Court judges;
- Increasing awareness of judges of the Constitutional Court regarding different methods of interpretation and jurisprudence of the ECtHR and of constitutional control institutions of the EU Member States, the recommendations of the Venice Commission, Council of Europe, OSCE and other international institutions.

Assistance delivered by the Project is focused on the achievement of the following results:

- Institutional support and capacity building, through the participation of a team of international experts contributing to a better understanding of the international constitutional jurisprudence and of the case law of the European Court of Human Rights, improving analytical and research process within the institution through continuous training and development of human resources; ensuring effective exchange of information with other constitutional courts and other relevant institutions from European countries; study visits of CCM staff organized to the relevant European institutions, including the European Court of Human Rights;
- Support and legal contribution, consisting in the provision of expertise and technical assistance for the working group under the Ministry of Justice to draft the new law on the Constitutional Court.
- Communication, awareness raising and interaction with civil society by conducting campaigns to raise awareness and inform the population on the importance

and role of the Constitutional Court of the Republic of Moldova and of its decisions, as well as on the constitutional rights and freedoms and the manner of their protection.

4.2. Council of Europe project "Support to a coherent national implementation of the European Convention on Human Rights in the Republic of Moldova"

The Council of Europe remains a very important partner of the Constitutional Court. In 2016 activities continued in partnership with the Council of Europe under the Project "Support to a coherent national implementation of the European Convention on Human Rights in the Republic of Moldova".

Thus, on 4 and 5 February 2016 took place the second seminar entitled *"Impact of the European Court of Human Rights (ECHR) case law on national jurisprudence"*. Ms Karolina Bubnyte, Governmental Agent of the Republic of Lithuania to the ECHR was a trainer and CoE expert and delivered an exhaustive analysis of the subject discussed, addressing in particular issues related to the role of courts in the light of the European Convention of Human Rights (ECHR) and of the national legislation, but also in terms of general international law; the legal status of the Convention and ECtHR judgments and their actual effect on the constitutional practice; limitation of ECHR action and ECtHR decisions on constitutional practice; possible models of interaction between the ECtHR and the national courts in the implementation of the Convention; the relationship between the ECtHR and the national courts in the enforcement of ECtHR judgments, other issues.

The third training workshop took place on 11 and 12 February 2016 and discussed the *ECtHR case law and application of the test "necessity in a democratic society",* having as trainers Dr. Ingrida Danėlienė, Secretary General of the Constitutional Court Lithuania, lecturer at the Faculty of Law, University of Vilnius, and Dr. Erika Leonaitė, assistant to the President of the Constitutional Court of Lithuania, lecturer at the Institute of International Relations and Political Science of Vilnius University.

The Participants in the series of trainings organized by the CoE received certificates of participation.

5 OFFICIAL MEETINGS

5.1. Visit to the Council of Europe and to the German Federal Constitutional Court

During the period 6 - 10 November 2016, an official delegation of judges and staff members of the CCM Secretariat conducted a study visit to the Council of Europe and to the German Federal Constitutional Court.

The visit began with participation in the opening ceremony of the World Forum for Democracy at the Palace of Europe.

On the same day, the delegation met the Secretary General of the Council of Europe, H.E. Mr. Thorbjørn Jagland. During the discussions, Mr. Thorbjørn Jagland stressed the importance of maintaining the democratic path for the development of constitutionalism in the Republic of Moldova and highlighted the role of the Constitutional Court with a view to strengthen and promote the values of the rule of law. In turn, the President of the Constitutional Court Mr. Alexandru Tanase highly appreciated the support offered by the Council of Europe for the Republic of Moldova in light of the European integration process in general and for the instance of constitutional jurisdiction in particular.

During the visit the delegation has a series of working meetings with representatives of various divisions of the CoE being driven to an active dialogue on topics included in the agenda.

On 8 November 2016, the delegation met Mr Thomas Markert, Secretary of the European Commission for Democracy through Law of the Council of Europe (Venice Commission) and the staff members of the Venice Commission. Within discussions the participants covered aspects related to the most recent developments of constitutional jurisprudence of CCM and their impact on the legislative framework.

The President of the Constitutional Court Mr. Alexandru Tanase highlighted the contribution of unquestionable value of the Venice Commission for the Constitutional Court and thanked for the support provided through the delivery of multiple amicus curiae briefs upon the requests submitted by the Constitutional Court.

On the same day, the official delegation was invited by H.E. Ms. Corina Călugăru, Permanent Representative of the Republic of Moldova to the Council of Europe, to visit the new premises of the diplomatic mission.

The members of the delegation had the opportunity to attend a public hearing of the Grand Chamber of the ECHR and to meet the judge from the Republic of Moldova at the ECHR.

On 10 November 2016, the delegation paid a study visit to the German Federal Constitutional Court, based in Karlsruhe. The visit aimed to exchange experiences and best practices in the field of constitutional jurisprudence and discuss new trends in the field of constitutional jurisdiction. In particular, the participants discussed current issues and new challenges in this area, such as migration in the context of free movement; limitations allowing interference in matters of fundamental human rights in the context of public safety; restriction of the freedom of religion in terms of protecting the rights of others, etc. During the visit, the delegation of the Constitutional Court of Moldova discussed with the Federal Constitutional Court judges as well as with the representatives of structural subdivisions of the Court.

This visit marked a new stage in bilateral relations between the two constitutional courts.

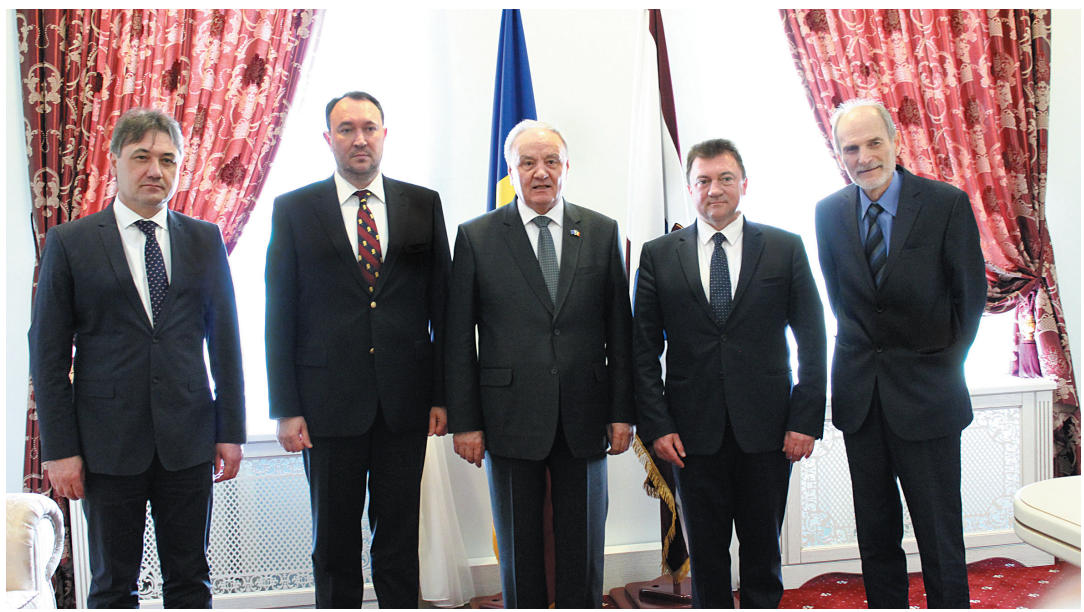
The study and documentation visit was organized with the support of the EU Project "Support to the Constitutional Court of Moldova".

5.2. Courtesy visits

On 14 April 2016 the Constitutional Court was visited by the President of the Republic of Moldova, Mr. Nicolae Timofti who visited the renovated premises of the Constitutional Court and met the expert team of the EU Project "Support to the Constitutional Court of the Republic of Moldova" which started in February 2016.

The Head of the State visited the library CCM recently reopened, which specializes in the collection of book in the field of constitutional law. The CCM library was named after the illustrious lawyer and politician Ion Pelivan, was supplemented with a number of important titles in Romanian, English, French and German languages within a number of projects developed by the Constitutional Court in collaboration with various external partners.

During 2016, the President of the Constitutional Court and CCM judges have hosted documentation and official visits by senior officials of the European institutions: Members of the Committee on Legal Affairs and Human Rights, PACE, Bernd Fabritius and Agnieszka Szklanna; UN Special Rapporteur on minority issues Rita Izsak for-Ndiayne visited Moldova to assess the level of implementation of the UN Declaration



on the rights of national minorities, religious and linguistic diversity; Co-rapporteurs of the Monitoring Committee on obligations and commitments by member states of the Council of Europe, the delegation being represented by Valentina Leskaj, Ogmundur Jonasson, Sylvie Affholder and Jose-Juis Herrero, Head of CoE Office in Chisinau; official delegation of the Romanian Ministry of Justice, headed by Minister Raluca Pruna, on an official visit to Moldova at the invitation of the Ministry of Justice of the Republic of Moldova; a group of observers within the OSCE / ODIHR Mission for the monitoring of the presidential elections of 30 October 2016, headed by Douglas Wake, Head of Mission, being present in Moldova at the invitation of the Central Election Commission; observers of the European Network of Election Monitoring Organizations (ENEMO), Mission of Observation of Presidential Elections 2016; UN Assistant Secretary General Ivan Simonovic and Titus Corlatean, Senator of the Romanian Parliament, member of the Committee for Foreign Policy of the Romanian Senate.

The President received the courtesy visit paid by the ambassadors accredited in Moldova - H.E. Marius Gabriel Lazurca, Extraordinary and Plenipotentiary Ambassador of Romania, H.E. Philip Batson, Extraordinary and Plenipotentiary Ambassador of the United Kingdom of Great Britain and Northern Ireland, H.E. Jaromil Kvapil, Extraordinary and Plenipotentiary Ambassador of the Czech Republic, H.E. Matthias Szilagyi, Extraordinary and Plenipotentiary Ambassador of the Republic of Hungary, H.E. Rimantas Latakas, Extraordinary and Plenipotentiary Ambassador of Lithuania, H.E. Artur Michalski, Extraordinary and Plenipotentiary Ambassador of Poland, H.E. Selim Kartal, Ambassador of Turkey, H.E. Zdeněk Krejčí, Ambassador of the Czech Republic (May 2016), H.E. Signe Burgstaller, Ambassador of Sweden, H.E. Daniel Ionita, Extraordinary and Plenipotentiary Ambassador of Romania (since July 2016).

6 EVENTS ORGANIZED AND CONDUCTED BY THE CONSTITUTIONAL COURT

6.1. On 15 February 2016 the Constitutional Court organized the seminar on ***"Exception of unconstitutionality. The impact of Constitutional jurisdiction over the judiciary"***, with the participation of Mr. Jes Albert Möller, Chairman of the Constitutional Court of the Land Brandenburg, Germany, and President of the court of first instance for social disputes, expert of the IRZ Foundation. The target group

was made up of judges of first instance courts and appeal courts from across the country. There were discussed issues related to: conditions under which the exception of unconstitutionality may be raised before the ordinary courts; procedure of settlement of complaints by the Constitutional Court regarding the exceptions of unconstitutionality; non-retroactivity of Constitutional Court judgments and the generally binding nature of Constitutional Court judgments.

The event was organized with the support of the German Foundation for International Legal Cooperation / IRZ.

6.2. On May 20 the ***Round table on "Constitutionality of constitutional amendments"*** took place, with the participation of representatives of the Venice Commission, Constitutional Courts of Austria, Bulgaria, Georgia, Lithuania, distinguished professors from the University of Regensburg and Charles University in Prague.

The works of the roundtable were opened by greeting messages of the President of CCM Mr. Alexandru Tanase, Mrs. Liliana Palihovici, Deputy Speaker of Parliament, H.E. Pirkka Tapiola, Head of EU Delegation in Moldova and Prof. Dr. Boguslaw Banaszak from the Venice Commission of the Council of Europe.

During the event the participants delivered presentations on the experience of European constitutional courts on the issues related to the legal force of the Constitution as the fundamental law which establishes principles organizing the struc-

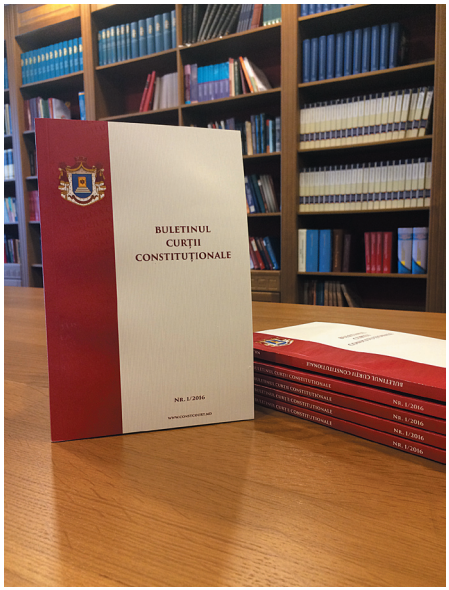
ture of the state and of the society and the limits of constitutional revision. Valuable constitutionalists from the EU and from the Republic of Moldova have discussed theoretical and practical issues related to the competence of the Constitutional Court to review the Constitution, the findings and conclusions following this debate being of considerable importance. In conclusion all the participants expressed their appreciation for the successful event which allowed them to addressthe most important aspects related of this subject.

The event was organized with the support of the EU Project "Support to the Constitutional Court of the Republic of Moldova".

6.3. On July 29, 2016, in Chisinau there was celebrated the ***Constitution Day of the Republic of Moldova***, on which occasion the Constitutional Court organized an official ceremony dedicated to the Constitution Day. The event brought together the country's leadership, MPs, ministers, diplomats, judges, representatives of civil society and academia.

On the occasion of the Constitution Day, the Court released the **edition "Block of Constitutionality"** translated into 8 languages, including the languages of national minorities living in the Republic of Moldova (Romanian, English, French, Russian, Bulgarian, Ukrainian, Gagauz, Romani). The publication of this edition was carried out with the support of United Nations Development Program (UNDP) in Moldova "Strengthening the rule of law and human rights protection in Moldova" and the financial support of the EU Project "Support to the Constitutional Court of the Republic of Moldova".

6.4. In November 2016 the Court released the first issue of the ***Bulletin of the Constitutional Court***, periodical edition conceived as a tool to disseminate the jurisprudence of the national constitutional instance, the case law of constitutional courts of other states, but also as a source of information in terms of the case law of the European Court of Human Rights, the Court of Justice of the EU, recommendations and standards developed by the Venice Commission and other international instances. The primary purpose of this publication is the popularization of jurisprudence and constitutional



doctrine both nationally and internationally, as it is intended to be a useful publication for specialists in law, and for the general public.

The Bulletin of the Constitutional Court of the Republic of Moldova is published with the support of the EU Project "Support to the Constitutional Court of the Republic of Moldova".

6.5. On 30 November 2016 a training seminar for the judges, lawyers and prosecutors from across the country was held, entitled ***"Exception of unconstitutionality. The impact of Constitutional jurisdiction over the judiciary".***

Trainers within this seminar were Mr. Alexandru Tanase, President of CCM, Mr. Dainius Žalimas, President and Mrs. Ingrida Danelienė, Secretary General of the Constitutional Court of Lithuania, Mr. George Papuashvili, Resigned President of the Constitutional Court of Georgia and Prof. Anna Śledzińska-Simon, University of Wroclaw, Poland.

The seminar addressed the most important aspects and particularities of the exception of unconstitutionality as a means of indirect access of the individual to the constitutional court and the role of all actors in this process; in this regard participants were presented shared experience of the constitutional courts of Moldova, Lithuania, Georgia and Poland.

Another important issue discussed at the event was the impact of constitutional jurisdiction over the judiciary and generally binding character of the Constitutional Court judgments, as examples the speakers presented the most important CCM judgments: on the status, guarantees of independence and accountability of judges; on judicial procedures and competences of the courts; on the exercise and the limits of restriction of fundamental freedoms. The participants at the seminar were handed in certificates of participation.

The event was organized with the support of the EU Project "Support to the Constitutional Court of the Republic of Moldova".

6.6. On 2 December 2016, the Constitutional Court hosted the International Conference ***"Role of Constitutional Courts in settling constitutional crisis."***

The conference encountered as participating experts: Mr. Alexandru Tanase, President of CCM, Mr. Reinhard Gaier, expert of the IRZ Foundation, resigned judge of the Federal Constitutional Court of Germany, Mr. Dainius Žalimas, President of Constitutional Court of Lithuania and George Papuashvili, resigned President of the Constitutional Court of Georgia.

The conference reunited representatives of the IRZ Foundation, national government officials, academia and diplomats, lawyers and resigned judges of the CCM.

The purpose of this Conference was to share the experience of other constitutional courts regarding the role of the Constitutional Court in protecting constitutional values, settling the conflicts between authorities, restoring institutional balance and control of state powers in order to ensure the rule of law, legal and political decisions of the constitutional courts and their influence on political processes.

The conference took place in partnership and with the support provided by the German Foundation for International Legal Cooperation / IRZ and the EU Project "Support to the Constitutional Court of the Republic of Moldova".

7 STUDY TOURS, THEMATIC CONTESTS FOR STUDENTS

In order to raise the legal culture and general knowledge of high school students and university students about the Constitution and the activity of the Constitutional Court, the Constitutional Court hosted and organized visits and contests under various formats. The Court has already established a tradition of to communicate with both the law school students and high school students.

Thus, on the occasion of the Europe Day, the Court was visited by students from 5 schools from across the country and from the capital city: Lyceum of the Academy of Sciences, Lyceum "Gogol" from Chisinau having Russian as teaching language and three lyceums from Gagauzia - Caracioban, Gaidarji, Tretiacov villages. For the first time one of the CCM hearings was attended having the proportion of 80% high school students. Following the hearing the students were delivered a presentation on the activity of the Court by the President of CCM.

As a continuation of the well-established tradition of communication with secondary education institutions, a group of students from 3 schools teaching in Gagauz and Russian languages from Vulcănești visited CCM and participated in a public hearing of the Court. At the end of the visit, the students received a copy of the Constitution in pocket format, published in 2016 in Romanian, Russian and Gagauz languages. By the end of the year there was organized another similar visit for a group of students from the schools of Gagauzia.

On 2 June 2016 a number of 20 young lawyers conducted a study visit to the CCM. Discussions were based on the topic *"Human Rights in Moldova from the perspective of constitutional law",* as well as envisaged the presentation of the activity of the institution. The visit was organized by the Association Invento, within the project "Action for Justice" supported by the State Department of the US Embassy in Moldova. The purpose of the project is to train young lawyers to act with integrity and professionalism in the professional field they have chosen.

The first year students of the Law Faculty of the State University of Moldova, at the initiative of the Department of Public Law, participated in the Contest of Scientific Papers on constitutional justice. For the first time, the event was organized at the premises

of the Constitutional Court, where the most successful works were awarded. The papers focused on the topic *"The role of constitutional justice in protecting the rule of law values."* The presentations participating in the Contest were appreciated by a distinguished panel consisting of the following members: PhD Prof. Igor Dolea - CCM judge, PhD Prof. Alexandru Arseni, Univ. Prof. Dr. Veaceaslav Zaporojan, Univ.Prof. Dr. Sergiu Cobăneanu. The event was attended by the teaching staff of the Department of Public Law of the SUM. Students who delivered presentations received certificates of participation, and the students who presented the most successful papers have been awarded diplomas.

The purpose of this event is to promote the institution of Constitutional jurisdiction and to raise the legal culture of citizens, especially with regard to the activity of the Constitutional Court. Thus, through the efforts of students and organizers the public is acknowledged on the importance and need to respect the Constitution. The event was organized by Moldova State University - Department of Public Law, in partnership with the Constitutional Court and Center for Constitutional Studies and Human Rights Education.

The students of the Law Faculty of the State University of Moldova, following the initiative of the Department of Public Law, participated in **Scientific Student Conference** on the development of normative content of the Constitution. The event took place at the SUM and was organized in cooperation with the Constitutional Court and Center for Constitutional Studies and Human Rights Education. Conference presentations of the participating students related to a range of topics - election of the president, the role of the prosecutor in the judicial system, the institution of exception of unconstitutionality and the block of constitutionality. Students that delivered public presentations received certificates of participation and the most successful papers have been awarded diplomas.

The Conference aimed at boosting future lawyers in multidimensional research of constitutional values and the of the implications they generate for the development of the normative content of the Constitution.

Contest was organized in partnership and with the support of the EU project "Support to the Constitutional Court of the Republic of Moldova".

TITLE V

THE ACTIVITY OF THE CONSTITUTIONAL COURT IN FIGURES

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THE ACTIVITY OF THE CONSTITUTIONAL COURT IN FIGURES

In 2016 there were 163 complaints lodged with the Constitutional Court, 13 complaints were taken over from 2015, so the task of the Court for 2016 implied 176 pending complaints *(see Charts no.1, no.2, no.4 and no.6)*

Of the total 176 pending complaints, 152 complaints were examined in 2016 and namely: 40 complaints followed by 34 judgements *(12 files were joined);* 8 complaints followed by 7 Opinions (*1 complaint was returned*); 98 complaints were declared inadmissible and 96 decisions were adopted in this respect (*3 files were joined*); 1 decision was adopted on the dismissal of the request to suspend the action of the challenged act and 6 complaints were returned to authors by letters. 24 complaints have been transferred to 2017 *(see Charts 3, 12).*

Pending complaints of the Court in 2016 were lodged by the following subjects:

- President of the Republic of Moldova – 1 complaint;
- Members of Parliament and Parliamentary factions – 39 complaints *(See Charts no. 9 and no. 10);*
- Government – 6 complaints;
- Courts – 121 complaints *(See Chart no. 11);*
- People's Advocate – 3 complaints;
- Central Electoral Commission - 4 complaints;
- General Prosecutor's Office – 1 complaint;
- Local Public Administration – 1 complaint.

Of the 39 pending complaints lodged by Members of Parliament and parliamentary factions, 5 complaints were reviewed on the merits, 28 complaints were declared inadmissible or returned by letters, and 5 complaints were transferred to 2017.

Of the 121 pending complaints lodged by the Courts of all levels, 2 complaints envisaged the interpretation of the Constitution, 1 complaint referred to the manner of application of the judgments of the Constitutional Court and 118 were submitted as exceptions of unconstitutionality. 33 complaints were reviewed on the merits, 70 complaints were declared inadmissible and 18 complaints were transferred to 2017.

Of the 3 complaints lodged by the People's Advocate, 2 complaints were reviewed on the merits, and 1 complaint was returned by letter.

In 2016 the Court delivered 35 judgements, namely:

– 3 judgements on the interpretation of certain provisions of the Constitution;
– 1 judgement on the review of constitutionality of normative acts;
– 25 judgments on the solving of exceptions of unconstitutionality;
– 3 judgements concerning the validation of MP mandates;
– 1 judgment on the confirmation of elections and validation of the mandate of the President of the Republic of Moldova;
– 1 judgment on the manner of application of Constitutional Court judgments;
– 1 judgment on the approval of the Report for the year 2015 *(see Charts No.8, No.13).*

Moreover, in 2016 the Government of the Republic of Moldova and a group of MPs requested the Court to deliver its Opinion on the draft constitutional laws amending the Constitution (*see Charts no. 4, no.7, no.12*)

Following the examination of the pending complaints in 2016, in *26 judgements* the Court delivered its decision on the constitutionality or unconstitutionality of the challenged legal provisions, as follows:

– in *9 judgements* at least one legal provision of the total provisions challenged was recognized as constitutional;
– in *10 judgements* at least one legal provision of the total provisions challenged was recognized as unconstitutional;
– in *7 judgements* the Court ruled on constitutionality of some legal provisions and non-constitutionality of other legal provisions (*see Chart 14*).

A | STATISTICAL DATA FOR 2016

Chart no.1

Jurisdiction of the Constitutional Court in 2016 *(based on complaints)*

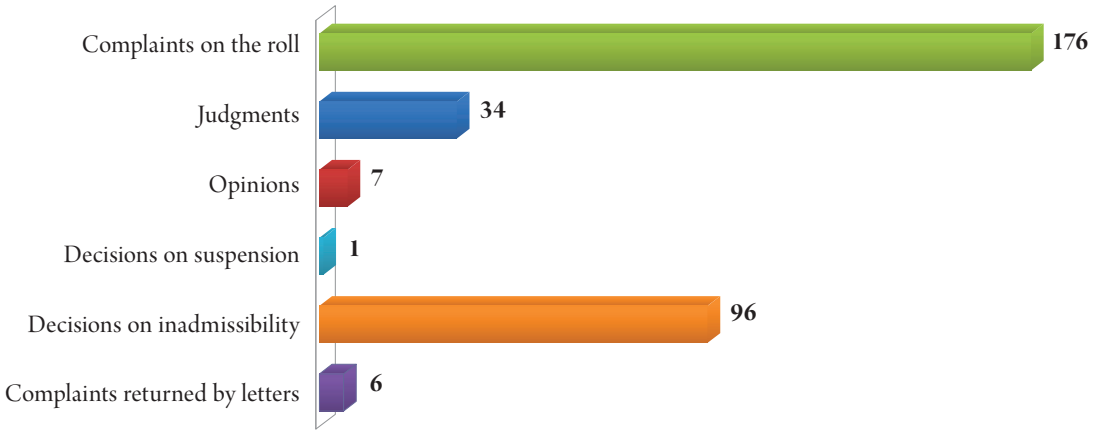


Chart no.2

Complaints examined in 2016

Chart no.3

Complaints settled in 2016 and transferred for 2017

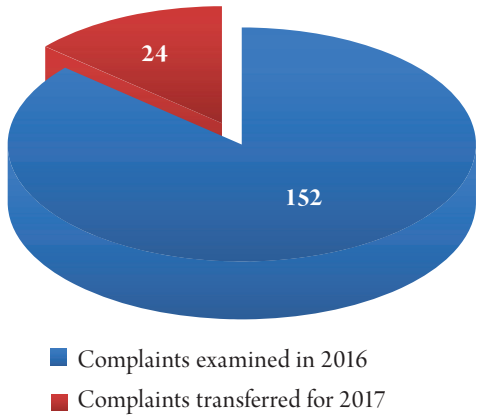


Chart no.4

Object of complaints examined by the Constitutional Court in 2016

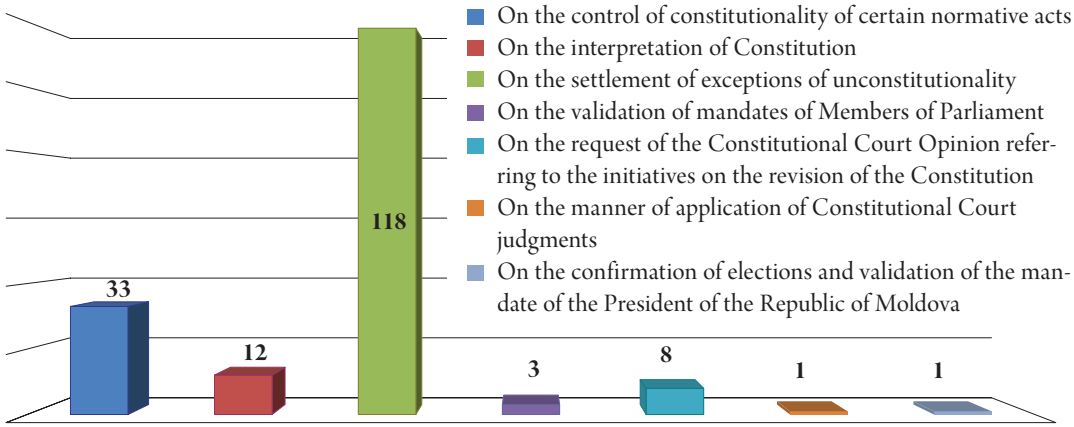


Chart no.5

Subjects having submitted complaints to the Constitutional Court in 2016

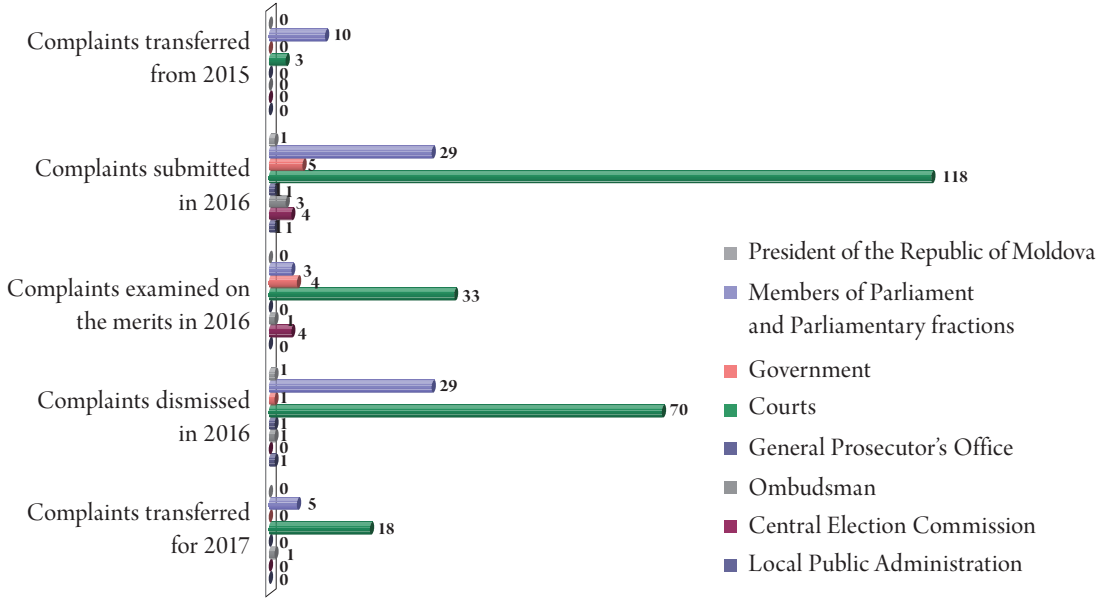


Chart no.6

Complaints settled by the Constitutional Court in 2016, including those undertook from 2015 and those transfered for 2017 *(per subject)*

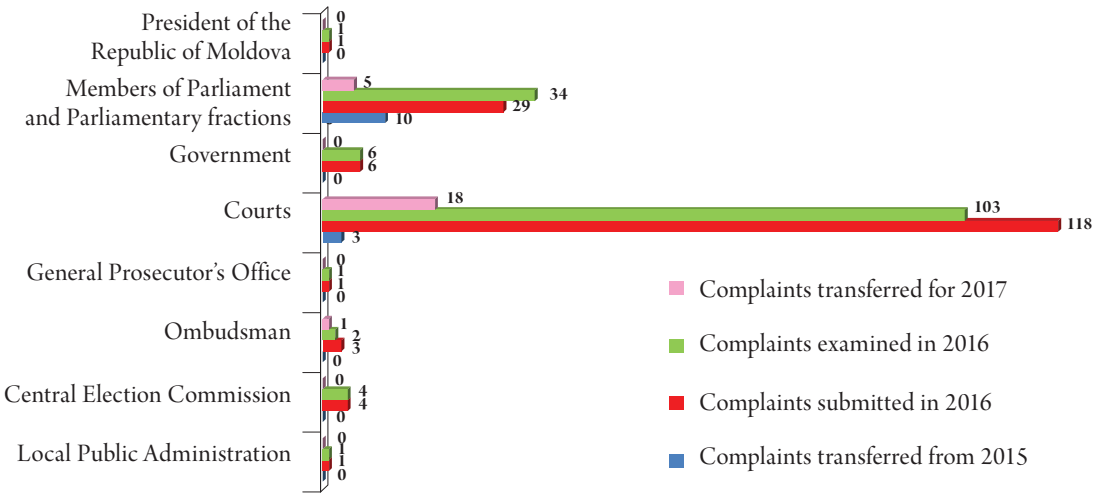


Chart no.7

Complaints settled by the Constitutional Court in 2016, including those undertook from 2015 and those transfered for 2017 *(per object)*

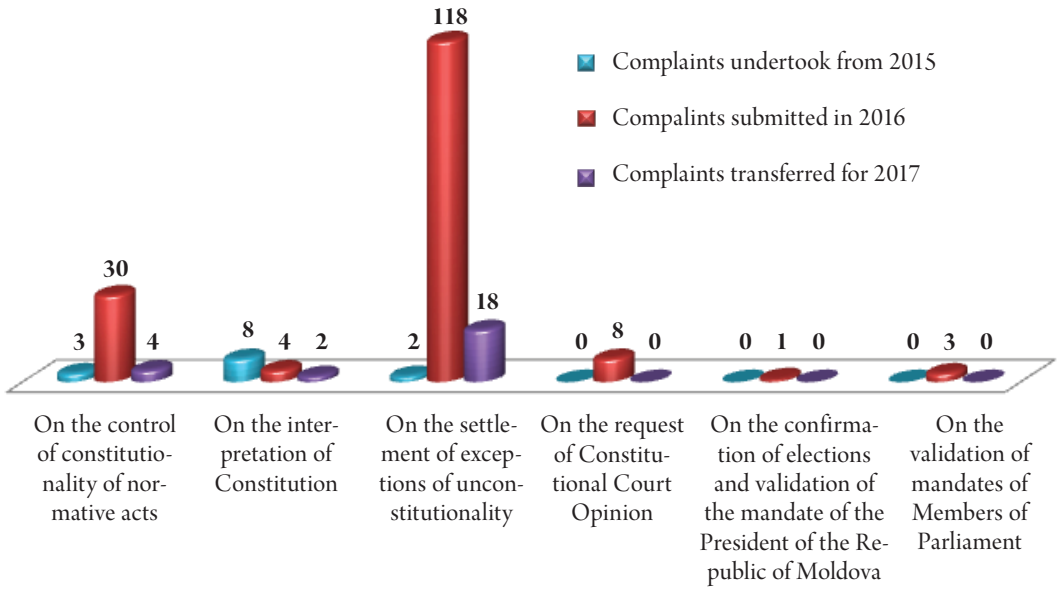


Chart no.8

Complaints settled by the Constitutional Court in 2016 by judgments *(per object)*

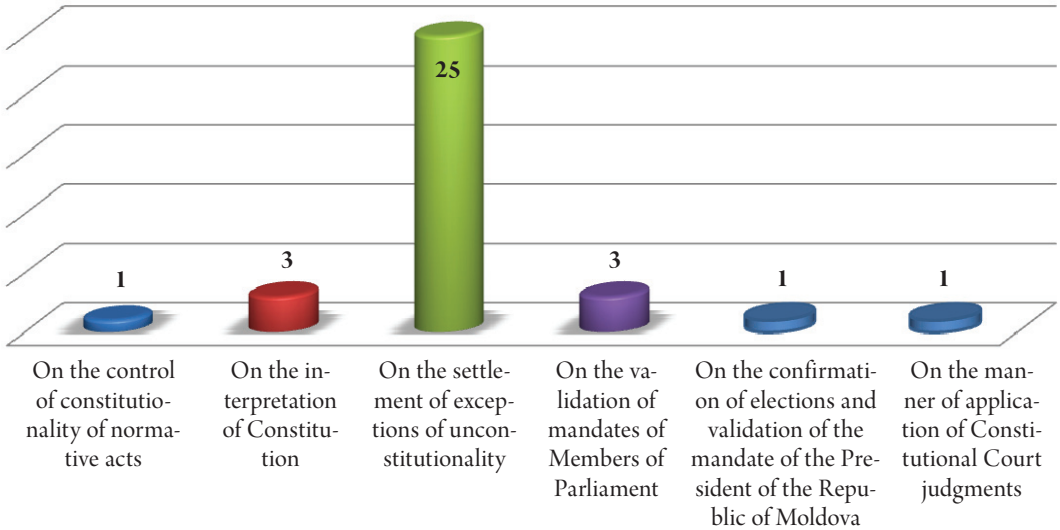


Chart no.9

Complaints submitted by Parliamentary fractions, including those undertook from 2015 and those transferred for 2017

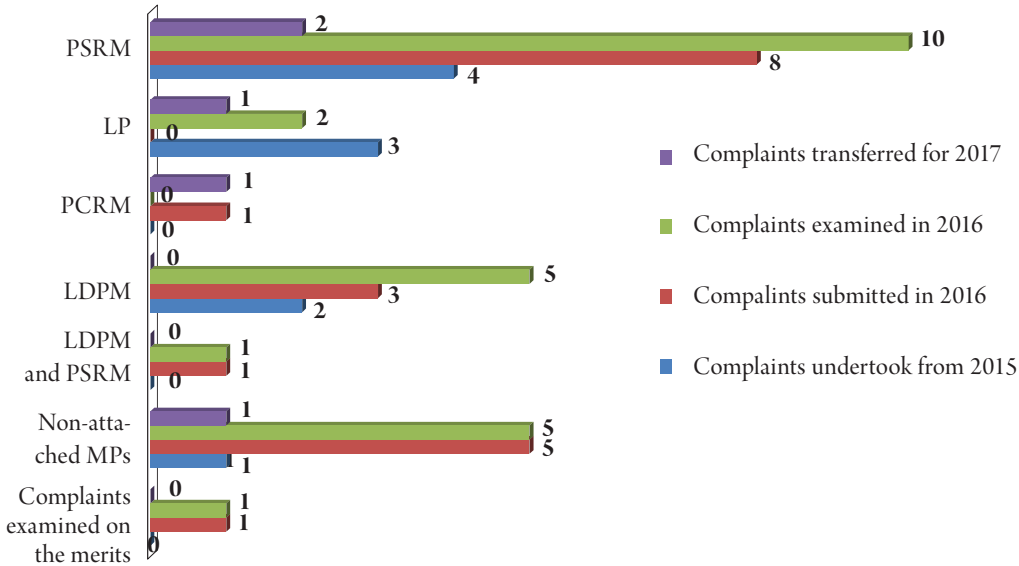


Chart no.10

Complaints submitted by members of Parliament and Parliamentary fractions, rejected or examined on the merits in 2016

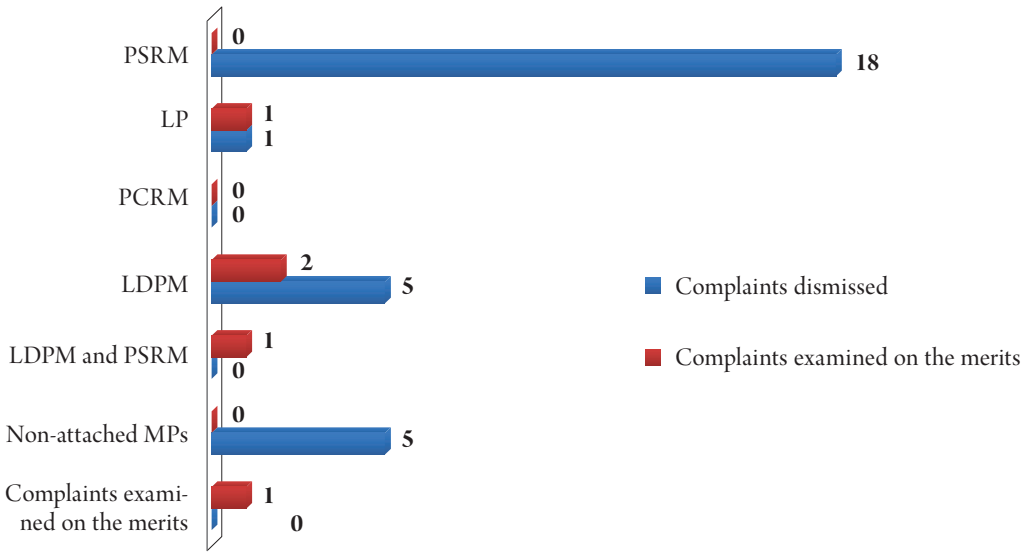


Chart no.11

Complaints submitted in 2016 by the courts of all levels

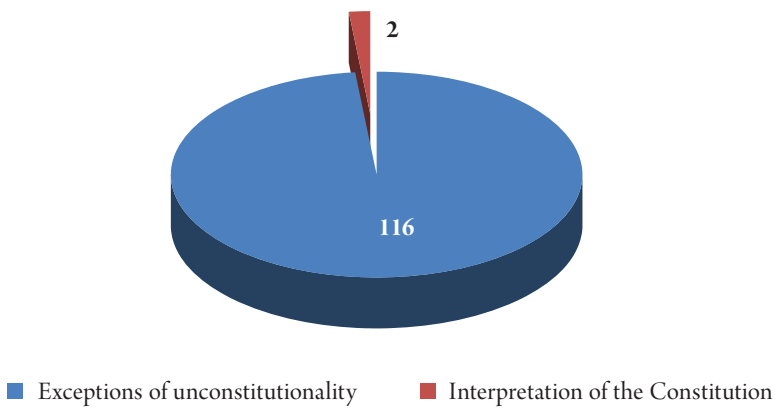


Chart no.12

Acts rendered by the Constitutional Court in 2016

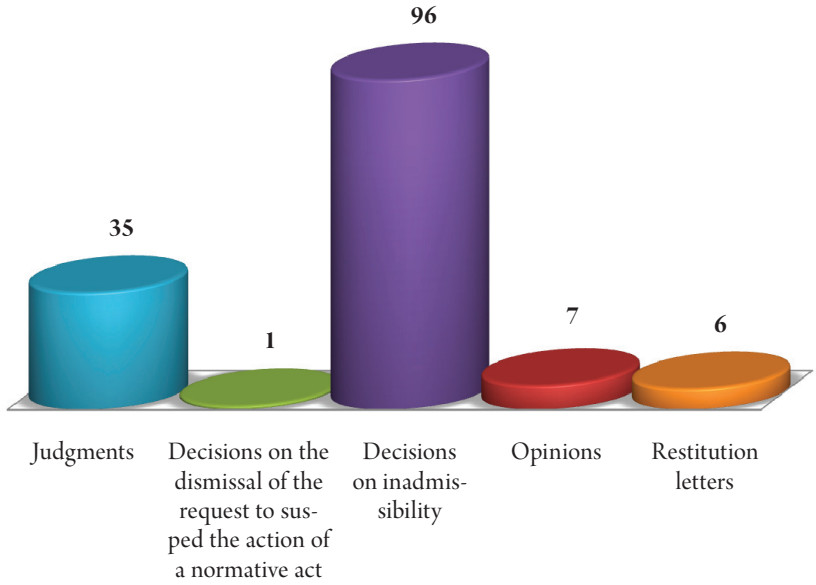


Chart no.13

Judgments delivered by the Constitutional Court in 2016 *(per object)*

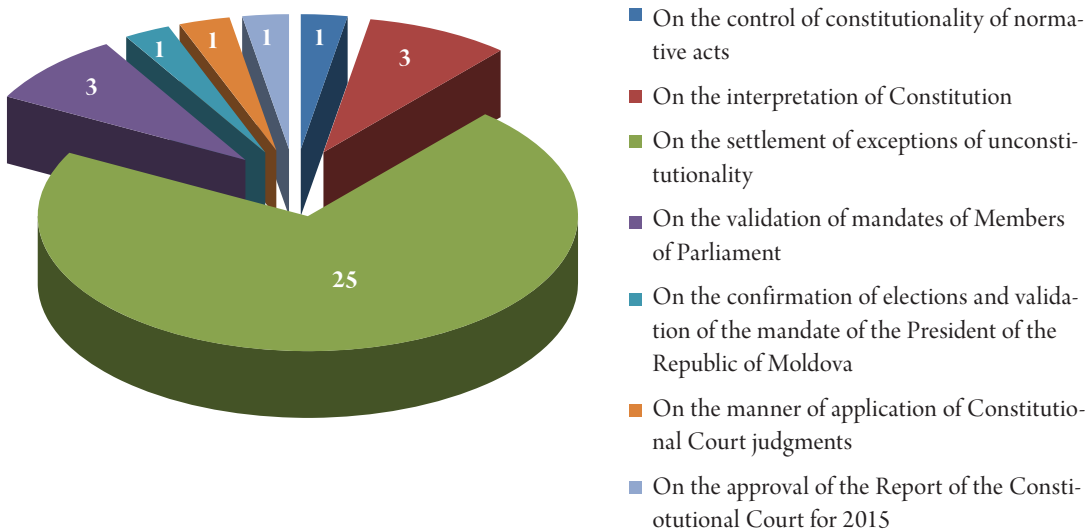


Chart no.14

Conclusions of the Constitutional Court in the judgments delivered

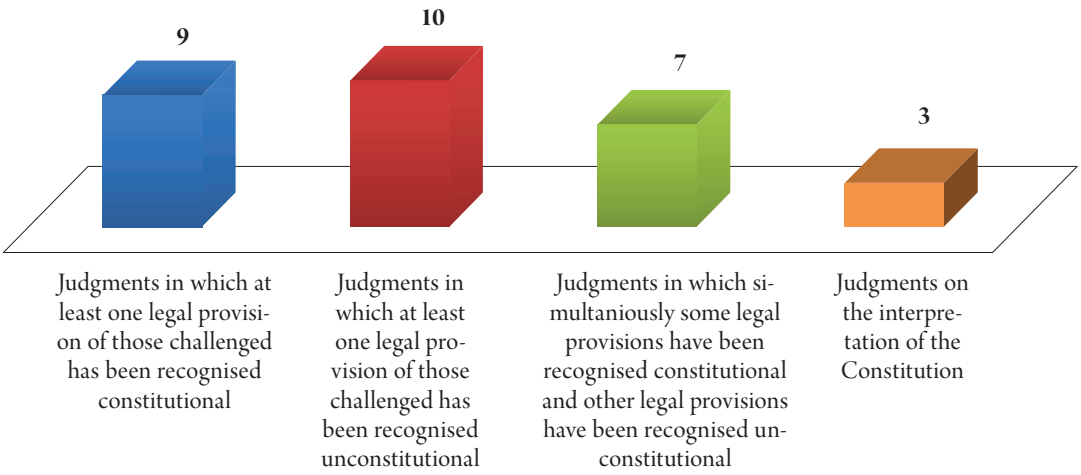


Chart no.15

Solutions delivered in respect of the complaints examined on the merits *(per subject)*

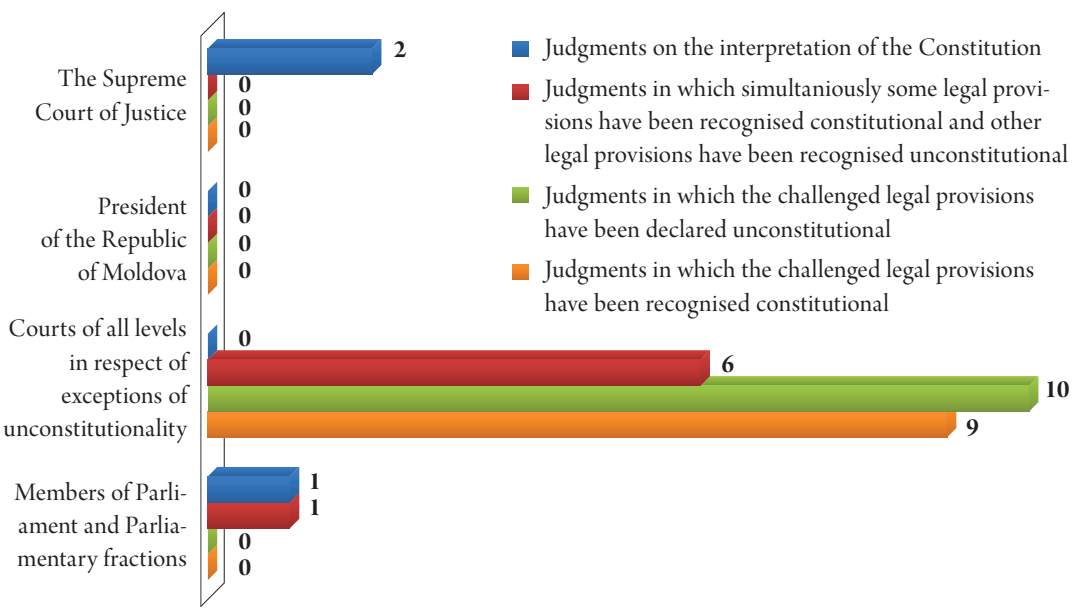


Chart no.16

Solutions delivered by the Constitutional Court on the complaints submitted by Members of Parliament and Parliamentary fractions

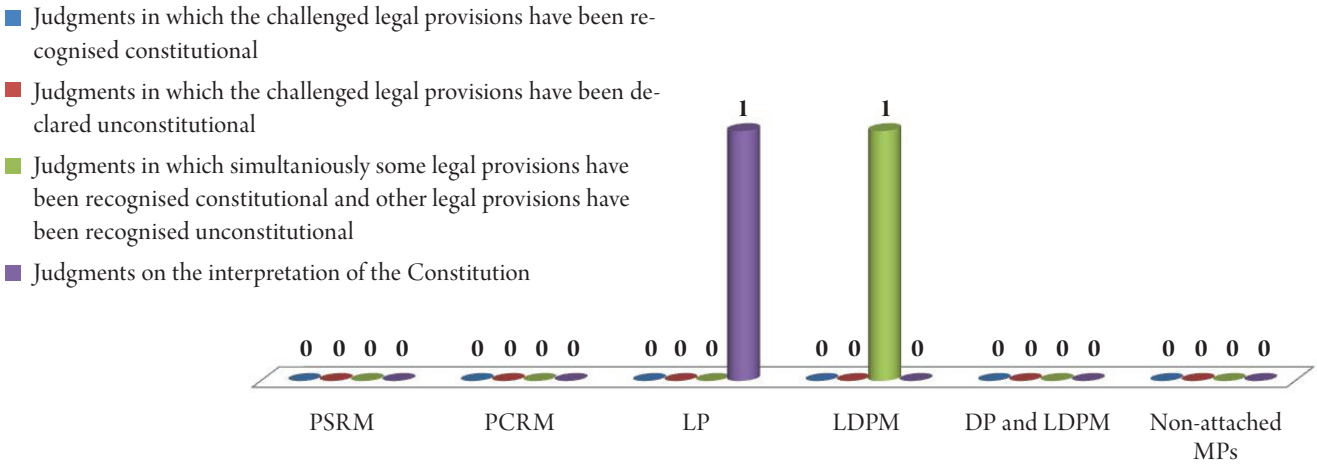
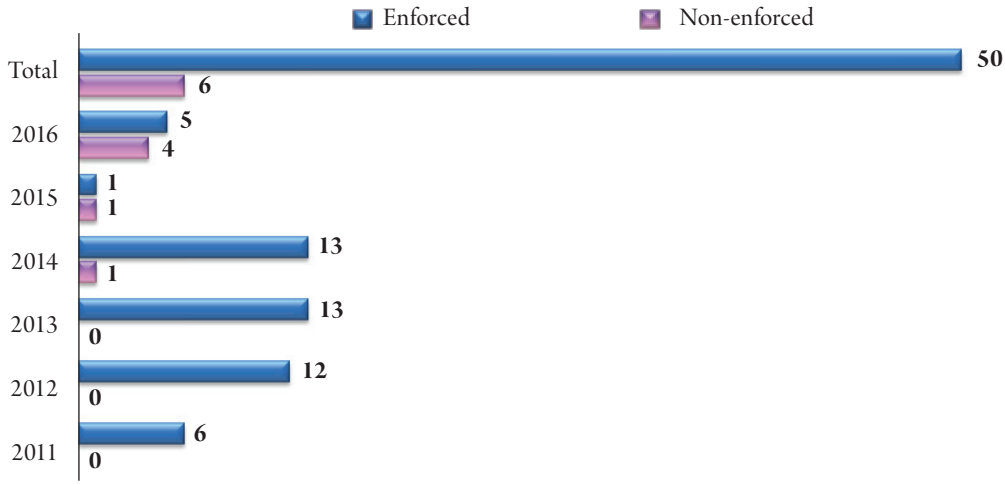


Chart no.17

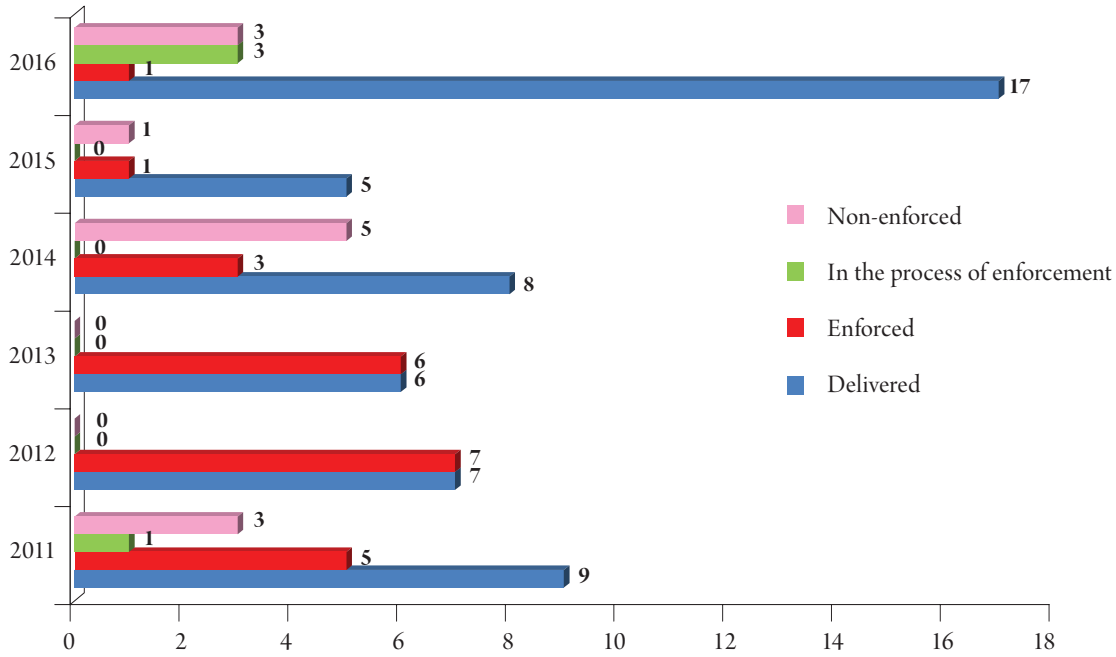
Enforcement of the Judgments delivered by the Constitutional Court in 2011-2016*



* Judgements to be enforced by 31.12.2016

Chart no.18

Enforcement of addresses delivered by the Constitutional Court in 2011-2016*



* Addresses to be enforced by 31.12.2016

B | EVOLUTION OF THE EXCEPTIONS OF UNCONSTITUTIONALITY WITHIN 1995-2016

Chart no.19

Exceptions of unconstitutionality out of the total number of complaints submitted within 1995 - 2016

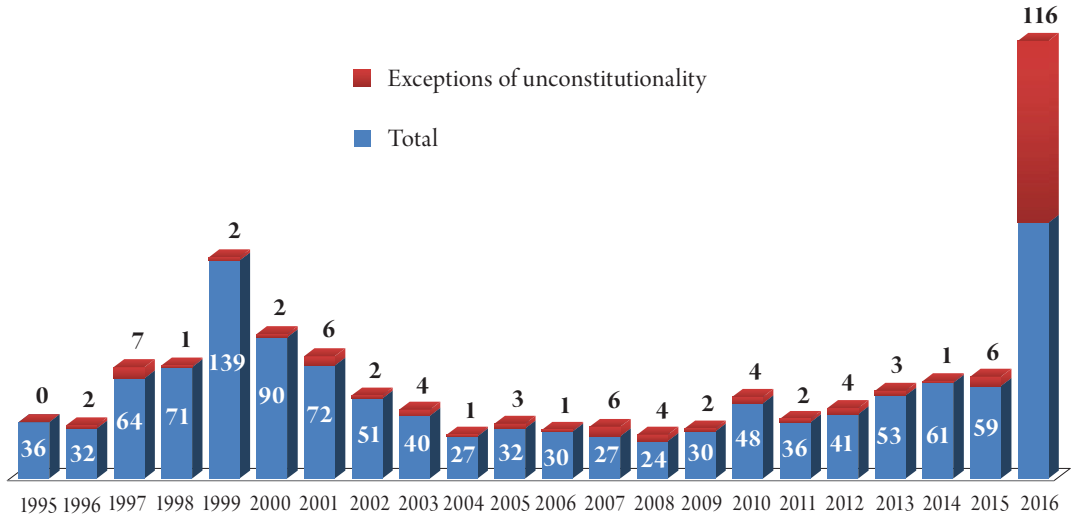


Chart no.20

Share of exceptions of unconstitutionality within the total number of complaints submitted in 1995 - 2016

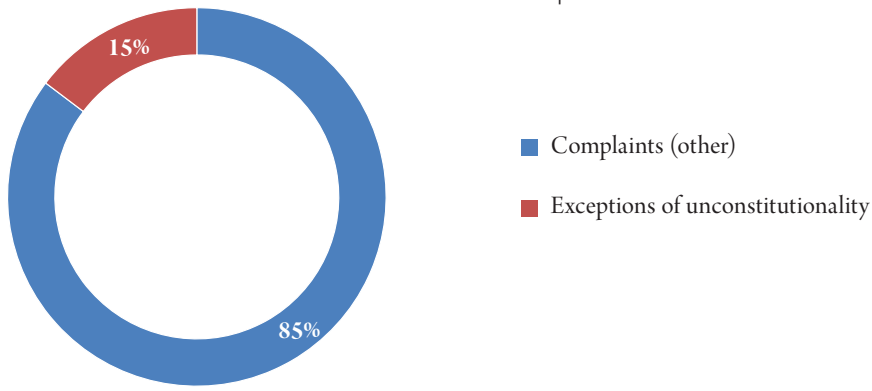


Chart no.21

Share of exceptions of unconstitutionality within the total number of complaints submitted in 2016

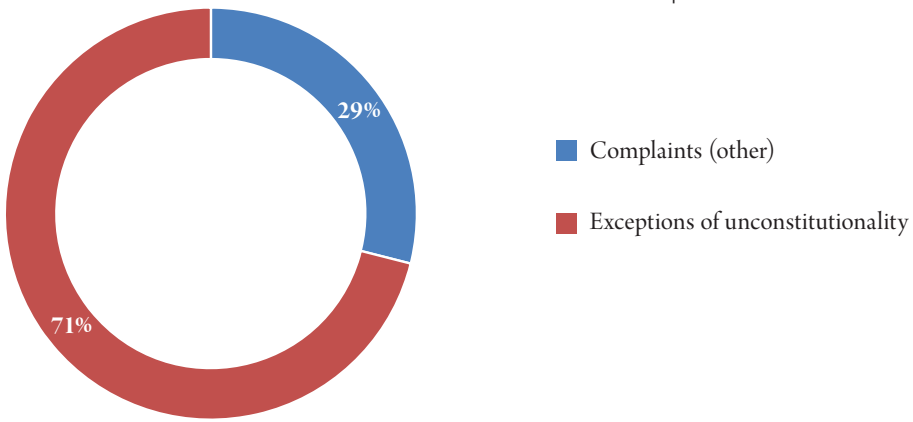
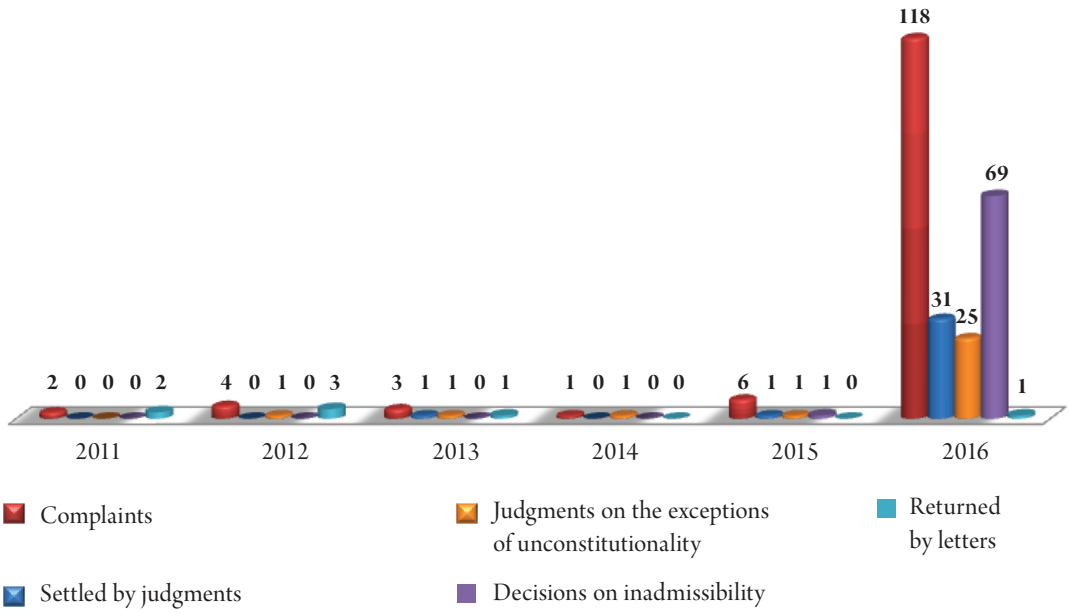


Chart no.22

Solution delivered in respect of exceptions of unconstitutionality



C | EVOLUTION OF CONSTITUTIONAL COURT ACTIVITY IN 1995-2016

Chart no.23

Exercise of constitutional jurisdiction within the period 1995-2016

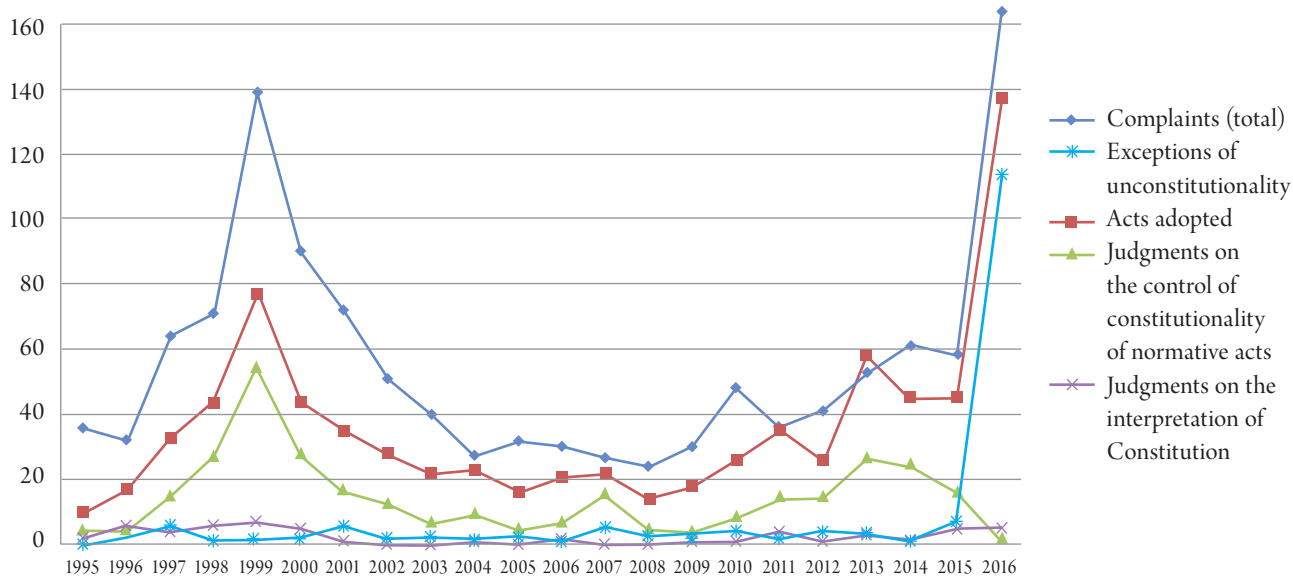


Chart no.24

Complaints submitted in 1995 - 2016

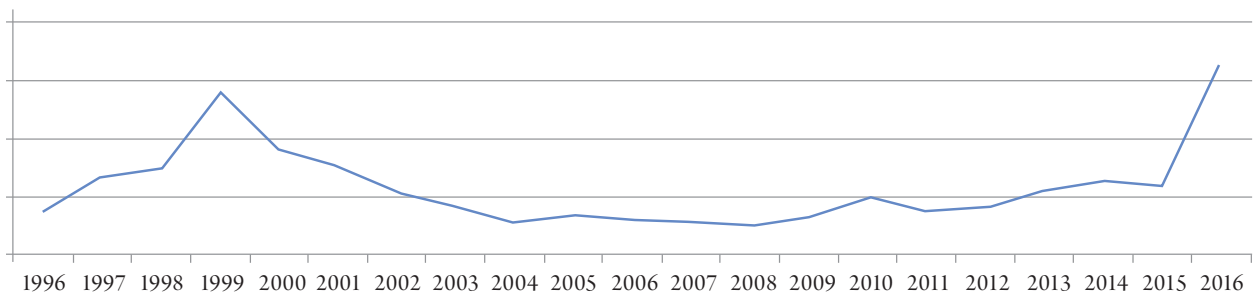


Chart no.25

Complaints *(exceptions of unconstitutionality)* in 1995 - 2016

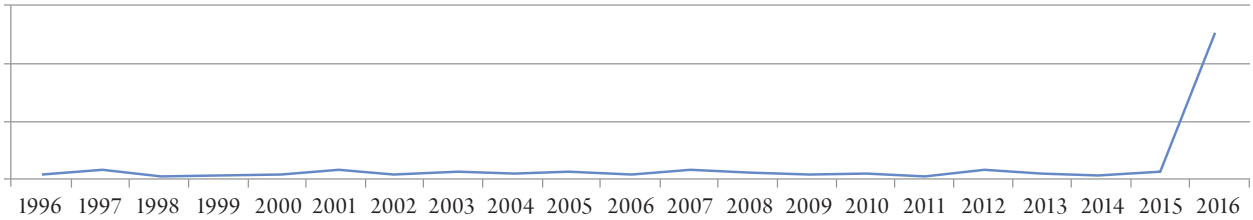


Chart no.26

Acts adopted in 1995 - 2016

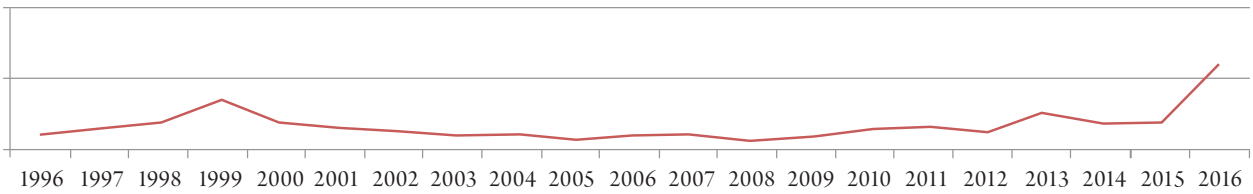


Chart no.27

Judgments on the control of constitutionality of normative acts adopted in 1995 - 2016

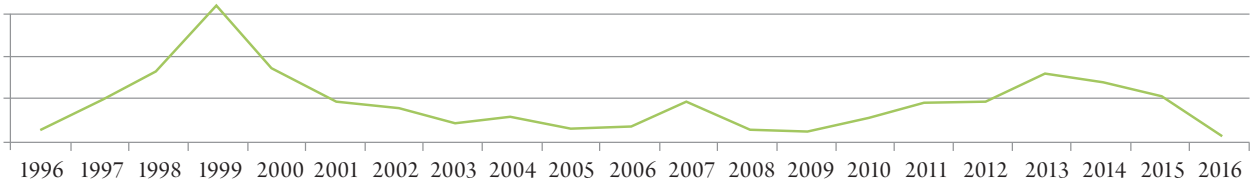
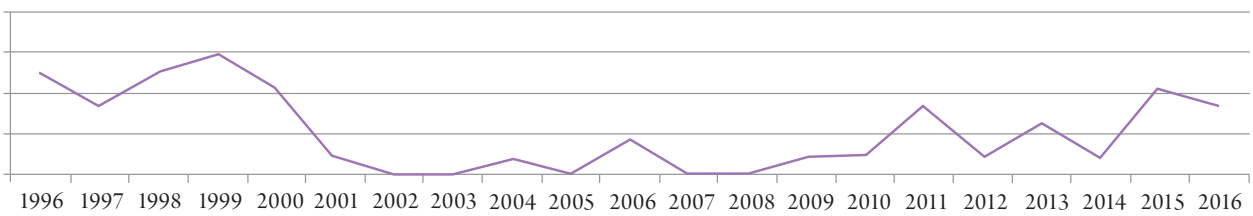


Chart no.28

Judgments on the interpretation of Constitution in 1995 - 2016



D | JUDGMENTS AND OPINIONS OF THE CONSTITUTIONAL COURT DELIVERED IN 2016

No.	Number and title of judgement	No. of complaint
1.	Judgment No.1 of 19.01.2016 on the approval of the Report on constitutional jurisdiction for 2015	
2.	Judgment no. 2 of 09.02.2016 on the interpretation of Art. 135 para.(1) p.a) and p.g) of the Constitution of the Republic of Moldova (*exception of unconstitutionality*) Address no. PCC-01/55b of 09.02.2016	Complaint no. 55b of 09.12.2015
3.	Judgment no. 3 of 23.02.2016 on the exception of unconstitutionality of paras.(3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code of the Republic of Moldova (*term of the preventive arrest*)	Complaint no. 7g of 17.02.2016
4.	Judgment no.4 of 01.03.2016 on the exception of unconstitutionality of certain provisions of paragraph 118 of Article I of the Law no. 155 of 5 July 2012 on amending and supplementing the Code of Civil Procedure of Moldova (*grounds for review of court rulings*)	Complaint no. 46g of 10.11.2015
5.	Judgment no.5 of 02.03.2016 on the interpretation of Article 1061.1 of the Constitution (*assigning the responsibility by the Government*)	Complaint no. 24b of 04.06.2015
6.	Judgment no.6 of 03.03.2016 on the exception of unconstitutionality of Article 53 p.c) of the Law no. 158-XVI of 4 July 2008 on public office and status of civil servant and of Article 76 p.g) of the Labour Code. (*suspension of labour relations*)	Complaint no. 50g of 20.11.2015

7.	Judgment no.7 of 04.03.2016 on the control of constitutionality of certain provisions of the Law no. 1115-XIV of 5 July 2000 amending the Constitution of the Republic of Moldova (*constitutionality of constitutional mendments*)	Complaint no. 48b of 12.11.2015
8.	Judgment no.8 of 16.03.2016 on the validation of the mandate of the Member of Parliament of the Republic of Moldova (*Valentina Rotaru and Serghei Chiseliov, on the list of the Democratic Party of Moldova*)	Complaint no. 19e of 15.03.2016
9.	Judgment no. 9 of 29.04.2016 on the manner of enforcement of the Constitutional Court Judgment no. 3 of 23.02.2016 on the exception of unconstitutionality of paras.(3), (5), (8) and (9) of Article 186 of the Criminal Procedure Code of the Republic of Moldova (*term of the preventive arrest*)	Complaint no. 35g of 07.04.2016
10.	Judgment no.10 of 10.05.2016 on the exception of unconstitutionality of certain provisions of Article 345 para. (2) of the Contravention Code (*individualization of sanctions*) Address no.PCC-01/26g/34g of 10.05.2016	Complaint no. 26g of 18.03.2016 Complaint no. 34g of 07.04.2016
11.	Judgment no. 11 of 11.05.2016 on the exception of unconstitutionality of certain provisions of Articles 37^{7} para.(2) and 37^{15} para. (2) of the Law on Financial Institutions No. 550 of 21 July 1995. (*prohibition of transfer and withdrawal of funds from bank accounts of persons affiliated to a commercial bank*)	Complaint no. 9g of 17.02.2016
12.	Judgment no. 12 of 12.05.2016 on the interpretation of Articles 116 para.(2), 116 para. (4) and 136 para. (1) of the Constitution (*extending the mandate of the judge*)	Complaint no. 15b of 12.03.2016

13.	Judgment no.13 of 13.05.2016 on the exception of unconstitutionality of Article 6 para.(1) p.d) and e) of the Law on the Activity within Customs Bodies no. 1150-XIV of 20 July 2000 (*restrictions for the performance of functional activity*)	Complaint no. 36g of 07.04.2016 Complaint no. 44g of 14.04.2016
14.	Judgment no. 14 of 16.05.2016 on the exception of unconstitutionality of Art.1 para.(2) p.c) of the Law no. 121 of 25 May 2012 on equality (*non-discrimination based on religion*)	Complaint no. 28g of 23.03.2016
15.	Judgment no.15 of 17.05.2016 on the exception of unconstitutionality of certain provisions of the Law on the Privatization of Housing no. 1324-XII of 10 March 1993 (*excluding the right to privatize the housing provided by the state employer*)	Complaint no. 42g of 14.04.2016
16.	Judgment no.16 of 18.05.2016 on the exception of unconstitutionality of Article 10 para.(4) of the Law on Governmental Agent no. 151 of 30 July 2015 (*access to information*) Address no. PCC1/29a of 18.05.2016	Complaint no. 29g of 24.03.2016
17.	Judgment no.17 of 19.05.2016 on the exception of unconstitutionality of Article 191 of the Code of Criminal Procedure (*provisional release pending trial*) Address no.PCC-01/33g of 19.05.2016	Complaint no. 33g of 06.04.2013
18.	Judgment no.18 of 18.07.2016 on the exception of unconstitutionality of certain provisions of Art. 264^1 para.(3) of the Criminal Code (*collection of biological samples from drivers*)	Complaint no. 66g of 06.06.2016

19.	Judgment no. 19 of 19.07.2016 on the exception of unconstitutionality of certain provisions of the Law no.156-XIV of 14 October 1998 on State Social Insurance Pensions and of the Regulations on payment of pensions established in the public system of state social insurance and state social allowances, approved by Government Decision no.929 of 15 August 2006 (*retroactive payment of pension*) Address no. PCC-01/67g of 19.07.2016	Complaint no. 67g of 07.06.2016
20.	Judgment no. 20 of 20.07.2016 on the exception of unconstitutionality of Article 22 para.(4) of the Law on the Housing Condominium no. 913-XIV of 30 March 2000 (*membership in the association on joint ownership of condominium*)	Complaint no. 64g of 25.05.2016
21.	Judgment no. 21 of 22.07.2016 on the exception of unconstitutionality of Article 125 p.b) of the Criminal Code, Articles 7 para.(7), 39 para.(5) and 313 para.(6) of the Code of Criminal Procedure and certain provisions of Articles 2 p.d) and 16 p.c) of the Law on the Supreme Court of Justice (*acts representing illegal practice of entrepreneurial activity*)	Complaint no. 37g of 11.04.2016
22.	Judgment no. 22 of 22.07.2016 on the exception of unconstitutionality of certain provisions of the Annex to the Law No. 793 of 10 February 2000 on administrative litigation (*access to justice of the head and deputy of the territorial office of the State Chancellery*)	Complaint no. 69g of 09.06.2016
23.	Judgment no.23 of 25.07.2016 on the exception of unconstitutionality of Article 27 of the Law no. 151 of 30 July 2015 on the Governmental Agent (*recourse action*)	Complaint no. 25g of 18.03.2016 Complaint no. 57g of 19.05.2016

24.	Judgment no. 24 of 14.09.2016 on the exception of unconstitutionality of Articles 55 para.(2) and 55 para.(8) of the Law No. 320 of 27 December 2012 Police and the Statute of Police Officer and section 59 para.5) and section 65 of the Disciplinary Statute of the Police Officer, approved by Government Decision no. 502 of 9 July 2013 (*hearings within disciplinary proceedings*)	Complaint no. 60g of 20.05.2016
25.	Judgment no. 25 of 21.09.2016 on the validation of the mandate of the Member of Parliament of the Republic of Moldova (*Oleg Ogor, on the list of the Liberal Party*)	Complaint no. 110e of 20.09.2016
26.	Judgment no.26 of 27.09.2016 on the exception of unconstitutionality of certain provisions of Articles 31para.(2) and 31 para.(4) of the Law No. 142-XVI of 26 June 2008 on mortgage (*term of notification*) Address no. PCC-01/83g of 27.09.2016	Complaint no. 83g of 15.07.2016
27.	Judgment no. 27 of 27.09.2016 on the exception of unconstitutionality of certain provisions of the Law No. 135-XVI of 14 June 2007 on limited liability companies (*modification of the founding acts of LLC*) Address no. PCC-01/97g of 27.09.2016	Complaint no. 97g of 02.08.2016
28.	Judgment no. 28 of 11.10.2016 on the exception of unconstitutionality of Article 19 para.(5) of Law No. 303 of 13 December 2013 on public Water Supply and Sewerage Service (*prohibition of the drilling of new artesian wells and the exploitation of the existing ones*)	Complaint no. 53g of 03.05.2016
29.	Judgment no. 29 of 28.10.2016 on the exception of unconstitutionality of certain provisions of item 34 of Annex No.3 to the Government Decision No. 360 of 25 June 1996 on state quality control of constructions (*establishment of fines for the infringement of the legislation on the quality of constructions*) Address no. PCC-01/73g/125g of 28.10.2016	Complaint no. 73g of 20.06.2016 Complaint no. 125g of 24.10. 2016

30.	Judgment no. 30 of 01.11.2016 on the exception of unconstitutionality of Article 19.4 of the Law No.303 of 13 December 2013 on the Public Water Supply and Sewerage Service *(free of charge transmission to the balance of the authority of installations and public networks of water supply and sewerage, located on public land)* Address no. PCC-01/76g of 01.11.2016	Complaint no. 76g of 23.06.2016
31.	Judgment no. 31 of 03.11.2016 on the exception of unconstitutionality of Article 73 para. (4) of the Customs Code of Moldova No.1149-XIV of 20 July 2000 (*validity term of the authorization on temporary admission of goods)*	Complaint no. 105g of 14.09.2016
32.	Judgment no.32 of 17.11.2016 on the exception of unconstitutionality of certain legal provisions referring to the enforcement of claims against the state (*enforcement of claims against the state*) Address no. PCC 01/80g of17.11.2016	Complaint no. 80g of 07.07.2016
33.	Judgment no. 33 of 17.11.2016 on the control of constitutionality of certain provisions of the Civil Code and Civil Procedure Code of the Republic of Moldova (*legal capacity of persons with mental disabilities*)	Complaint no. 49a of 25.04.2016 Complaint no. 56a of 05.05.2016 Complaint no. 63g of 24.05.2016 Complaint no. 90g of 26.07.2016
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35.	Judgment no. 35 of 20.12.2016 on the validation of the mandate of the Member of Parliament of the Republic of Moldova (*Irina Mizdrenco, on the list of the Party of Socialists of the Republic of Moldova*)	Complaint no.154e of 19.12.2016
36.	Opinion no. 1 of 29.01.2016 on the initiative of revising Article 78, Art85 para.(4) and Article 89 of the Constitution of the Republic of Moldova (*election of the President of the Republic of Moldova*)	Complaint no. 8c of 17.02.2016
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39.	Opinion no. 4 of 18.04.2016 on the initiative of revising Article 70 of the Constitution of the Republic of Moldova (*excluding parliamentary inviolability*)	Complaint no. 38c of 11.04.2016
40.	Opinion no. 5 of 19.04.2016 on the draft law amending the Constitution of the Republic of Moldova (*prosecutor's office*)	Complaint no.40c of 12.04.2016
41.	Opinion no. 6 of 19.04.2016 on the draft law amending the Constitution of the Republic of Moldova (*system of the judiciary*)	Complaint no.41c of 12.04.2016
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